

**APPELLATE CIVIL.**

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*Before Shadi Lal C. J. and Gordon Walker J.*

SHIV DYAL (PLAINTIFF) Appellant

*versus*

RAM JIWAYA (DEFENDANT) Respondent.

Civil Appeal No. 183 of 1929.

*Hindu Law—competence of father to make partition of the joint family property without consent of the sons—provided each son gets a share equal to that of the father—Suit for partition—must embrace the whole family property.*

*Held*, that although according to Hindu Law it is competent to a father to make a partition of the joint property during his life-time, even without the consent of his sons, this rule is subject to the proviso that on partition each son takes a share equal to that of the father. If the partition is not made *bonâ fide* and is unfair, it cannot be held to be valid.

*Kandasami v. Doraisami Ayyar* (1), *Aiyavier v. Subramania Iyer* (2), and *Nirman Bahadur v. Fateh Bahadur Singh* (3), relied upon.

*Held further*, that where a suit for partition is brought by one co-sharer against the other co-sharers, it should embrace the *whole* family property.

*Second appeal from the decree of Mr. H. B. Anderson, District Judge, Multan, dated the 12th November 1928, affirming that of Maulvi Barkat Ali Khan, Senior Subordinate Judge, Multan, dated the 29th April 1927, dismissing the plaintiff's suit.*

JAGAN NATH AGGARWAL and AJIT PARSHAD, for Appellant.

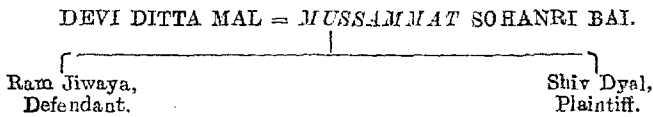
FAQIR CHAND, and BADRI DAS, for Respondent.

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(1) (1880) I. L. R. 2 Mad. 317.      (2) (1917) 40 I. C. 205.

(3) 1929 A. I. R. (All.) 963.

SHADI LAL C. J.—The following pedigree-table explains the relationship of the persons interested in this litigation:—



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In 1916 Devi Ditta Mal, the father of the plaintiff and the defendant, effected a partition of the joint property and got mutations effected, in favour of his wife *Mussammât* Sohanri Bai, and his sons, Ram Jiwaya and Shiv Dyal, of the lands allotted to each of them. The defendant Ram Jiwaya objected to the partition and protested against the mutations being effected in his favour. He urged *inter alia* that the so-called partition had been effected to deprive him of the share kept by the father for himself. His objections were, however, overruled and the mutations were effected as desired by the father. It appears that Ram Jiwaya also protested against the allotment of certain houses to him, but his protest proved abortive.

In 1925 *Mussammât* Sohanri Bai died and the plaintiff Shiv Dyal thereupon brought the present suit for the partition of certain house property allotted to the lady in 1916. The claim was resisted by Ram Jiwaya, mainly on the ground that the alleged partition of 1916 made an unequal distribution of the property and was consequently not binding upon him. He urged that the plaintiff should sue for the partition of the whole of the joint property, and his suit for partial partition could not be maintained.

The learned District Judge, concurring with the trial Court, held that the partition relied upon by the plaintiff "was not fair and equal;" and that it was

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not binding upon the defendant. He accordingly dismissed the suit, as it offended against the rule prohibiting partial partition.

The plaintiff has preferred a second appeal to this Court, and the vital question for determination is, whether the defendant is bound by the partition effected by his father in 1916. Now the learned District Judge has, upon a consideration of all the evidence produced by the parties pronounced his opinion that "there was a very great difference in the irrigated areas of the shares allotted to the plaintiff and to the respondent, which would certainly affect the income derivable from the lands so allotted. It is also clear from the fact that the land revenue payable by the defendant was Rs. 2-5-6 whereas that payable by the plaintiff was Rs. 5-1-0, that the quality of the plaintiff's land was superior to that of the defendant." It is true that according to Hindu Law it is competent to a father to make a partition of the joint property during his lifetime, even without the consent of his sons, and the partition so made by him binds the sons. This rule is, however, subject to the proviso that on partition each son takes a share equal to that of the father. As laid down in *Kandasami v. Doraisami Ayyar and others* (1), if the partition is not made *bonâ fide* and is unfair, it cannot be held to be valid. The same view has been taken in *Aiyavier v. Subramania Iyer and others* (2) and *Nirman Bahadur v. Fateh Bahadur Singh and others* (3).

The learned counsel for the appellant, however, urges that the defendant having acquiesced in the partition is not now entitled to object to it. But the trial Judge has made it absolutely clear that no such

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acquiescence on the part of the defendant has been established. This finding of the trial Court was not impugned before the learned District Judge, and it must, therefore, be held that no acquiescence has been proved which would debar the defendant from impeaching the validity of the partition relied upon by the plaintiff.

The rule is firmly established that where a suit for partition is brought by one co-sharer against the other co-sharers, it should embrace the whole family property. It is true that this rule is subject to certain exceptions, but none of those exceptions apply to the present case.

The action brought by the plaintiff, therefore, infringes the general rule against partial partition, and has been rightly dismissed by the lower Courts. I would accordingly dismiss the appeal with costs.

GORDON-WALKER J.—I concur.

A. N. C.

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*Appeal dismissed.*