

APPELLATE CIVIL.

1877
May 25.

(Before Mr. Justice Turner and Mr. Justice Oldfield).

AMBIKA DAT (PLAINTIFF) v. SUKHMANI KUAR AND ANOTHER (DEFENDANTS).*

Hindu Law—Joint and Undivided Ancestral Property—Definement of Shares—Insufficient Evidence of Partition—Enjoyment of Profits.

Definement of shares in joint ancestral property recorded as separate estate in the revenue records in pursuance of an alleged intended separation between the members of a joint and undivided Hindu family does not necessarily amount to such separation, which must be shown by the best evidence, *viz.*, separate enjoyment of profits, or an unmistakable intention to separate interests which was carried into effect.

THE plaintiff in 1874 sued the defendants, widows of the plaintiff's deceased cousin Debi Prasad, for possession of certain landed property, ancestral and acquired with other estate, of which the defendants were in possession, the plaintiff alleging that his deceased cousin and himself were members of a joint and undivided Hindu family, and that the plaintiff as nephew of Debi Prasad was entitled to succeed to Debi Prasad's estate. The defendants pleaded in answer to the suit that they held possession of the bulk of the estate under a compromise entered into in 1872 between the plaintiff and the defendants after the death of Debi Prasad, and with respect to the claim set up by the plaintiff to a half share of certain landed property in mauza Sandhi, the defendant asserted that it was held by them under a partition effected in 1854, when the plaintiff was a minor, between the plaintiff's father, Dhanchhar Ram, and Debi Prasad's father, Maneshar Ram.

The Subordinate Judge found that the compromise of 1872, asserted by the plaintiff to have been only a nominal proceeding, really took effect, and so far as it related to all the property held there-under dismissed the suit, but with respect to the half share of mauza Sandhi, the Subordinate Judge gave the plaintiff a decree, holding that notwithstanding the definement of shares in the property, which occurred in 1854 owing to a temporary rupture in the family,

* Regular Appeal, No. 19 of 1876, from a decree of Pandit Jagat Narain, Subordinate Judge of Jaunpur, dated the 13th December, 1875.

1877.
 AMBIKA
 DAT
 v.
 SUKHMANI
 KUAR.

the enjoyment of the profits of the said property remained joint. The plaintiff appealed to the High Court with respect to the portion of the claim dismissed, and the respondents filed objections under s. 348 of Act VIII of 1859 to the finding of the Subordinate Judge that the partition of 1854 was not completed by the mere definement of shares recorded as separate property in the revenue records. The portion of the High Court's decision relating to the said property as joint and undivided, notwithstanding the definement of shares, will be found below.

Munshi *Hanuman Prasad*, Pandit *Bishambhar Nath*, and *Chotey Tiwari*, for appellant.

Pandit *Ajudhia Nath*, for respondents.

TURNER, J.—(after stating the facts continued) On the question of the character of the family whether in union or divided there is not much reliable evidence either way. It is for the defendants to make out a sufficient case showing partition, but with the exception of the fact that there was a quarrel between Maneshar Ram and Dhāneshar Ram in 1854, and that they then defined their interests in the property which they then held, and which at their deaths came to be recorded in the same way in their sons' names, there is really no reliable evidence. There is nothing definite to show the very important fact that the definement of shares was ever followed by separate enjoyment of profits (1).

The fact that there was a definement of shares followed by entries of separate interests in the revenue records in some estate only is an important piece of evidence towards proving separation of title and interests, but it will not necessarily amount to such separation; it must be shown that there was an unmistakable intention on the part of the share-holders to separate their interests, and that the intention was carried into effect. The best evidence is separate enjoyment of profits and dealings with the property, and if we find through a long course of years nothing to show that the definement of shares which took place in 1854 has been acted on, and that the parties continued to enjoy the property on the

(1) See *Appovier's case*, 11 Moore's *simha Roy Bahadur v. Raja Suraneni*
Ind. Ap. 75 (89), and 3 B. L. R. (P. C.) 41 *Laksmi Venkama Roy*
(Raja Suraneni Venkata Gopala Nara-

same footing as before, it is but reasonable to suppose that, although they may have taken some steps towards separation, from some cause or other, it may be a reconciliation, the intention to separate was abandoned.

1877.

AMBIKA
DAT
v.
SUKHMANI
KUMAR.

It appears to be the fact that Dhaneshar Ram, who was devoted to religion, never managed his own affairs, the management was in the hands of Maneshar Ram, apparently both before and after 1854, and until Maneshar's death. Maneshar was succeeded in the management by Debi Prasad, who continued to be sole manager during and after the cessation of plaintiff's minority, and until he died in 1872. Had what occurred in 1854 operated as a separation, we think it probable that something would have been done to relieve Maneshar of the management, and it would not have been continued in Debi Prasad while Dhaneshar was alive, nor is there any satisfactory evidence to show any separate enjoyment of profits or separate dealings with the property. There are no accounts which show it, such as there are point the other way, the oral evidence is indefinite and contradicted by oral evidence on the side of defendants, and the documents which show purchases, &c., in Debi Prasad's sole name cannot be relied on to show either separation or union of interests, for he was manager of the entire property and head of the family and the plaintiff was a minor, and transactions might have been done in his name in his capacity as a manager.

On the other hand we have the statement of Debi Prasad himself made on the 5th July, 1871, to the effect that there was no kind of separation, and the profits of the villages were without any specification considered by him to be the common property of himself and Ambika Dat. We do not see any reason why this statement should be distrusted because it was given for the purpose of the income tax assessment. We consider the last plea in appeal as to costs is so far valid, that each party should pay their own costs, and with this modification we shall affirm the judgment of the lower Court and dismiss the appeal, each party paying their own costs.

Appeal dismissed.