## APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Gokaran Nath Misra.*

SARJU PRASAD SINGH (PLAINTIFF-APPELLANT) *v.* NAND GOPAL SINGH AND OTHERS (DEFENDANTS-RESPONDENTS).* 1927 *August*, 22.

*Hindu law—Joint Hindu family—Separation of one co-parcener from others—Presumption if the others also separated—Burden of proof of jointness or re-union among other members.*

*Held*, that when it is proved that one member of a joint Hindu family has separated from his co-parceners, and person, who subsequently alleges that the remaining co-parceners are to be considered a joint Hindu family among themselves, must prove one of two things. He must either prove that there was no separation among the remaining members originally or he must prove that there has been a separation followed by subsequent reunion.

Under the Mitakshara law there is a presumption when one co-parcener separates from the others that the latter are separate, and any agreement among the remaining members of a joint family to remain united or to reunite must be proved like any other fact. *Bala Bakhsh* v. *Rukma Bai* (1) and *Palani Ammal* v. *Muthuvenkatacharla Moniagar* (2), followed.

Mr. *Haider Husain*, for the appellant.

Mr. *K. P. Misra*, for the respondents.

STUART, C. J. and MISRA, J.:—This appeal raises a question which comes frequently for decision before the Indian courts as to the position which arises when one member of a joint Hindu family under the Mitakshara law separates from the remaining members of the family. Is the presumption that the remaining members of the family continue joint, or is the presumption that they are separate? There is not, in our opinion,

*First Civil Appeal No. 99 of 1926, against the decree of Mohammad Munim Bakht, Additional Subordinate Judge of Sultanpur, dated the 12th of June, 1926, dismissing the plaintiff's claim.

(1) (1903) L.R., 30 I.A., 130. (2) (1925) L.R., 52 I.A., 83.

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any difficulty in answering that question in view of the decision of their Lordships of the Judicial Committee in *Bala Bakhsh* v. *Rukma Bai* (1). In their judgment in that appeal their Lordships laid down that there is no presumption, when one co-parcener separates from the others that the latter remain united; and they continued that any agreement among the remaining members of a joint family to remain united or to reunite must be proved like any other fact. The learned Counsel for the appellant has argued with considerable ingenuity that their Lordships did not lay down the proposition that there was a presumption when one-co-parcener separated from the others that the latter were separate, but we are of opinion that their Lordships did lay down this proposition impliedly. The presumption in a Hindu family governed by the Mitakshara law is that it is joint, but their Lordships have laid down that when one co-parcener separated from the others that presumption ceases to exist. Some presumption must take its place and that presumption can only be the ordinary presumption which will apply to every one, outside an undivided joint Hindu family, that the members are separate. It has been urged by the learned Counsel that the decision of their Lordships of the Judicial Committee in *Palani Ammal* v. *Muthuvenkatacharla Moniagar* (2) has expanded the doctrine laid down in L. R., 30 I. A. 130; but we do not find that there is anything in the latter decision which adds materially to the principles laid down in the former. The law appears clear to us. When it is proved that one member of a joint Hindu family has separated from his co-parceners, any person, who subsequently alleges that the remaining co-parceners are to be considered a joint Hindu family among themselves, must prove one of two things. He must either prove that there was

(1) (1903) L.R., 30 I.A., 130. (2) (1925) L.R., 52 I.A., 83.

no separation among the remaining members originally or he must prove that there has been a separation followed by a subsequent reunion. The learned trial Judge has arrived at a perfectly correct conclusion of law when he stated, as he has stated, that it was for the plaintiff-appellant to prove that the father of the plaintiff-appellant and the father of the defendant No. 1 remained joint after the separation of Ram Sarup. Here the allegation was not an allegation of separation followed by subsequent reunion, but it was an allegation that there had been no separation. It was for the plaintiff-appellant to establish that allegation by evidence, before he could succeed. The learned trial Judge has found that there was no reliable evidence to establish the plaintiff-appellant's case. The learned Counsel for the plaintiff-appellant has taken us through the evidence, but he has not been able to satisfy us that the conclusion of the learned trial Judge on this point is incorrect. As we find, therefore, that there is no reliable evidence to show that the father of the plaintiff-appellant and the father of the defendant No. 1 remained joint after the separation of Ram Sarup, we find that the decision of the learned trial Judge is correct and dismiss this appeal with costs.

*Stuart, C. J., and Misra, J.*

*Appeal dismissed.*