1910

EMPEROR v. IBRAHIM KHAN.

charge is clearly deemed to be a charge of one offence within the meaning of section 233 (*Vide* clause 2 of section 222). If it goes so far as is contended before us, we cannot agree with it.

Nor can we see that the accused has in the present case been at all prejudiced at his trial.

In our opinion the order of the Sessions Judge is wrong. We allow this application, set aside his order and direct that the appeal be decided on its merits according to law.

Order set aside.

APPELLATE CIVIL.

1910
July 4.

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

GOPI (DEFENDANT) *v.* MUSAMMAT JALDHARA (PLAINTIFF).*

Hindu Law—Will—Construction—Bequest in favour of two married daughters —Joint tenancy or tenancy in common.

A Hindu died leaving a will whereby he bequeathed the whole of his property to his two married daughters without specification of shares. ***Held*** that the estate taken by the legatees was a tenancy in common and not a joint tenancy. *Jogeswar Narain Deo* v. *Ram Chandra Dutt* (1) followed.

THE facts of this case were as follows:—

On the 28th of February, 1881, one Mohan Lal executed a will in favour of his two daughters, Lila and Maya, in the following terms:—

"I Mohan Lal, son of Har Dayal, Brahman by caste, alias Dubi, resident of Kasba Soron Khas, district Etah, declare as follows:—

"Life is transient, therefore it is necessary for every person to make such arrangement during his lifetime that after his death his name may be perpetuated and commemorated in this world. I am now about 55 years old and have got no son. I am in proprietary possession of the whole of the movable and immovable property up to the present time. No stranger or a relative of mine is a partner or sharer with me. No one else besides me is in possession and enjoyment of the property. Therefore, while in a sound state of body and mind, I make a will under this deed of will that after my death my daughters, Musammats Lila and Maya, shall be the owners in possession of the whole of the property in my possession specified below, like myself. If any relative or sharer comes forward and brings any claim against my daughters, Lila and Maya, then his claim shall be false under this will. It is necessary for Musammats Lila and Maya to provide

* First Appeal No. 238 of 1909, from a decree of Ahmad Ali Khan, second Additional Judge of Aligarh, dated the 27th of April, 1909.

(1) (1896) L. R., 23 I. A., 37; (44).

1910

GOPI v. MUSAMMAT JALDHARA.

with pleasure Musammat (paper torn) with food if she lives after my death during her lifetime with her consent. I have therefore executed these few presents by way of a will in order that it may serve as evidence."

Both the daughters survived Mohan Lal. Lila subsequently died, leaving a daughter, Jaldhara, and a husband, Bhaskaran. On the 31st May, 1900, Maya, the surviving daughter, and Bhaskaran executed a mortgage of one of the houses and of the *birt jijmani* books, to Gopi, who obtained a decree on his mortgage. Jaldhara then instituted the present suit. The court below found the will proved. The question raised in appeal was whether on the death of Lila, her sister Maya became entitled to the whole property as survivor of the two legatees under the will of Mohan Lal. The Court below held that the legatees were tenants in common and decreed the plaintiff's suit. The defendant appealed.

Mr. *S. Shams-ud-din*, for the appellant, contended that the principle of English law that a gift to two persons without words of division created a joint tenancy and not a tenancy in common, applied to the present case; *Mankamna Kunwar* v. *Balkishan Das* (1). He also submitted that under the Hindu Law daughters get a joint estate in the property inherited from their father. He referred to Mayne's Hindu Law ed. 7, para. 563, *Sant Kumar* v. *Deo Saran* (2) and *Venkayyamma Garu* v. *Venkataramanayyamma Bahadur Garu* (3).

Munshi *Gulzari Lal*, for the respondent, submitted that the principle relied on by the appellant was a highly technical rule of the English law of conveyancing and did not apply to India. He cited *Jogeswar Narain Deo* v. *Ram Chandra Dutt* (4), *Bhoba Tarini Debya* v. *Peary Lall Sanyal* (5) and *Lakshmibai* v. *Hirabai* (6) which was affirmed on appeal in *Hirabai* v. *Lakshmibai* (7).

Mr. *S. Shams-ud-din* was heard in reply.

STANLEY, C. J., and GRIFFIN, J.—The sole question in this appeal depends upon the true construction of the will of one

(1) (1905) I. L. R., 28 All., 38.
(2) (1886) I. L. R., 8 All., 365.
(3) (1902) L. R., 29 I. A., 156; I. L. R., 25 Mad., 678.
(4) (1896) L. R., 23 I. A., 37, 44; I. L. R., 23 Calc., 670.
(5) (1897) I. L. R., 24 Calc., 646 (652).
(6) (1886) I. L. R., 11 Bom., 69 (77).
(7) (1887) I. L. R., 11 Bom., 573 (579).

Mohan Lal, dated the 28th of February, 1881. Mohan Lal had two daughters, namely, Lila and Maya. Both these daughters were married, Bhaskaran being the husband of Lila. Lila left a daughter, namely, the plaintiff Jaldhara. According to the will of Mohan Lal, which is a short document, after setting out that life was transient and therefore it was necessary for every person to make arrangements during his lifetime so that after his death his name may be perpetuated and commemorated, he directs that after his death his daughters, Musammats Lila and Maya, shall be the owners in possession of the whole of the property in his possession like himself. Nothing is to be found in the will to qualify the terms of this gift. The sole question before us is whether or not this gift to his two daughters was a gift to them as tenants in common or as joint tenants. Bhaskaran, the husband of Lila, and Maya executed a mortgage on the 31st of May, 1900, of a house which belonged to the testator, in favour of the defendant appellant Gopi, and it is his contention that the gift was a gift to the two daughters in joint tenancy, and therefore the survivor Maya was able to give a valid mortgage of the entire house. On the other hand it is contended that according to the rule of construction to be applied in the case of a Hindu will the gift in question was a gift to the two daughters as tenants in common. The court below held that it was such a gift and decreed the plaintiff's claim for a declaration that the plaintiff is the owner in possession of one-half of the property in dispute by right of inheritance from her mother Lila.

The question appears to us to be concluded by the ruling of their Lordships of the Privy Council in the case of *Jogeswar Narain Deo* v. *Ram Chandra Dutt* (1). The testator in that case made a gift in the following terms:—"The remaining 4 anna share I give to you Srimati Rani Doorga Kumari, and the son born to your womb, Jogeswar Narain Deo, for your maintenance." This was followed by a direction in the following terms:—"Upon my death you and your son and grandsons, *et cetera*, in due order of succession, shall hold possession of the zamindari, *et cetera*, according to the above distribution of shares. And I give to you the power of making alienation by sale or gift." It was there

(1) (1898) L. R., 23 I. A., 37; I. L. R., 23 Calc., 670.

1910

GOPI v. MUSAMMAT JALDHARA.

contended, upon the authority of *Vydinada* v. *Nagammal* (1), that by the terms of the will the Rani and her son, Jogeswar Narain Deo, became joint tenants of the 4 anna share and not tenants in common. In *Vydinada* v. *Nagammal* a Hindu by his will granted jointly to his brother's son and Nagammal, the wife of the latter, certain lands with power of alienation, and it was held in accordance with the rule of English conveyancing governing a gift of the kind that the grantees were joint tenants and not tenants in common. Their Lordships of the Privy Council overruled this decision, stating that there were two substantial reasons why it ought not to be followed as an authority, the first of these being "that the learned Judges of the High Court of Madras were not justified in importing into the construction of a Hindu will an extremely technical rule of English conveyancing." "The principle of joint tenancy," they observed, "appears to be unknown to Hindu law, except in the case of coparcenary between the members of an undivided family." By this decision of their Lordships we are bound in the present case, the facts of which appear to be on all fours with those in the case of *Jogeswar Narain Deo* v. *Ram Chandra Dutt*. We may point out that the gift was not made to members of a Joint Hindu family but to the two daughters of the testator, both of whom were married women. It is most unlikely that the testator would, under such circumstances, have given his property to his own daughters in joint tenancy. We think, therefore, that the decision of the court below was correct and dismiss this appeal with costs.

Appeal dismissed.

(1) (1888) I. L. R., 11 Mad., 258.