

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

Sir George Knox.

1907
March 11. -

BHOLA NATH (PLAINTIFF) v. GHASI RAM AND OTHERS (DEFENDANTS).*

Hindu law—Joint Hindu family—Minor—Right of minor member of a joint family to sue for partition.

Held that a minor member of a joint Hindu family may institute a suit for and obtain partition of his share in the joint family property if there exist circumstances such as in the interest of the minor render it advisable that his share should be set aside and secured for him.

THE plaintiff in this case sued as a minor under the guardianship of one Niadar Mal for partition of his share in the property of a joint family consisting of himself, his father Ghasi Ram and his uncle Moti Ram. He alleged that his father had admitted to a share in the property in suit the plaintiff's cousin Makhan Lal, the son of a deceased uncle, Ram Prasad, who according to the plaintiff, had separated from the rest of the family long before the date of the suit and was not entitled to a share in the property. Makhan Lal alone defended the suit, pleading that he was still joint with the other members of the family, and that the plaintiff being a minor was not entitled to sue. The Court of first instance (Subordinate Judge of Aligarh) dismissed the suit, holding that the plaintiff was not under the particular circumstances of the case entitled to maintain it. The plaintiff appealed to the High Court.

Dr. Tej Bahadur Sapru, for the appellant.

Babu Jogindro Nath Chaudhri (for whom Babu Satya Chandra Mukerji), for the respondents.

STANLEY, C. J.—This appeal arises out of a suit for partition instituted by a minor son against his father. In the plaint the plaintiff by his guardian assigned his reason for instituting the suit in paragraphs 8 and 9. He alleges that the defendant Ghasi Ram, wrongfully, in collusion with his brother, caused the name of his nephew Makhan Lal to be recorded in respect of one-third of the property in the village called Surajpur Shahbazpur, although he had no title to or concern with that property. In the succeeding paragraphs he states that Ghasi Ram was the lambardar of the village which I have mentioned and that he wrongfully misappropriates the income of that village. If this allegation be true,

* First Appeal No. 141 of 1905 from a decree of Maulvi Muhammad Shafi, Subordinate Judge of Aligarh, dated the 8th of March 1905.

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it would seem certainly to be for the interests of the minor plaintiff that the property should be partitioned and the interest of the plaintiff be thereby safeguarded. The learned Subordinate Judge, however, has dismissed the suit on the ground that no case of malversation was established. In the course of his judgment he observes :—“ Under the Hindu law the minor son could only sue for partition on the ground of malversation.” Then he quotes the following passage from Mr. Mayne’s work :—“ A suit could not be brought by or on behalf of a minor to enforce partition, unless on the ground of malversation, or some other circumstances which make it for his interest that his share should be set aside and secured for him”— (Mayne, section 400) ; and then the learned Subordinate Judge observes :—“ Here in my opinion there was no case of malversation.” Whether the learned Subordinate Judge intended by this to convey that no case of malversation had been alleged in the plaint we are unable to say. He evidently was of opinion that unless malversation was alleged and proved, the suit on behalf of a minor son for partition could not be maintained. He has overlooked the other circumstances which according to the authorities will justify the institution of a partition suit by or on behalf of a minor. These are such circumstances as in the interest of the minor render it advisable that his share should be set aside and secured for him. In other words, the question for the Court to determine is whether or not it is shown to be for the benefit of the minor that a partition of the joint family property should be effected. As this question does not appear to have been properly considered and the suit was dismissed on the sole ground that there was no case of malversation, we must allow this appeal. We set aside the decree, and remand the case under the provisions of section 562 of the Code of Civil Procedure to the Court below, with directions that it be reinstated in the file of pending suits and be disposed of on the merits, the important consideration for the Court being whether or not it is for the interest of the minor plaintiff that the family property should be partitioned.

Costs here and hitherto will abide the event.

KNOX, J.—I agree, and only wish to add that if the matter were *res integra* I should feel bound to express a doubt as to

whether the Hindu law on the subject has been rightly apprehended. So far as I know no text has yet been found which prohibits a demand for partition on the part of a minor, and it is upon this that the law at present proceeds. At the same time the idea of a minor in a Hindu joint family asserting a right to partition as against his father is something so strange that, but for the Courts having held as they have done, I should have ventured to question the decision.

Appeal decreed and cause remanded.

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REVISIONAL CRIMINAL.

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March 14.

Before Mr. Justice Banerji.

EMPEROR v. SUMER CHAND.*

Act (Local) No. 1 of 1891 (N.-W. P. and Oudh Water Works Act), sections 34, 40 and 41— Construction of Statutes—Omission to give notice of re-occupation of house—Water rate paid during period of non-occupation.

Held that the provisions of section 41 of the North-Western Provinces and Oudh Water Works Act, 1891, would not apply to the case of a person who had in fact regularly paid the water rate due in respect of the house during the period of its non-occupation.

SUMER CHAND was convicted by a Bench of Magistrates of an offence under section 41 (3) of the North-Western Provinces and Oudh Water Works Act, 1891, in that he had omitted to give notice to the Municipal Board of the re-occupation of a house belonging to him which had been vacant, and was fined two rupees. Sumer Chand admitted not having given notice, but pleaded that in fact the water rate had been paid for the whole time that the house was unoccupied. An appeal from this conviction to the District Magistrate was dismissed, and Sumer Chand then applied to the High Court in revision, urging that as he had in fact paid all that was due for water rate in respect of the house in question he ought not to have been convicted.

Mr. C. Ross. Alston, for the applicant.

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

* Criminal Revision No. 633 of 1906.