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MACPHERSON, J.

both the Courts below and that the latter bear their own costs throughout.

JAMES, J.—I agree.

VARMA, J.— I agree.

Appeal allowed.

PRIVY COUNCIL.

J. C.*
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November, 27.

RAM NARAIN CHAUDHURY

v.

PAN KUER.

On Appeal from the High Court at Patna.

Hindu Law—Partition—Reunion—Who may reunite—Agreement to inherit from one another—Claim by heir of party to enforce agreement—Mitakshara, ch. 2, s. 9(2) (3).

In a Hindu family governed by the Mitakshara a reunion after partition is valid under ch. 2. s. 9 (2) (3) only if it is with a father, brother or paternal uncle, and only if it is between parties to the partition.

Basanta Kumar Singha v. *Jogendra Nath Singha*(1), approved.

Where three members of a divided Hindu family have agreed that if any of the three dies without a son, then his property is to devolve upon that one who has an heir, the agreement can be enforced only by those who were parties to it; an heir of one of the parties, though he was alive when it was made, cannot claim its benefit.

Decree of the High Court affirmed.

Consolidated Appeal (no. 22 of 1931) from four decrees of the High Court (January 30, 1929) which reversed two decrees of the Subordinate Judge of Patna (February 26, 1927).

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* *Present*: Lord Blanesburgh, Lord Thankerton, and Sir Shadi Lal.

(1) (1905) I. L. R. 33 Cal. 371.

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The appeal related to succession to the property of one Ram Kishore, a member of a Hindu family governed by the Mitakshara, who died in August 1927. The plaintiff-appellant, Ram Narain (since deceased) whose branch of the family had separated from Ram Kishore's branch under a deed of partition in 1908, alleged that he and Ram Kishore had reunited in 1917; he therefore claimed the whole property by survivorship. Alternatively, he claimed a half share under an ekrarnama or agreement of 1896. Mt. Pan Kuer, respondent no. 1, claimed under a will of the deceased the genuineness of which was no longer in dispute.

Ram Narain and Ram Kishore were distant cousins. The ekrarnama of 1896 was made between the father of Ram Narain and the father and uncle of Ram Kishore.

The facts, with a pedigree, appear more fully from the judgment of the Judicial Committee.

The Subordinate Judge found that a reunion was proved in fact, but that it was invalid in law. He held however that under the ekrarnama of 1896 the plaintiff and his brother became entitled to the whole property; he accordingly made a decree for a half share.

On appeal to the High Court the decree was set aside. Das J., with whose judgment Adami J. agreed, found that the alleged reunion was not proved, and held that such a reunion would be inoperative. The parties, he said, were bound by the interpretation which the author of the Mitakshara [in ch. 2, s. 9(2) (3)] had placed upon the text of Brihaspati. The authorities in Southern India and Bengal settled beyond doubt that the Mitakshara excluded reunion with relations other than a father, a brother, and a paternal uncle: *Basanta Kumar Singha* v. *Jogendra Nath Singha*(1). The text had been differently interpreted in the Mithila school and in the Bombay school,

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and the Court had been urged to construe the text for itself. But, as had been pointed out by the Judicial Committee in *Collector of Madura* v. *Moottoo Ramalinga Sathupathy*(1), the duty of a Judge was "not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage." The learned Judge doubted whether the ekrarnama was genuine. In any case, though a valid agreement between the parties, it was not one which the plaintiff could enforce; if it could be enforced by the heirs it would be an invalid alteration of the Hindu law of succession.

1934 Oct. 29. *De Gruyther*, *K. C.* and *Wallach* for the appellants did not seriously controvert the decision with regard to the alleged reunion; they contended however that as the plaintiff was alive when the agreement of 1896 was made, his father entered into it on his behalf as well as his own, and that he was entitled to enforce it.

Dunne, *K. C.* and *Hyam* for respondent no. 1 were not called upon.

Nov. 27. The judgment of their Lordships was delivered by—

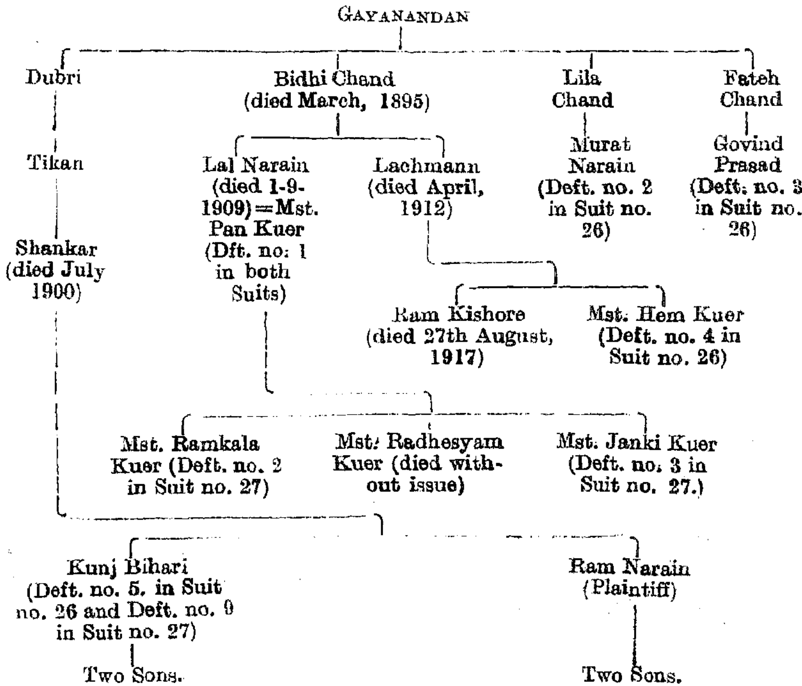
LORD THANKERTON.—These are consolidated appeals from four decrees of the High Court of Judicature at Patna, dated the 30th January, 1929, which reversed two decrees of the Subordinate Judge of Patna, dated the 26th February, 1927.

The original appellant, Ram Narain Chaudry, was plaintiff in the two suits in which these decrees were made and which were instituted by him in 1924, but he has recently died and the present appellants are his personal representatives. The main question, which is common to both suits, is whether the original

(1) (1868) 12 Moo. I. A. 397, 436.

appellant was entitled to succeed to the whole estate of Ram Kishore Chaudry, who died on the 27th August, 1917, or otherwise to one-half thereof.

The following pedigree shows the relationship of the parties concerned :—



Gayanandan Chaudry, who was the common ancestor of Ram Narain, the original appellant, and Ram Kishore, had six sons, of whom the four appearing in the pedigree in 1887 formed a joint Hindu family. Of the remaining two, who do not so appear, one had separated from the family before that date and the other had died without issue. In 1887 a partition took place between Dubhri and Bidhi on the one hand and Lila and Fateh on the other hand.

Bidhi died in March, 1895, predeceased by his brother Dubhri. Family disputes resulted in a partition, the family property being partitioned under an

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award dated the 14th July, 1896, in half shares as between Shankar on the one hand and Lal Narain and Lachmann on the other hand. The joint family at that time consisted of Shankar and his two sons, Kunj Bihari and the original appellant, and Lal Narain and Lachmann, along with the latter's son, Kishore, if then in existence. In the view that their Lordships take, it is unnecessary to decide whether Kishore was then in existence. The appellants found on an ekrarnama or agreement between Shankar, Lal Narain and Lachmann made in July, 1896, the genuineness and effect of which is in dispute and which will be referred to later.

In 1908 there was a partition between Lal Narain and Lachmann, and Lal Narain died in September, 1909, leaving his widow, Musammat Pan Kuer, respondent no. 1 in these appeals, and three daughters, but no son. Lachmann obtained possession of Lal Narain's estate to the exclusion of the widow and daughters, although he subsequently made some provision for the widow. Lachmann died in April, 1912, and his estate devolved on his only son, Ram Kishore. As already stated, the last-named died in August, 1917, and the present dispute arose as to the succession to his estate. It is sufficient to state that the three main contestants were Ram Narain, the original appellant, who claimed the entirety by survivorship under an alleged reunion between him and Kishore in June, 1917, or, alternatively, a moiety under the agreement of 1896; respondent no. 1, who claims under the will of Ram Kishore; and the heirs on intestacy of Ram Kishore, Murat Narain and Govind Prasad, the sons of Lila Chand and Fateh Chand, respectively. The genuineness of Ram Kishore's will is no longer challenged, and the only question now is whether its operation is excluded by an alleged reunion between Ram Narain and Ram Kishore, or, otherwise, by the provisions of the agreement of 1896.

As presented to their Lordships, the appellants' claim was based on two alternative grounds, viz., (*1*) that, in virtue of a reunion between Ram Narain and Ram Kishore, which took place a short time before his death, their estates had become joint, and that, on Ram Kishore's death without male issue, Ram Narain became entitled to the whole joint estate by survivance, or, alternatively, (*2*) that he was entitled, under the provisions of the agreement of 1896, to one half of the estate, his brother being entitled to the other half.

On the first point their Lordships agree with the decision of the High Court that, even assuming the reunion of 1917 to have been established in fact, it was inoperative in law, as Ram Narian and Ram Kishore were not within the class of relationship to which reunion is limited under the Mitakshara Law, which rules the present case.

The passage in the Mitakshara, chapter II, section 9, paragraphs 2 and 3, is thus translated by Colebrooke:—

> "2. Effects which have been divided and which are again mixed together are termed reunited. He to whom such appertain is a reunited parcener.
>
> 3. That cannot take place with any person indifferently, but only with a father, a brother or a paternal uncle, as Brihaspati declares, 'He who being once separated dwells again through affection with his father, brother or paternal uncle is termed reunited.'"

In *Basanta Kumar Singha* v. *Jogendra Nath Singha*(1), the learned Judges note two slight inaccuracies in the translation of paragraph 3, viz.: that there is no word in the original Sanskrit corresponding to the word "only," and that the concluding words "is termed reunited" should be literally rendered as "is termed reunited with him." The question in that case, as in the present case, was whether the express mention of the father, brother and paternal uncle was restrictive or merely illustrative. It was held that it was restrictive. In the

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present case the learned Judges of the High Court followed that decision, and their Lordships agree with their decision and the reasoning on which it is based. In their Lordships' opinion the text of the Mitakshara is clear and unambiguous and excludes recourse to other authorities, and they would only add that, in their opinion, paragraph 2 makes clear that the parties to the reunion must have been parties to the original partition, and that, when paragraph 3 states "that cannot take place with any person indifferently," it is intended to place a further restriction within a still narrower limit than that prescribed by paragraph 2. In this view it is difficult to see how the persons expressly named can be merely illustrative, or, indeed, what class they can illustrate.

It follows that the alleged reunion of 1917 could not be valid in law, in respect that Ram Narain and Ram Kishore were not within the relationship named in paragraph 3, and it is unnecessary to consider whether Ram Kishore was alive and a party to the partition of 1896, which would have been relevant to the limitation imposed by paragraph 2.

The appellants' alternative case raises, primarily, a question of construction of the agreement of 1896; if this question be decided adversely to the appellants, it will be unnecessary to consider any other questions, such as, the genuineness of the agreement.

The material passage in the agreement is as follows:—

"It has been finally settled by all of us three men that if any of us, God forbid, may become childless, then his properties movable and immovable or nami and benami shall devolve upon him whose heir will remain alive and any other third person shall have no right or claim to the said properties. If the person devoid of heir may have a daughter and if with a view to deprive others of their right he may give the properties to his daughter by executing any deed in her favour or if he may destroy the properties in any other way then it shall be regarded as illegal in the court in the face of this ekrarnama. Should our heirs and representatives in any way act in contravention of the terms of this ekrarnama, it shall be regarded as wrong and false in the court. It shall be incumbent on our heirs and representatives to stick to the terms of this ekrarnama."

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It is common ground that the word "childless" means "sonless," and the appellants maintain that on the death of Ram Kishore, who was sonless, his estate devolved, in terms of the above provision, on Ram Narain and his brother Kunj Bihari, both of whom had sons then living.

In their Lordships' opinion, however, it is clear that the benefit of the devolution under that provision is confined to "us three men," that is, to the three parties to the agreement, who were Shankar, Lal Narain and Lachmann. It is a condition that the party taking the benefit of the provision should have a living heir, but no right to take is conferred on such heir. In that view Ram Narain could claim no right under the agreement, and the appellants' alternative claim also fails.

Their Lordships will accordingly humbly advise His Majesty that the appeals should be dismissed with costs and that the decrees of the High Court of the 30th January, 1929, should be affirmed.

Solicitors for appellant's representatives: *W. W. Box & Co.*

Solicitors for respondents: *Barrow, Rogers and Nevill.*

APPELLATE CIVIL.

Before Courtney Terrell C.J. and Luby, J.

1934.

August, 30. *September*, 3, 6.

MUSAMMAT LALTAPATI KUER

v.

NARAIN MAHTON.*

Joint debtors—appeal by some—liability reduced by agreement between creditor and appealing debtors—benefit

* Appeal from Original Order no. 282 of 1933, from an order of Babu Brajendra Prasad, Subordinate Judge of Patna, dated the 15th July, 1933.