powers) we should see no reason to exercise them because of the reasons we have given in rejecting the prayer for the appointment of a Receiver.

We, therefore, dismiss this application with costs.

Application dismissed.

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ALI RAZA KHAN, SARDAR v. NEWAZISH ALI KHAN, SARDAR

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan, Acting Chief Judge

RAM LAKHAN (PLAINTIFF-APPELLANT) *v.* SURAJ PRASAD AND OTHERS (DEFENDANTS-RESPONDENTS)*

1939 *July*, 17

Hindu Law—Joint family property—Agricultural holding treated by members of family as joint family property but no proof that it was acquired with the help of joint family property—Holding, if joint family property.

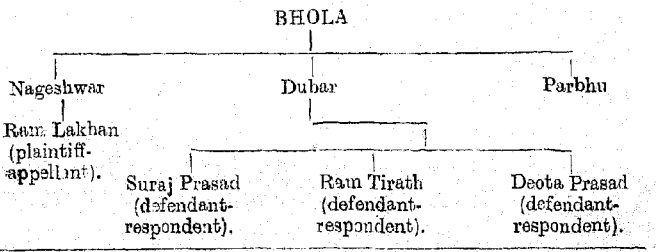
Whilst it cannot be said that in every case an agricultural holding acquired by a member of a joint Hindu family becomes joint family property, it is equally wrong to say that in no case can a holding acquired by a member of a joint family be joint family property. Where there is no evidence to show that a holding was acquired "with the help of the ancestral or joint family property" but there is evidence that the holding was treated by members of the family as joint family property, the holding is joint family property. *Acharji Ahir* v. *Harai Ahir* (1), referred to.

Messrs. *M. Wasim* and *Ali Hasan*, for the Appellant

Mr. *S. N. Roy*, for the respondents.

ZIAUL HASAN, A.C.J.:—This is a plaintiff's second appeal against a decree of the learned Civil Judge of Gonda confirming a decree of the Munsif of that place.

The relationship existing between the parties will appear from the following pedigree:



*Second Civil Appeal No. 97 of 1936, against the order of Mr. Gauri Shankar Varma, Sub-Judge of Gonda, dated the 23rd December, 1935.

(1) (1930) I.L.R., 52 All., 961

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Ziaul Hasan, A. C. J.

It will be seen that the plaintiff-appellant and the defendants-respondents are cousins. The suit was for recovery of possession of an agricultural holding, 11·6 acres in area, situated in the village of Bishunpur. The plaintiff's case was that he was the sole tenant of the land on behalf of the Mahnawn estate but that the defendants had four years previous to the suit taken possession of it by force. He also claimed Rs.200 as damages.

The defence was that the parties are members of a joint Hindu family, that the plaintiff's father Nageshwar was the manager of the family, that the holding in dispute belonged to the joint family but that when in 1921 the parties separated in mess, a hundred bighas of land were taken by the plaintiff in his cultivation and the land in dispute was taken by the defendants in their cultivation and that this arrangement had been in force for more than twelve years. Some legal pleas were also taken but they have not survived.

The learned Munsif disbelieved the plaintiff's case that the holding in suit was acquired solely by the plaintiff's father Nageshwar and he also disbelieved the defendants' story that by a mutual arrangement arrived at in 1921, the land in dispute was given exclusively in the possession of the defendants. Holding that the land in dispute was joint family property he decreed the plaintiff's suit for joint possession only. No damages were awarded to the plaintiff and the parties were ordered to bear their own costs. The plaintiff appealed against this decree but the learned Civil Judge dismissed the appeal and upheld the decree of the trial court.

The admitted facts of the case are that the *patta* in respect of the holding in suit stood in the name of Nageshwar alone. It was given to him in 1905. About the year 1322 Fasli Nageshwar got the holding recorded in the name of his son Ram Lakhan the present plaintiff-appellant. Nageshwar died in 1925 and

the defendants' father Dubar died in 1928. The plaintiff went on pilgrimage and remained absent from the village for about five years up to April, 1930. The defendants or Dubar never paid rent of the land in dispute up to 1331 Fasli. In 1331, 1335 and 1339 Fasli the defendants paid half of the rent and in 1332, 1333, 1336, 1337, 1340, 1341, and 1342 they paid the whole of the rent. The plaintiff paid half of the rent in 1331 and 1335 Fasli and the whole of it in 1334 and 1338 Fasli.

The finding of the lower court that the family was joint when Nageshwar obtained the *patta* in respect of the land in suit is not challenged on behalf of the appellant. It is contended, however, that there can be no presumption that a joint family is possessed of joint family property and that unless it is proved by the defendants that there was a nucleus in the joint family, the holding in dispute cannot be deemed to be joint family property. The general proposition of law stated by the learned counsel is undoubtedly correct but in the present case it has been found as a fact by the courts below that the holding belonged to the joint family. This finding is borne out by payments of rent of the holding by the defendants in some years, a fact for which no explanation could be offered by the plaintiff. It was argued that the payment of rent by the defendants was subsequent to 1921 when according to the defendants' case there was a separation in the family. The defendants never set up the case that the family was divided in 1921, but only stated that the two branches separated in mess only. On the other hand in paragraph 7 of their written statement they clearly stated that the parties are still members of a joint Hindu family. The finding of the courts below also is that the family is joint.

It was further argued that there was no evidence to show that before 1921 the holding was treated by the parties as joint family property or was thrown into the

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hotch pot. The payment of rent by the defendants is however an indication of the holding being treated as joint family property and the fact that this payment was made subsequent to the year 1921 is immaterial seeing that no division of the family has as yet taken place.

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Finally, it was argued that an agricultural holding cannot be joint family property and that the Oudh Rent Act does not contemplate an agricultural holding to be subject to the rules of Hindu Law. It seems to me that while it cannot be said that in every case an agricultural holding acquired by a member of a joint Hindu family becomes joint family property, it is equally wrong to say that in no case can a holding acquired by a member of a joint family be joint family property. The question depends on the circumstances of each individual case. The case of *Acharji Ahir* v. *Harai Ahir* (1), on the second paragraph of the headnote of which the learned counsel for the appellant relies itself, shows that there is nothing to absolutely prevent an agricultural holding from being joint family property and though there may be no evidence in the present case to show that the holding in question was acquired "with the help of the ancestral or joint family property" there is evidence that the holding was treated by members of the family as joint family property.

I am of opinion that the courts below were right in giving the plaintiff-appellant a decree for joint possession. The appeal is therefore dismissed with costs.

Appeal dismissed.

(1) (1930) I.L.R., 52 All., 961.