

1906  
January 5.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir  
William Burkitt.

RAM DAYAL (DEFENDANT) v. AJUDHIA PRASAD (PLAINTIFF).\*

*Hindu law—Joint Hindu family—Sale of ancestral property by the father with no antecedent debt or valid necessity to support it—Suit by sons to set aside sale so far as affecting their interests.*

A sale of ancestral property by the father in a joint Hindu family may be set aside on suit by the sons so far as it affects their interests in the property, if there is no antecedent debt or valid necessity to support it, although the transaction may not be shown to be tainted with immorality. *Manbahal Rai v. Gopal Misra* (1) followed. *Debi Prasad v. Jai Karan Singh* I. L. R., 24 All., 479 referred to; *Debi Singh v. Jai Ram*, I. L. R., 25 All., 214 distinguished.

While an appeal on behalf of two minor appellants was pending in the High Court, their guardian *ad litem* and also one of the appellants themselves died. The appeal was decreed without these matters having been brought to the notice of the Court. *Held*, that this was no more than an irregularity, which was cured by the subsequent appointment of a guardian *ad litem* pending an appeal under section 10 of the Letters Patent.

SHEO NARAIN and Ajudhia, minor sons of Sukh Lal, sued the latter and the latter's vendee, Ram Dayal, for recovery of property admitted to be ancestral.

The Court of first instance (Munsif of Cawnpore) decreed the claim. The first appellate Court (Judge of Small Cause Court, Cawnpore, with powers of Subordinate Judge), ignoring the admission as to the nature of the property, upheld the sale.

In second appeal the High Court decreed the claim, following *Manbahal Rai v. Gopal Misra*, W. N., 1901, p. 57.

Pandit *Mohan Lal Nehru*, for the appellant.

Mr. *W. Wallach*, for the respondent.

STANLEY, C.J. and BURKITT, J.—The suit which has given rise to this appeal was brought by Sheo Narain and Ajudhia, the two infant sons of the defendant, Sukh Lal, for the recovery of joint possession of two-thirds of property alleged by them to be ancestral. The defendants to the suit are Sukh Lal and Ram Dayal, who purchased the property in question from Sukh Lal. The Court of first instance decreed the plaintiff's claim, relying upon the authority of the case of *Manbahal Rai v. Gopal Misra* (1). It appears from the judgment of the Munsif that it was

\* Appeal No. 50 of 1904, under section 10 of the Letters Patent.

(1) Weekly Notes, 1901, p. 57.

admitted before him that the property in question was ancestral property, having been purchased by Puran, the father of Sukh Lal. An appeal was preferred from this decision, the grounds of appeal being, first, that it was not proved on evidence that the defendant-appellant was aware of the existence of the respondents I and II (that is, the two respondents in the present appeal); secondly, on the ground of the existence of antecedent debts of the respondent, Sukh Lal, and their payment out of the purchase-money of the house sold, alleged to be proved by the evidence on record; and, thirdly, that there being no antecedent debts, the respondents were not entitled to succeed without refunding the price paid by the purchasers and the costs of the improvements made by the appellants. There was no question thus raised as to the nature of the property in dispute, which was admitted in the Court of first instance to have been ancestral property. Notwithstanding this, the learned Subordinate Judge, in a judgment not altogether intelligible, and carelessly prepared, begins by referring to a case as governing the case, namely, the case of *Debi Prasad v. Jai Karan Singh* (1). This case has absolutely no applicability to the case which was before the Court. We are told, however, that the case the Subordinate Judge intended to refer to is the case of *Debi Singh v. Jia Ram* (2). If this be the case he intended to refer to, we may observe that it also has no application, inasmuch as in it property which belonged to a joint Hindu family was sold in execution of a decree obtained upon a mortgage. In that case the Court considered the liability of sons to pay their father's debts, and came to the conclusion that unless the debt for which the mortgage was given was tainted with immorality, the sons could not defeat a sale had in execution of a decree obtained on foot of the mortgage. We then find this statement in the judgment of the Subordinate Judge:—"The house in suit was purchased by the vendor. The title deed was in his name, so the vendee has done nothing wrong in purchasing the property from him." This is absolutely incorrect. It is in conflict with the admission of the parties before the Court of first instance, and we find from a recital in the sale-deed itself, that the property was

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(1) (1902) I. L. R., 24 All., 479.

(2) (1902) I. L. R., 25 All., 214.

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purchased by Puran, the father of Sukh Lal. Then the Subordinate Judge determines the questions in the following language:—  
“Following the principle of law enunciated by honourable Justices in the case quoted above, I was bound to uphold the sale. For these reasons I find as follows: No. 1 issue in favour of the appellant.” Now, as we have pointed out the case to which he refers has no bearing whatever upon the case before the Court, and the statement of the learned Subordinate Judge, that the house in dispute was purchased by the vendor is contrary to the admitted facts, as appears from the judgment of the learned Munsif and from the sale-deed itself. We cannot but express very great surprise at the want of care exhibited in the preparation of this judgment, and that a judgment reversing the decision of the Court below. On the facts as established beyond reasonable doubt the case is governed by the decision in the case of *Manbahal Rai v. Gopal Misra* (1), to which we have already referred. We cannot in any way distinguish the two cases. Therefore, we think that the decision of the learned Judge of this Court was perfectly right and that this appeal ought to be rejected, except in reference to a matter to which we shall presently refer. A point, however, has been raised by the learned vakil for the appellants, namely, that during the pendency of the appeal before the learned Judge of this Court, one of the appellants died before the decision of the case, as did also the guardian of both the appellants, so that there was no guardian to represent the surviving appellant when the decree was passed in that appeal. This was no doubt an irregularity, but in no way is the appellant prejudiced thereby. A guardian was subsequently appointed and now represents the surviving plaintiff-respondent. The decree, however, of the learned Judge of this Court must be varied by reason of the death of Sheo Narain. Upon his death, his share of the property devolved upon his surviving brother and his father. Consequently, the surviving brother, Ajudhia, is only entitled to a decree for one-half, and not two-thirds of the property. We accordingly modify the decree of the learned Judge of this

(1) W. N., 1901, p. 57.

Court to that extent, awarding to Ajudhia only a one-half share of the property in dispute. In other respects we uphold the decision of the learned Judge of this Court. The appellant must pay the costs of this appeal.

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*Decree modified.*

## REVISIONAL CRIMINAL.

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January 8.

*Before Mr. Justice Richards.*

EMPEROR v. BINDESHRI SINGH.\*

*Criminal Procedure Code, section 528—Transfer—Act No. XLV of 1860 (Indian Penal Code), section 193—False evidence—Affidavit of accused person in support of an application for transfer.*

*Held*, that where an accused person applies for the transfer of the case pending against him to some other Court, supporting his application by an affidavit, he cannot, or at least ought not to, be prosecuted under section 193 of the Indian Penal Code in respect of statements made therein. *In the matter of the petition of Barkat (1)* followed.

ONE Jai Singh filed a complaint under sections 379 and 323 of the Indian Penal Code against Bindeshri Singh in the Court of a Tahsildar. A few days afterwards Bindeshri Singh applied to the District Magistrate for a transfer of the case to his Court. He supported this application with an affidavit, in which he made serious allegations against the Tahsildar. On this the complainant withdrew his complaint. The District Magistrate examined Bindeshri Singh, called for a report from the Tahsildar, and ultimately directed the prosecution of Bindeshri Singh under section 193 of the Indian Penal Code. Bindeshri Singh applied in revision to the Sessions Judge, and being unsuccessful there, to the High Court.

Mr. J. Simeon, for the applicant.

The Assistant Government Advocate (Mr. W. K. Porter) for the Crown.

RICHARDS, J.—This case is an application to revise the order made by the District Magistrate under section 476, sanctioning the prosecution of the applicant for an alleged offence under

\* Criminal Revision No. 658 of 1905.

(1) (1897) I. L. R., 19 All., 200.