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SHERIFF v. DINA NATH MOOKERJEE.

There is nothing of that kind in this case. The plaintiff's cause of action accrued long before the time of the former case. There was no period during which the tenancy ceased to exist. We cannot extend the time of suit on the ground that he brought a suit improperly, on the allegation that the relationship of landlord and tenant between him and the tenant did not exist.

The result is that the decree of the Court below will be varied to this extent, that the rent for 1282, 1283 and 1284 will be disallowed.

The appellant will have his costs in this Court, and he will also get his costs in the lower Courts in proportion to the amount disallowed to the plaintiff.

J. V. W. *Decree varied.*

Before Mr. Justice Tottenham and Mr. Justice Agnew.

1885
July 23.

BATA KRISHNA NAIK AND OTHERS (DEFENDANTS) *v.* CHINTAMANI NAIK AND ANOTHER (PLAINTIFFS.)*

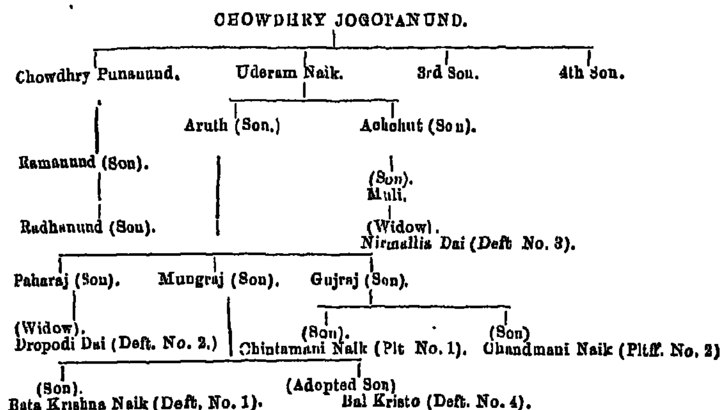
Hindu Law—Joint Family—Onus of proof—Presumption as to branch of family remaining joint when separation has taken place between it and other branches of joint family.

Each branch of a family whose original stock has been divided, may continue to be a joint family within the meaning of the Hindu law, subject to all the presumptions arising from that state, and when such a state of facts exists the onus of proving a separation is on those who allege it, the presumption still being, in the absence of such proof, that the branch of the family remained joint amongst themselves.

THIS appeal arose out of a suit, instituted on the 27th August 1879, by the plaintiffs to recover their share of certain property upon the footing of its being joint family property, and upon the allegation that they had been dispossessed by the defendants upon the 15th Jeyt, 1285 (28th May 1878). For the defendants it was contended that the separation had taken place at a much earlier date, and that consequently the plaintiffs' claim was barred by limitation; that of the properties claimed some did not exist and

* Appeal from Appellate Decree No. 126 of 1885, against the decree of J. B. Worgan, Esq., Officiating District Judge of Cuttack, dated the 13th of August 1884, affirming the decree of W. Wright, Esq., Subordinate Judge of that district, dated the 27th of June 1881.

others were the self-acquired properties of some of the defendants which never had belonged to the joint family ; and that the suit was bad for non-joinder of parties. The last named defect was remedied by the parties being added before the first hearing. The following pedigree will explain the state of the family :—



The first Court upon the evidence decided the case in favor of the plaintiffs and gave them a decree, being of opinion that it was not proved that a separation took place amongst the members of Uderam Naik's branch of the family before the date alleged in the plaint, and consequently that the family must be held to have been joint within 12 years of the date of suit.

The lower Appellate Court reversed that decree and dismissed the suit upon the ground that it was barred by limitation.

It was found as a fact by that Court, and not disputed by the plaintiffs, that a separation had taken place about 40 years ago between Uderam Naik's branch of the family and the other descendants of Chowdhry Jogotanund, and the lower Appellate Court for that reason declined to presume that Uderam Naik's descendants remained joint amongst themselves, and considered that the onus of proving that no separation had taken place lay on the plaintiffs, and that they had neither discharged that onus nor proved possession within 12 years.

The plaintiffs thereupon preferred a special appeal to the High Court against that decree, and the High Court remanded the case for reconsideration upon the ground that it by no means followed that the descendants of Uderam Naik ceased to be joint upon the

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BATA KRISHNA NAIK *v.* CHINTAMANI NAIK.

separation between them and the other descendants of Chowdhry Jogotanund taking place—*Upendra Narain Myti* v. *Gopee Nath Bera* (1). It was also of opinion that the lower Appellate Court had erred in rejecting certain evidence consisting of a statement made by Mungraj as to the position of the family in the year 1871, and that the reasons relied on were not sufficient to support the finding that the suit was barred by limitation.

Upon the remand the lower Appellate Court affirmed the decree of the original Court in favour of the plaintiffs. It found that the defendants had failed to destroy the presumption that the family remained joint up to the time alleged in the plaint, though the onus was on them, and taking into consideration Mungraj's statement in 1871 that the family was then joint, it now held that the suit was not barred by limitation as no separation was shown to have taken place till that alleged by the plaintiffs in 1285 (1878), and agreeing with the other findings of fact in the lower Court, gave the plaintiffs a decree for the share in the properties claimed.

Against this decree the defendants now preferred a special appeal to the High Court, upon the ground, amongst others, that the onus had wrongly been placed upon them.

Baboo *Mohesh Chandra Chowdhuri*, Baboo *Anund Gopal Palit* and Baboo *Gopi Nath Mookerji*, for the appellants.

Baboo *Ambica Churan Bose*, and Baboo *Karuna Sindhu Mookerji*, for the respondents.

The judgment of the Court (TOTTENHAM and AGNEW, JJ.) was as follows:—

This suit for the recovery of the plaintiffs' share in a joint family property was on one occasion dismissed by the Court below on the ground of limitation, the District Judge being of opinion that a separation had taken place so long before the institution of the suit that the plaintiffs could not succeed without proving his possession within twelve years. On second appeal to this Court, the case was remanded for a fresh decision, as we thought that the District Judge had wrongly dealt with the question of

(1) I. L. R., 9 Calc., 817; 12 C. L. R., 356.

limitation. The lower Appellate Court has now found for the plaintiffs, and has affirmed the decree made in their favour by the first Court. The defendants are the appellants in the present appeal.

The principal ground upon which the vakil for the appellants has addressed us is that the original stock of the family having been subjected to a separation many years ago, the presumption as to the joint family can no longer be maintained in regard to the various branches into which the family has been divided. With reference to this we think it sufficient to refer again to the case cited in our remand order, namely, *Upendra Narain Myti* v. *Gopee Nath Bera* (1). It appears to us that each branch of a family whose original stock has been divided may continue to be a joint family within the meaning of the Hindu law subject to all the presumptions arising from that state. We think, therefore, that the lower Appellate Court did not err in the manner suggested by the vakil for the appellants. That being so, and the District Judge having further found that the separation occurred in the year 1285, we think that the present suit is not barred by limitation; and the separation having taken place at so late a date, we are of opinion that the Judge was right in acting upon the presumption of law that the property in question was joint family property.

The appeal is dismissed with costs.

H. T. H. *Appeal dismissed.*

ORIGINAL CIVIL.

Before Mr. Justice Pigot.

THE ORIENTAL BANK CORPORATION *v.* T. F. BROWN & CO., LIMITED.

1885 *July* 20.

Discovery—Affidavit of documents—Sufficiency of affidavit—Further affidavit—Inspection of Documents—Privileged Communications—Practice.

Where in an affidavit of documents privilege is claimed for a correspondence on the ground that it contains instructions and confidential communications from the client (the plaintiff) to his solicitor, it must appear not merely that the correspondence generally contains instructions, &c., but that each letter contains instructions or confidential communications to the attorneys with reference to the conduct of the suit—*Bewicke* v. *Graham* (2) followed.

(1) I. L. R., 9 Calc., 817: 12 C. L. R., 356. (2) 7 Q. B. D., 400.