

Before Mr. Justice Wilson and Mr. Justice Tottenham.

1884
April 24.

NOBIN CHUNDER CHOWDHRY AND ANOTHER (DEFENDANTS) v.
DOKHOBALA DASÍ (PLAINTIFF).*

Joint family—Partition—Presumption as to purchase in name of wife.

In a suit for partition of joint family property, it was found that certain property stood partly in the name of the wife of the original proprietor, and partly in that of a daughter-in-law: *Held*, that a wife, a member of a joint family, is, as regards property held in her name, in the same position as her husband with respect to property acquired in his name, and subject to the same presumption in favour of the joint family. *Chunder Nath Moitra v. Kristo Komul Singh* (1) followed *Chowdhraim v. Tarini Kant Lahiri Chowdhry* (2) distinguished.

THE plaintiff on the allegation that she was a member of a joint family brought this suit for partition against the other members of the joint family. The defendants stated, *inter alia*, that certain plots of land enumerated in the schedule to the plaint were the self-acquired properties of Raimoni, the wife of the common ancestor, and Jadumoni, his daughter-in-law, and held by them under three separate *kobalas* or conveyances. The Court of first instance gave a decree to the plaintiff, and with respect to the properties in the names of the ladies made this observation: „There is no independent proof as to the source from which the purchase-money of the land included in the three *kobalas* came, whether or no it came from the *stridhana*, or from whom the *stridhana* was acquired. On account of these deficiencies in the evidence and want of reliable proof, the presumption would be against the ladies.” On appeal, the District Judge entirely concurred in the view of the lower Court.

The defendant appealed to the High Court.

Baboo *Rashbehari Ghose* (with him *Bahoo Golap Chunder Sircar*) for the appellants contended that the presumption of Hindu law that property purchased in the name of one member is joint family property of all the members did not apply to the pur-

* Appeal from Appellate Decree No. 765 of 1883, against the decree of S. H. C. Taylor, Esq., Judge of Beerbhoom, dated 30th December 1882; affirming the decree of Babu Minu Lal Chatterji, Subordinate Judge of that district, dated the 17th April 1882.

(1) 11 W. R., 357.

(2) 11 C. L. R., 41.

chases by Raimoni and Jadumoni, and that the *onus* was on the plaintiff of proving that the purchases in question were *benami* acquisitions with the family funds.

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NOBIN
CHUNDER
CHOWDHRY

Babu *Mohesh Chunder Chowdhry* and Baboo *Srish Chunder Chowdhry* for the respondent. DOKHOBALA
DASI.

The judgment of the High Court (WILSON and TOTTENHAM, JJ.) was delivered by

WILSON, J., (TOTTENHAM, J., concurring).—The only question argued before us is this, whether property acquired in the name of a Hindu lady, a member of a joint family, is presumably joint family property or not. The property in this case is found standing in the names of two ladies, members of a joint Hindu family and widows of deceased members of that family. An express decision on the point given in 1871 is that of *Chunder Nath Moitra v. Kristo Komul Singh* (1). The judgment was delivered by one of the greatest masters of Hindu law who has ever administered justice in this country. And we are not aware that that view has ever been questioned until now. It is said that a recent decision of a Division Bench of this Court is in conflict with this ruling. But it does not appear to us to be so. The case referred to is *Chowdrain v. Tarini Kant Lahiri Chowdhry* (2).

There the question considered was whether as between a husband or a purchaser at a sale in execution against the husband and the wife, there is any presumption that property standing in the name of the wife is held by her *benami* for her husband. That is an entirely different question from that raised in this case, whether a wife, a member of a joint family, is, as regards property held in her name, in the same position as her husband with respect to property acquired in his name, and subject to the same presumption in favor of the joint family.

The appeal is dismissed with costs.

Appeal dismissed.

(1) 11 W. R. 357.

(2) 11 C. L. R. 41.