PRIVY COUNCIL.*

RANI JAGADAMBA KUMARI

v.

WAZIR NARAIN SINGH.*

1922.

Oct. 24.
Oct. 25.
Dec. 20.

Hindu Law—impartible estate—separation—purchases out of income—accretion to impartible estate.

The established rule that a member of a joint Hindu family can separate therefrom by a clear and unequivocal intimation of his intention to sever, applies where the estate is impartible; but in that case, as the member separating loses his chance of succeeding to the whole estate, it requires strong evidence to establish a separation. In the present suit, in which it was concurrently found that though there had been a separation in residence there had been no separation in worship, the Board affirmed the decision of the Courts in India that the family remained undivided.

The income of an impartible joint estate is not so affected by its source that it should be assumed to form an accretion to the estate. Further, as the holder is entitled to the whole of the income, the principle applicable to an ordinary joint family that self-acquired moneys are to be regarded as joint property if mixed with the moneys of the joint family, does not necessarily apply to property acquired by the holder of an impartible estate out of the income.

The deceased holder of an impartible estate had applied savings out of the income to purchasing immovable properties and making loans, the rents and interest being received by the manager of the estate and treated in his books as part of the income of the estate,

Held, that the property so acquired had not become part of the impartible estate but remained the separate property of the deceased holder.

* *Present*: Lord Buckmaster, Sir John Edge, Sir Lawrence Jenkins and Lord Salvesen.

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Quaere whether movable property can ever be treated as an accretion to immovable property.

Sarabjit Partap v. *Indarjit Partap*(1), doubted.

Decree of the High Court varied.

Appeal (No. 27 of 1921) from a judgment and decree of the High Court (January 31, 1917) modifying a decree of the Subordinate Judge of Hazaribagh.

The suit was instituted by the father (since deceased) of the respondent against the appellant, sued as a ward of the Court of Wards, to establish the plaintiff's right of succession to the estate of Raja Saroda Naram, the deceased husband of the appellant.

The property in dispute comprised (*1*) the ancestral impartible estate of Serampur, (*2*) immovable property acquired by the late Raja, and (*3*) movable property, including Government promissory notes acquired by him. It was established in the litigation that the acquired property had been acquired out of the income of the estate.

The deceased Raja, who died in 1907 without issue, was the grandson of the eldest son of Dubraj Singh, who had held the estate at one period; the plaintiff was the son of Bharat Singh, a younger son of Dubraj. The parties were Surjabansi Rajputs governed by the *Mitakshara* law.

The plaintiff claimed as surviving member of a joint Hindu family; alternatively, he alleged a custom excluding widows from succession, and claimed as heir. The defendant-appellant by her defence alleged that there had been a separation; she denied the alleged custom and claimed as widow; she contended that in any case only the ancestral raj was joint property. It appeared that Dubraj Singh had granted two villages, one of which was named Chowrah, to his younger son Bharat, the father of the plaintiff. The defence alleged that thereafter Bharat and his

(1) (1904) I. L. R. 27 All. 203.

descendants had lived at Chowrah separated in food, worship, and estate. The plaintiff's case was that the grant was a customary *kharposh* grant for maintenance, and that there had been no separation.

The Subordinate Judge found that the late Raja and the plaintiff were, at the time of the former's death, members of a joint undivided Hindu family; he, however, found that the custom alleged was proved. He held that the property acquired by the late Raja had been incorporated by him with the impartible estate, and with it passed to the plaintiff, in whose favour he made a decree.

An appeal to the High Court was heard by Chapman and Roe, J.J., the plaintiff having died and the present respondent, his son, having been substituted for him. The learned Judges there finding that there had been no separation, but held that the alleged custom was not established. They found that the Government promissory notes had not been incorporated with the impartible estate, but that the residue of the acquired property had been so incorporated. The notes were accordingly held to have passed to the widow, the present appellant, but in other respects the decree was affirmed.

1922. Oct. 24, 26. *De Gruyther*, K.C., *E. B. Raikes*, and *Palat*, for the appellant. The proper inference from the grant to Bharat Singh and the removal to Chowrah was that a severance of the joint family then took place: *Tara Kumari* v. *Chaturbhuj*(1). That case, like the present, related to an impartible estate, and the facts are similar. It is now well settled that impartibility does not exclude the right to sever by a clearly expressed intention to do so. The test whether a separation has taken place is the same whether the estate be partible or impartible. The Courts in India misdirected themselves on that point. The view in *Lalteshwar Singh* v. *Rameshwar Singh* (2),

(1) (1915) I. L. R. 42 Cal. 1179; L. R. 42 I. A. 192.

(2) (1909) I. L. R. 36 Cal. 481, 487.

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that in the case of an impartible estate there is nothing for a separation to act upon, is not in accordance with later decisions. [Reference was made also to *Parbati* v. *Naunihal Singh* (1), *Girja Bai* v. *Sadashiv Dhundiraj* (2) and *Baijnath Prasad Singh* v. *Tej Bali Singh* (3)]. Even if the family remained joint the appellant is entitled to all the self-acquired property. The respondent did not satisfy the onus upon him, which was to show that it had been incorporated with the ancestral property. *Parbati Kumari Debi* v. *Jagadis Chunder Dhabal* (4); *Janki Parshad Singh* v. *Dwarka Parshad Singh* (5); *Murtaza Husain Khan* v. *Mahomed Yasin Ali Khan* (6). In the first of those cases the facts relied on to prove incorporation were similar to those in this case. The view expressed in *Sarabjit Partap* v. *Indarjit Partap* (7), that acquired property not disposed of is to be presumed to have been incorporated by intention with the impartible estate is erroneous.

Dunne, K. C. and *Kenworthy Brown*, for the respondent. The authorities referred to for the appellant establish clearly that an estate impartible by custom can be added to by the incorporation of acquired property. In this case the facts showing that intention were stronger than in *Parbati Kumari Debi's* case (4); here the collections were made by one office, and the entries were made in one set of books. Both Courts found an intention to incorporate save as to the promissory notes. There is significance in the fact that the owner died without having taken any step to make the acquired property descend differently from the ancestral estate; the view expressed on that point in *Sarabjit Partap's* case (7) has never been overruled.

(1) (1909) I. L. R. 31 All. 412; L. R. 36 I. A. 71.
(2) (1916) I. L. R. 43 Cal. 1031; L. R. 43 I. A. 151.
(3) (1921) I. L. R. 43 All. 228; L. R. 48 I. A. 195.
(4) (1902) I. L. R. 29 Cal. 433; L. R. 29 I. A. 82, 97, 98.
(5) (1913) I. L. R. 35 All. 391; L. R. 40 I. A. 170, 181.
(6) (1916) I. L. R. 38 All. 552; L. R. 43 I. A. 269.
(7) (1904) I. L. R. 27 All. 203, 251, 252.

There had been a blending of the acquired property such as in the case of an ordinary joint estate would constitute it joint property: *Lal Bahadur* v. *Kanhaia Lal* (1); *Suraj Narain* v. *Ratan Lal* (2). No difference in principle arises in the case of an impartible estate. The cases as to accumulations or purchases by a Hindu widow are analogous: see *Isri Dut Koer* v. *Hansbutti Koerain* (3), *Sheo Lochun Singh* v. *Saheb Singh* (4). [The respondents were not called upon as to the alleged separation.]

De Gruyther, K. C. in reply. Having regard to the limited nature of a widow's estate different considerations there apply. [Mayne's *Hindu Law*, paragraph 629, referred to.]

Dec. 20. The judgment of their Lordships was delivered by—

LORD BUCKMASTER.—The appellant in this case is the widow of Raja Saroda Narain. The respondent is the nearest male agnate of the deceased, being the son of one Nilkantha Narain, the original plaintiff in the suit, who was the son of Bharath Singh. The proceedings were instituted for the purpose of establishing the title of the plaintiff to an estate known as the Serampur Raj or *gaddi* and certain movable and immovable property, cash and securities which had been purchased out of the income of that estate. The questions with regard to the estate and the monies and property representing the investments from this income are distinct, and need to be separately considered. They have both been decided adversely to the appellant, with the exception of the claim to certain Government securities which will be more specially referred to hereafter. Serampur *raj* or *gaddi* is impartible, and the

(1) (1907) I. L. R. 29 All. 244; L. R. 34 I. A. 65.

(2) (1917) I. L. R. 40 All. 159; L. R. 44 I. A. 201.

(3) (1913) I. L. R. 10 Cal. 324; L. R. 10 I. A. 151.

(4) (1887) I. L. R. 14 Cal. 387; L. R. 14 I. A. 63.

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family is governed by the *Mitakshara* law. If there had been no division of the family the property would have passed to the plaintiff, but it is asserted that Bharat Singh separated from his father in his lifetime, and that consequently neither he nor the plaintiff was joint in estate with Raja Saroda Narain.

Now, the facts upon which this alleged separation is based have been concurrently found by the two Courts, and are no longer the subject of dispute. The argument, properly open to the appellant, is not upon the facts themselves, but that these facts, when accepted, do establish separation. The facts are these: The village of Chowrah was granted, at a date not precisely ascertained but many years ago, by the then Raja to the plaintiff's father, Bharat Singh, by way of maintenance on a *mukarrari* grant at a nominal rent. The plaintiff's father, who died in 1879, does not appear to have gone to reside at Chowrah, but the plaintiff went there about 1885, when the then Raja was a minor and his estate was under the management of the Court of Wards. The effect of this change of residence necessarily effected a separation in food and mess. The High Court hold distinctly that there was no separation in religion, and the learned Subordinate Judge holds that there was no separation beyond the separate living in the maintenance village and the consequent separate messing.

The cases of *Girja Bai* v. *Sadashiv Dhundiraj* (1) and *Kawal Nain* v. *Prabhu Lal* (2) are clear decisions that it is competent to a member of a joint family to separate himself from the family by a clear and unequivocal intimation of his intention to sever; but as in that case the person separating forfeits his chance of inheriting the whole of the estate by survivorship, it requires strong evidence to establish such separation. The latter case illustrates this. It was there found that the separation relied on was a complete separation

(1) (1916) I. L. R. 43 Cal. 1031; L. R. 43 I. A. 151.
(2) (1917) I. L. R. 39 All. 496; L. R. 44 I. A. 159.

in worship, in food, and in estate; and, further, there was good reason for the complete separation, and that consequently the requisite evidence was forthcoming. In this case these conditions are lacking, and their Lordships are unable to think that there has been any misapplication of the principles of law which regulate this question, and the findings of fact are sufficient to defeat the appellant's claim.

The second question gives rise to greater difficulty. It appears that Raja Saroda Narain, when he inherited the estate, was a minor. The estate was then placed under the custody of the Court of Wards. On his obtaining majority the Raja entered into possession and appears to have managed the estate with care and skill. Towards the end of his life misfortune overtook him and he became insane. His estate was once more placed under the custody of the Court of Wards, and so remained until his death in 1907.

Originally the estate was in debt, and as there is no evidence of any acquisition of property from other sources, it follows that all the estate possessed by the Raja, other than the impartible *raj*, was derived from the income of the *raj* itself. In the end this income produced very considerable property. There were certain villages, certain mortgages, usufructuary and otherwise, sums due on bonds and decrees, Government promissory notes to the extent of two lakhs, and other movable and immovable properties. With the exception of the Government promissory notes the whole of these have been awarded to the plaintiff upon the ground that they represented an accretion to the estate and descended with it. Their Lordships think that this conclusion is wrong, and that its error is due to the idea that the produce of the impartible estate naturally belongs to and forms an accretion to the original property. In fact, when the true position is considered there is no accretion at all. The income when received is the absolute property of the owner of the impartible estate. It differs in no way from property that he might have gained by his own effort,

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or that had come to him in circumstances entirely dissociated from the ownership of the *raj*. It is a strong assumption to make that the income of the property of this nature is so affected by the source from which it came that it still retains its original character.

It is possible that this confusion is due to the consideration of the position with regard to an ordinary joint family estate. In such a case the income, equally with the *corpus*, forms part of the family property, and if the owner mixes his own moneys with the moneys of the family—as, for example, by putting the whole into one account at the bank, or by treating them in his accounts as indistinguishable—his own earnings share with the property with which they are mingled the character of joint family property; but no such considerations necessarily apply to the income from impartible property.

The whole of the evidence on the matter in the present case, as stated by the High Court, is as follows:

"Some new properties were acquired out of the savings of Serampur *gaddi*. When there was savings in my hand I" (the manager of the estates) "used to send the money to the raja and take receipts from him. The money was utilised by the raja by giving loans and purchasing other properties. On some occasions the raja used to lend the money himself, and these sums are not entered in our books. When the loan was given through us, then we used to keep accounts of such money. I can't give the sums that passed through our hands or their probable amount. The moneys that passed through our hands were invested in loan and also in purchasing *zamindaris*. The incomes of *zamindaris* purchased were also entered in our books. It was treated as part of the income of the estates. Loans with interest repaid were also entered in our books. That money was also treated as part of the estate. All this was done at the instance of the raja. Loans advanced by the raja personally and not through our hands, and those that were not entered in the estate account at the time of the advance, the money when repaid used sometimes to come to our hands and sometimes paid to the raja direct. Those that came to our hands were entered in our book. What was so entered into the estate account was considered as estate money with the raja's consent. I can't say if the raja purchased any landed estate out of the money advanced by him personally."

For the reasons already given such a statement is insufficient to affect the property with the character of impartibility. Whether it be possible, in any circumstances, to treat movable property as an

accretion to a landed estate of this character is a matter not arising for decision.

It is true that in *Sarabjit Partap* v. *Indarjit Partap* (1) it was decided that movable property could be so regarded, but as the point does not arise here their Lordships need only say that they must not be regarded as accepting the soundness of that decision. The facts here are not very different from those in *Rani Parbati Kumari* v. *Jagadis Chunder Dhabal* (2), where it was held that the evidence was inadequate to show that certain *mauzas* bought out of the savings of the *zamindar* were attached to the *zamindari*. In both *Janki Parshad Singh* v. *Dwarka Parshad Singh* (3) and *Murtaza Husain Khan* v. *Muhammad Yasin Ali Khan* (4) the addition of family property to the original *raj* is considered. Both these cases dealt with property other than movable property. In the present case their Lordships can see no evidence in the facts stated of any sufficient intention to treat the acquired properties, whether the *mauzas*, mortgages or other personal estate, as part of the original *raj*.

The consequence is that to that extent the appellant succeeds, and the decree of the High Court must be varied by declaring that the decree for possession made in favour of the respondent be further varied by providing that it shall not include items 2, 3, 5, 6, 7, and 9 in Schedule A to the plaint. The respondent will pay the costs of the appeal.

Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellant: *T. L. Wilson & Co*

Solicitors for respondent: *Pugh & Co.*

(1) (1904) I. L. R. 27 All. 203.
(2) (1902) I. L. R. 29 Cal. 433; L. R. 29 I. A. 82.
(3) (1913) I. L. R. 35 All. 391; L. R. 40 I. A. 170.
(4) (1916) I. L. R. 38 All. 552, 567; L. R. 43 I. A. 269, 281.