

tended for over a period of twelve years, they have now become full owners of the land and their possession cannot be disturbed. It was held in *Jiwa Khan v. Lakhmi Chand* (1) that a mortgagee can set up adverse possession if his possession at its inception was that of a trespasser.

We accordingly dismiss this appeal with costs.

A. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

BENI PARSHAD (PLAINTIFF) Appellant,

versus

Mst. GURDEVI (DEFENDANT) Respondent.

Civil Appeal No. 2544 of 1919.

1923

Feb. 27.

Hindu Law—Joint Hindu family—partition of a part of the joint property—effect of.

Held, that when the members of a joint Hindu family effect a partition, even though it is a partition of only a portion of the joint property, they cease to be members of a joint Hindu family.

Gavrishankar v. Atmaram (2), not followed.

First appeal from the decree of Sheikh Ruknuddin, Senior Subordinate Judge, Ambala, dated the 29th August 1919, dismissing the plaintiff's suit.

MANOHAR LAL, for Appellant.

JAGAN NATH, for Respondent.

The judgment of the Court was delivered by—

MARTINEAU J.—The plaintiff is the brother, and the defendant, *Mussammatt Gurdevi*, is the widow of *Atma Ram*, a *bania* of *Jagadhri*, who died on the 9th

(1) 232 P. L. R. 1911.

(2) (1893) I. L. R. 18 Bom. 511.

June 1917, and the suit is for a declaration that the defendant is not the heir of Atma Ram and is not entitled to the succession certificate which she has obtained, the plaintiff's contention being that he and Atma Ram formed a joint Hindu family, and that the defendant is also not entitled to succeed by reason of her unchastity during her husband's lifetime. The lower Court has dismissed the suit, finding that the plaintiff and Atma Ram were divided in *status* by a partition which took place between them, that the evidence as to the defendant's unchastity is unreliable, and that if there was any unchastity it was condoned by her husband. The plaintiff appeals.

It is not disputed that the plaintiff and Atma Ram executed a deed on the 23rd July 1916 (page 9 of the paper book) by which they partitioned a portion of the immoveable property, *viz.* the houses and shops. But counsel for the appellant contends that, notwithstanding this partition, they continued to be members of a joint Hindu family as regards the rest of the property which remained undivided. He relies on *Gavrshankar v. Atmaram* (1), which supports his contention. But with all respect we cannot agree with the view taken by the learned Judges of the Bombay High Court. The very conception of a joint Hindu family involves joint ownership of all the family property by its members, and consequently the moment the partition took place between the plaintiff and Atma Ram in 1916, even though it was a partition of only a portion of the joint property, they ceased to be members of a joint Hindu family. The case for the defendant is also supported by the plaintiff's own application and *affidavit*, dated the 7th July 1917, filed in a suit which he and his brother had instituted against one Ganpat Rai for the possession of a half share in a garden. Atma Ram died during the pendency of that suit, and the plaintiff stated in his application and *affidavit* that *Mussammatt* Gurdevi was Atma Ram's sole heir. Another fact which is noteworthy is that in the account books of the family Atma Ram's *khata* is separate from the plaintiff's, as the latter has admitted. We have no hesitation in agreeing with the lower Court that the plaintiff and Atma Ram were not members of a joint Hindu family at the time of the latter's death.

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We also agree in the finding that the defendant's unchastity has not been proved. No doubt it appears that unchastity was imputed to her, the allegation being that a child to whom she had given birth was illegitimate, but the evidence produced against her is wholly unreliable, the statements of the witnesses in regard to her misconduct being purely hearsay.

We accordingly dismiss the appeal with costs.

C. H. O.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Zafar Ali.

SALIG RAM, VENDEE (DEFENDANT) Appellant,

versus

BADHAWA AND OTHERS (PLAINTIFFS' } Respondents.
AND MANGAL, VENDOR (DEFENDANT) }

Civil Appeal No. 1036 of 1920.

Custom—Alienation—Brahmans of Mauza Gokalgarh, District Ambala—Hindu Law.

Held, that the initial presumption in the case of *Brahmans* is that they are governed by their personal law, and that the plaintiffs had failed to prove that the *Brahmans* of Mauza Gokalgarh were governed by a custom restricting the proprietor's power of alienation.

The mere fact that a family or tribe has departed from its personal law in one respect, namely, the incompetency of a daughter to inherit her father's property, does not necessarily lead to the conclusion that it has adopted agricultural custom in all other respects.

Kapuria v. Mangal (1), referred to.

Second appeal from the decree of Lieutenant-Colonel A. A. Irvine, District Judge, Ambala, dated the 24th March 1920, reversing that of Sheikh Ruknuddin, Senior Subordinate Judge, Ambala, dated the 4th March 1919, and decreeing plaintiffs' suit.

JAGAN NATH, for Appellant.

DEVI DIAL, for Respondents.