

PRIVY COUNCIL.

*Before Lord Buckmaster, Lord Dunedin, Lord Carson, Sir John Edge
and Lord Salvesen.*

1923
May 15.

Mussammat JATTI (PLAINTIFF)—Appellant
versus
BANWARI LAL AND OTHERS (DEFENDANTS)
Respondents.

Privy Council Appeal No. 35 of 1922.
(Chief Court Appeal No. 1629 of 1916.)

Hindu Law—Joint family—Severance of one member—Absence of presumption that remaining members remained united—Partnership—Death of partner—Dissolution—Widow claiming Accounts—Indian Limitation Act, IX of 1908, Sch. I, Art. 106.

When one member of a joint Hindu family separates there is no presumption that the remaining members remained united; an agreement to remain united or to re-unite must be proved like any other fact.

Balabux Ladhuram v. Rukhmabai (1) and Balkishen Das v. Ram Narain Sahu (2), followed.

When a member of a partnership firm dies there is a dissolution of the firm and his widow is barred by the Indian Limitation Act, 1908, Sch. I, Art. 106, from suing for an account more than 3 years after his death, in the absence of proof of an agreement whereby she became a partner in his place; the fact that the deceased partner's share continued to be dealt with in the partnership books is no evidence of such an agreement.

Decree of the Chief Court affirmed on different grounds.

Appeal from a judgment and decree of the Chief Court delivered on 24th December 1917, affirming a decree of the Senior Subordinate Judge of Amritsar.

The suit was brought by the appellant in 1914 against the respondents. In her plaint she stated that her husband (who had died in 1905) and his three brothers had separated in or about 1876; that after the severance of the family *status* and estate her husband and his two brothers, Harbhagwan and Daya Ram, carried on business as tenants in common or partners and that on her husband's death she was admitted into the partnership business. She sued for dissolution of the partnership

(1) (1903) I. L. R. 30 Cal. 725 :
L. R. 30 I. A. 130.

(2) (1903) I. L. R. 30 Cal. 738 :
L. R. 30 I. A. 139.

and claimed a one-third share of the assets. The respondents contended by their written statements that in 1876, one brother only had separated, and that the other brothers had remained joint, and that on the death of the plaintiff's husband they succeeded by survivorship. They denied that the plaintiff had been admitted a partner.

The trial judge held that there had been a complete severance of the joint family in 1876, and found that the plaintiff had not proved that she had become a partner. He accordingly held that the suit was barred by the Indian Limitation Act, 1908, Sch. I, Art. 106, and made a decree dismissing the suit.

That decree was affirmed on appeal to the Chief Court. The learned Judges (Shah Din and Leslie Jones, JJ.) construed the deed of 1876 by which the separation was effected as leaving the other brothers joint; they accordingly held that the present respondents had succeeded by survivorship.

The plaintiff had applied for a review but that application had been rejected.

DE GRUTHER, K. C. and DUBE, for the Appellant.

ABDUL MAJID, for the Respondent.

The judgment of their Lordships was delivered by—

LORD DUNEDIN—In 1876 four brothers, Ishar Das, Harbhagwan, Rup Chand and Daya Ram, lived as a joint Hindu family and carried on a family business. In that year a deed was executed by which the assets of the family were described and divided, and Ishar Das was finally paid out. Thereafter the business was carried on, but the profits were carried to separate accounts of the three remaining brothers in equal shares.

In 1905 Rup Chand died, leaving a widow who is the appellant. In 1914, the widow raised this suit against the remaining brother and the sons of the other who had pre-deceased, claiming accounts and payment of one-third of the partnership assets.

The defence put up was two-fold. It was alleged that though in 1876 Ishar Das separated from this joint family, the other brothers remained joint: that in consequence on the death of Rup Chand, the husband of the plaintiff, she had only the right of maintenance as a Hindu widow, which maintenance she had duly received.

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Consequently, it was said that assuming that there was a complete separation, the suit was time-barred under Article 106 of the 1st Schedule of the Limitation Act. The statement of the plaintiff as to what happened at her husband's death was not expressed with precision, but might be read as an averment that on her husband's death she was admitted to be a partner, her share being the same as that of her deceased husband. The issues as originally framed were only three in number, one of which, being as to the plaint being adequately stamped, may be disregarded. The remaining two were (1) On the separation of Ishar Das did not the remaining male members of the family become separate? (2) Did they convert the joint family business into a partnership? The case went to trial and no evidence was produced by the plaintiff, except the account books of the firm, which showed that after Ishar Das separated the profits of the business were carried to separate shares in the names of the three brothers, and this continued after Rup Chand's death. The learned Senior Subordinate Judge found first, that the deed executed at the separation of Ishar Das showed separation of the whole brothers; that re-union had not been proved and that the joint family came to an end. But finding in the pleading a clear plea to the effect that the suit was time barred, he added an issue to that effect and decided it in favour of the defendants.

The plaintiff appealed, and on appeal the learned Judges of the Chief Court of the Punjab held that in 1876, though Ishar Das had separated, separation had not taken place among the other brothers, and consequently the plaintiff had only the rights of a Hindu widow for maintenance and could not maintain the suit. They, therefore, found it unnecessary to consider the question as to limitation. The plaintiff has appealed to the King in Council.

Their Lordships do not find themselves able to agree with the views of the learned Judges of the Chief Court.

The law is well settled by the cases of *Balabux Ladhuram v. Rukhmabai* (1) and *Balkishen Das v. Ram Narain Sahu* (2). Lord Davey remarks in the former case:—

“It appears to their Lordships that there is no presumption, when one co-parcener separates from the others, that the latter

(1) (1808) I. L. R. 30 Cal. 725 :
L. R. 30 I. A. 130.

(2) (1903) I. L. R. 30 Cal. 783 :
E. R. 30 I. A. 139.

remain united. Their Lordships think that an agreement amongst the remaining members of a joint family to remain united or to re-unite must be proved like any other fact."

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Their Lordships think that the result is well stated by the learned trial Judge, who says :—

" There is absolutely no material on the file from which it can be inferred that the three brothers continued united or re-united as co-parcenary members of a joint Hindu family, while defendants' own books show the contrary I have therefore not the least hesitation in finding that on the separation of Ishar Das the family of the parties ceased to be a joint Hindu family in the strictest sense of the term ; or, in other words, its members ceased to be co-parceners. Thus I find the first issue against the defendants."

There remains, however, the question of limitation. The position here seems clear. Separation having been effected in 1876, and the business being carried on by the three brothers, the business became an ordinary partnership, subject to the Contract Act. On the death of Rup Chand, the plaintiff's husband, the partnership was dissolved and a right to an accounting arose. But Rup Chand died in 1905, and this suit was not raised until 1914. It is, therefore, time-barred as a suit for such an accounting. If, however, on Rup Chand's death the widow was admitted as a partner to a new partnership, then the date of dissolution would only be the raising of the suit and no limitation could apply. It is possible to read the averments of the plaintiff as alleging such a partnership. But the existence of such a partnership was denied. The case went to trial, and not a scrap of evidence directly proving such an agreement was produced. All that the widow got was a mere allowance of Rs. 51 a month. The fact that Rup Chand's share still continued to be dealt with in the books is no evidence of a partnership with his widow.

Their Lordships think that a perfectly correct view was taken by the learned Subordinate Judge. As, however, the result is the same as if the grounds of judgment of the Court of Appeal had been adopted,

the form of judgment, which will be appropriate will be simply to dismiss the appeal with costs, and their Lordships will humbly advise His Majesty accordingly.

A. M. T.

Appeal dismissed.

Solicitors for Appellants : *Ranken Ford and Chester.*

Solicitors for Respondents : *Chapman-Walker and Shephard.*

APPELLATE CIVIL

Before Mr. Justice Harrison and Mr. Justice Zafar Ali.

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ASAD ULLAH KHAN AND ANOTHER—(DEFENDANTS)

Appellants

versus

KARAM CHAND AND WADAYA RAM—(PLAINTIFFS)

Respondents.

Civil Appeal No. 2449 of 1921.

Civil Procedure Code, Act V of 1908, Order XXI, rules 58, 91, 92, 93—Whether auction purchaser who has paid the full price and is dispossessed of the property by a successful claimant can sue to recover the money.

Held, that an auction purchaser who has paid the full price can bring a suit to recover that money, on being dispossessed of the property by a successful claimant who had lodged an unsuccessful objection under Order XXI, rule 58 of the Code of Civil Procedure, and subsequently brought a suit and established his right to the property.

Prasanna Kumar v. Ibrahim Mirza (1), followed.

Ram Sarup v. Dalpat Rai (2), dissented from.

Bhagwan Das v. Allah Bakhsh (3), distinguished.

Rustomji Ardeshir Irani v. Vinayak Gangadhar Bhat (4),

Nannu Lal v. Bhagwan Das (5), and Bindeshri Prasad v. Badal Singh (6), referred to.

Miscellaneous appeal from the order of Rai Bahadur Lala Ganga Ram Soni, District Judge, Multan, dated the 11th July 1921, reversing that of Mirza Nawzash Ali Khan, Junior Subordinate Judge, Multan, dated the 15th March 1921, and remanding the case.

(1) (1917) 36 Cal. L. J. 205.

(2) (1920) I. L. R. 43 All. 80.

(3) 52 P. R. 1919.

(4) (1910) I. L. R. 35 Bom. 29.

(5) (1916) I. L. R. 39 All. 114.

(6) (1923) 21 All. L. J. 228, 230 (F.B.).