

1914
January, 17.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Framada Charan Banerji.

RAM CHARAN AND ANOTHER (PLAINTIFFS) v. MIHIN LAL AND ANOTHER (DEFENDANTS). *

Joint Hindu family—Sale of family property by managing member for the benefit of the family—Sale binding on minor members of the family.

The managing member of a joint Hindu family sold certain joint family property for the purpose of providing funds for the marriage of one of the female members of the family and partly of carrying on a shop in which the family was interested. *Held* that the sale was valid and binding on the minor members of the family, although the vendor was not in the circumstances of the case their natural guardian. *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonwerree* (1) and *Mohanund Mondul v. Nafur Mondul* (2) referred to.

THIS was a suit for a declaration that a sale-deed executed by Gopal Das, brother of the plaintiffs, was null and void as against them on the ground that the property sold belonged to the joint family of which the plaintiffs, their father Hoti Lal, their brother Gopal Das, and their grandfather Parbhu Lal, were members, and that Gopal Das alone had no authority to sell without the concurrence of the plaintiffs. Gopal Das purported to have executed the sale-deed as guardian of his minor brothers, the plaintiffs, and as head of the joint family of which he and his brothers were members. It appeared that he was not the natural guardian of the minor brothers, as the mother of the plaintiffs was alive at the time of the sale. It also appeared that Hoti Lal himself had purchased the property and Parbhu Lal was not in possession of it nor did he share in the profit arising from it. The lower court held that Gopal Das was manager of the family and that he sold the property in order to raise money to meet the expenses of the marriage of his sister and to carry on a family business. The suit of the plaintiffs was, therefore, dismissed. The plaintiffs appealed to the High Court.

Munshi *Haribans Sahai* (with him The Hon'ble Dr. *Tej Bahadur Sapru*), for the appellants, argued that Parbhu Lal and his son and grandsons were members of a joint Hindu family and consequently in the life-time of Parbhu Lal nobody else could be treated as *karta* of the family. In any case, the mother of the

* First Appeal No. 175 of 1912 from a decree of Muhammad Shams-ud-din, Officiating First Additional Subordinate Judge of Aligarh, dated the 27th of April, 1912.

(1) (1856) 6 Moo., I. A., 393 (412).

(2) (1889) I. L. R., 26 Cal., 820.

minors being alive, she was their natural guardian, and the elder brother, Gopal Das, was not in law the guardian of his minor brothers and could not act as such. He cited Trevelyan on Hindu Law, p. 209.

Dr. *Satish Chandra Banerji* (with him The Hon'ble Pandit *Moti Lal Nehru*), for the respondents, submitted that the Hindu Law did not prescribe any hard and fast rules regarding guardianship. The property in dispute being the self-acquisition of Hoti Lal, his father Parbhu Lal had nothing to do with it. The mother may be *de jure* the natural guardian, but as she is a female the adult brother may *de facto* act as such, and if he does act as guardian of his brothers and enters into some transaction which is for the benefit of those brothers, they would be bound by his acts. The property was joint ancestral property in the hands of the three brothers and the elder brother must be treated as the *karta* of this parcel of property. He cited Trevelyan on Minors, pp. 49-51; *Thakoor Moti Singh v. Dowlat Singh* (1); *Gunga Pershad v. Phool Singh* (2); *Hunoomanpersaud Panday v. Mussamat Babooe Munraj Koonweree* (3) and *Gharib-ullah v. Khalak Singh* (4).

[BANERJI, J. referred to *Mohanund Mondul v. Nafur Mondul* (5)].

Munshi *Haribans Sahai*, in reply referred to Ghose's Hindu Law, p. 713; *Tirbeni Pershad v. Ram Narain* (6) and *Jamna Prasad v. Jagdeo* (7).

RICHARDS, C. J., and BANERJI, J.—The suit which has given rise to this appeal was brought by the plaintiffs appellants for a declaration that a sale-deed executed by their brother Gopal Das in favour of the first defendant, Mihin Lal, on the 4th of January, 1910, was null and void and not binding on them. They allege that the property comprised in the sale belongs to the joint family, of which they, Gopal Das, their father Hoti Lal, and their grandfather Parbhu Lal, were members, and that Gopal Das had no authority to sell it without the concurrence of the plaintiffs. They

(1) (1844) N. W. P., S. D. A., 1844, (4) (1903) L. L. E., 25 All., 407.
P., 86.

(2) (1866) 10 W. R., C. E., 106. (5) (1859) I. L. R., 26 Calc., 820.

(3) (1856) 6 Moo., I. A., 398, 412-4. (6) (1913) 11 A. L. J., 713.

(7) Weekly Notes, 1908, p. 163.

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further allege that the first defendant induced Gopal Das to make the sale by practising a fraud upon him and did not pay the amount which purported to be the consideration for the sale.

The court below has found against the plaintiffs. It was of opinion that Gopal Das was the manager of the family and that he sold the property in order to raise money to meet the expenses of the marriage of the sister of himself and the plaintiffs and to carry on a shop which jointly belonged to him and the plaintiffs. That court dismissed the suit.

It is contended on behalf of the plaintiffs that Gopal Das was not their legal guardian and was not competent to sell the property on their behalf. Gopal Das purports to have executed the sale-deed of the 4th of January, 1910, as guardian of his minor brothers and also as manager and head of the joint family of which he and his brothers were members. It is true that Gopal Das was not the legal guardian of the plaintiffs, but if he was the manager of the joint property which belonged to him and his brothers and the transaction was for the benefit of the plaintiffs, it is binding on them. The law on the subject is thus stated in Mayne's Hindu Law, VII edition, p. 225 :—"Where the act is done by a person who is not his guardian, but who is the manager of the estate in which he has an interest, he will equally be bound, if under the circumstances the step taken was necessary, proper or prudent." This is in accordance with the ruling of their Lordships of the Privy Council in the well-known case of *Hanoomanpersaud Panday v. Munraj Koonveree* (1). That no doubt was a case of a mortgage, but the principle equally applies to the case of a sale : See *Mohanund Mondul v. Nafur Mondul* (2).

[After discussing the evidence in the case, the judgement thus continued :—]

The learned Subordinate Judge has come to the conclusion that the consideration for the sale, which far exceeded the amount for which the property had been purchased, was actually received and applied partly towards the expenses of the marriage of the sister and partly in carrying on this shop. We see no reason to differ from this conclusion, but are on the contrary satisfied that the evidence supports it. In this view, Gopal Das being the manager of the property and the sale being to the advantage of the plaintiffs also, it is binding on them.

(1) (1856) 6 Moo., I. A., 893 (412). (2) (1899) I. L. R., 26 Calc., 820.

An argument was addressed to us to the effect that the property must be deemed to have been the joint property of Parbhu Lal and Hoti Lal. The lower court has found that it has not been proved that Parbhu Lal was interested in the property. We are not prepared to dissent from that conclusion. But even if it was joint property in which Parbhu Lal had an interest, since the sale was for valid purposes, it would attach to the interests of Parbhu Lal which came to Gopal Das and his brothers by right of survivorship.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

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BALDEO DAS (DEFENDANT) v. GOBIND DAS (PLAINTIFF).*

Act No. I of 1872 (*Indian Evidence Act*), section 35—*Evidence—Public document—Report made by kotwal in 1840, on reference by the Political Agent.*

Held that, on the question of the ownership of a certain temple said to be the property of the Ajaigarh state, the report of a kotwal who in 1840 had made an inquiry into the ownership of the temple at the instance of the Political Agent was relevant evidence as being a public record of a public inquiry.

THE facts of this case were as follows :—

The plaintiff alleged that the Ajaigarh State owned a temple of Sri Thakurji Shiam Sundar, and that the whole of the village, Sangrampur, which is a revenue-free village, in the district of Banda, was dedicated to this temple. The State was competent to appoint the *mahant*, and the last *mahant*, Bihari Das, was also appointed by the State. He died in 1890, and the *mahantship* remained vacant up to the 15th of March, 1910, when the plaintiff was appointed to fill up the vacancy. The plaintiff on these facts asked for possession of the village dedicated to the temple, of which, according to him, the defendant had wrongfully taken possession. The defendant defended the suit on the ground that the temple did not belong to the Ajaigarh State, which had no power to appoint the *mahant*; that the *gaddi* was meant for a *bairagi* of the *Charan Dasi* sect, whereas the plaintiff was a *Harabhyasi*, and was not a fit person to be appointed, and that the defendant was according to the custom duly elected a

* First Appeal No. 255 of 1912 from a decree of Achal Behari, Subordinate Judge of Banda, dated the 13th of May, 1912.