

circumstances I am unwilling to believe that the compromise was not in fact for the benefit of the minors. It may be that there was some irregularity in the procedure adopted by the parties and possibly by the Court and I refrain from expressing any opinion as to whether on account of this irregularity the plaintiffs may succeed in their suits, but I am not satisfied that in the circumstances of the case their interests were not properly considered and, therefore, I would not grant an injunction. I would dismiss this appeal with costs.

Ross, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Adami, J.J.

DIGAMBAR MAHTO

v.

DHANRAJ MAHTO.*

Hindu Law—Partition—parties—whether grandsons are necessary parties—whether grandsons entitled to claim partition against grandfather.

In a suit for partition instituted by a member of a joint Hindu family the grandsons may be proper parties but they are not necessary parties if their interests are represented in the suit by their father.

Obiter—Grandsons are entitled to claim partition as against their grandfather.

Apaji Narhar Kulkarni v. Ramchandra Raoji Kulkarni(1), disapproved.

Jogul Kishore v. Shib Sahai(2), *Rameshwar Prasad Singh v. Lachmi Prasad Singh*(3) and *Subba Ayyar v. Ganasa Ayyar*(4), approved.

* Appeal from Original Decree No. 121 of 1919, from a decision of J. E. Friend Pereira, Esq., Subordinate Judge of Deoghar, dated the 8th March, 1919.

(1) (1892) I. L. R. 16 Bom. 29 (F.B.).

(3) (1904) I. L. R. 31 Cal. 111.

(2) (1883) I. L. R. 5 All. 430.

(4) (1895) I. L. R. 18 Mad. 179.

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Appeal by defendant No. 2.

The facts of the case material to this report are stated in the judgment of Das, J.

Nirsu Narain Sinha, for the appellant.

Siva Narain Bose, for the respondents.

DIGAMBAR
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DAS, J.

DAS, J.—This appeal is directed against a preliminary decree in an action for partition. The only question which has been argued before us is that the plaintiff did not cite as parties to the action certain persons who would be entitled to a share on partition.

Now the plaintiffs are the sons of defendant No. 1 and defendant No. 2 is also a son of defendant No. 1. It is argued before us that the plaintiffs should have brought on the record their sons and the sons of defendant No. 2. The learned Subordinate Judge has taken the view that grandsons are not entitled to claim partition as against the grandfather. I am not prepared to up-hold the view of the learned Subordinate Judge in this respect. No doubt a Full Bench of the Bombay High Court in the case of *Apaji Narhar Kulkarni v. Ramchandra Rarji Kulkarni* (1), took the view that it is not open to a grandson to maintain an action for partition against a grandfather, but all the other High Courts have dissented from that view, see *Jogul Kishore v. Shib Sahai* (2), *Rameshwar Prasad Singh v. Lachmi Prasad Sinha* (3), and *Subba Ayyar v. Ganasa Ayyar* (4). In my opinion it was open to the grandsons to claim partition as against the defendant No. 1. But the question in the present action is somewhat different, namely, whether these grandsons were necessary parties in an action for partition. In my opinion the distinction between a proper party and a necessary party is not always recognized. It may be that the grandsons were proper parties in the present action but I am not prepared to admit that they were necessary parties. They were

(1) (1892) I. L. R. 16 Bom. 29 (F. B.).

(3) (1904) I. L. R. 31 Cal. 111.

(2) (1883) I. L. R. 5 All. 430.

(4) (1895) I. L. R. 18 Mad. 179.

fully represented in the action by their father and there is no prejudice to their interest by the decree which has been pronounced by the learned Subordinate Judge. But the learned Vakil on behalf of the appellant makes a grievance and I think that the best course to adopt in this matter would be to bring the grandsons on the record as parties to the suit. The learned Vakil for the plaintiffs undertakes to present an application to the Court below for the purpose of bringing the sons of the plaintiffs and the sons of defendant No. 2 on the record as party defendants. The names of these added parties will be mentioned in the decree and the commissioner will proceed to make the partition in accordance with the decision of the learned Subordinate Judge. If, however, the added defendants wish to have shares allotted to them they must apply to the Court for that purpose and in that case the learned Subordinate Judge will give the necessary directions to the commissioner. Subject to this variation, this appeal will stand dismissed but without costs.

ADAMI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Adami, J.J.

HIRANANDAN OJHA

v.

RAMDHAR SINGH.*

Lease—clause of nullity—relief against forfeiture—English law, whether applicable to India—Transfer of Property Act, 1882 (Act IV of 1882), sections 111 and 114.

Where, in a *mukarrari* lease granted before the enactment of the Transfer of Property Act, 1882, it was provided that in default of three instalments of rent the lease should be null

* Appeal from Original Decree No. 33 of 1919, from a decision of Babu Suresh Chandra Sen, Special Subordinate Judge of Palamau, dated the 28th November, 1918.

1922.

DIGAMBAR
MAHTO
v.
DHANRAJ
MAHTO

DAS, J.

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