1903 JULY 14, 15, 16, 17, 20, 21, 22 & 28.

APPELLATE CIVIL.

31 C. 433=8 C. W. N. 408.

they forced them into litigation. Mr. Hodges seems to have been exceedingly forbearing towards the ladies, and we do not believe that he gave the additional Rs. 7,000 or, more strictly speaking, the additional Rs. 3,600 for Lalgarha out of any other motive than generosity and, as the witness Chalu Ram says, because he saw "the helplessness of the Mussammuts." Debi Dayal has been blamed for not pressing the ladies at the time of the sale of Chianki and Ganka to pay off two Zurpeshgi bonds or rather usufructuary mortgages for Rs. 1,200, executed in his favour. He says he did not do so, because he was in possession of the lands and the investment was a profitable one. But the ladies do not appear to have wished to pay off these bonds. Probably they did not wish to pay them off because they had no interest to pay on them. They apparently preferred to take Rs. 1,200 in each and pay off their more pressing creditors Bhagwan Shah and the Garhwa man, to whom they had probably to pay interest.

We therefore feel no doubt that the sales disputed in these suits were good sales made for legal necessity, and after due enquiries had been made by the purchasers, which in the circumstances they were not required to make. The suits seem to belong to a class very common in the country, in which reversioners endeavour to recover property alienated by Hindu widows for legal and pressing necessites, and in which purchasers of property from such widow, too often lose both their property and the money they have paid for it.

It is unnecessary we think to discuss the last plea raised by the defendant, viz., whether the Subordinate Judge was justified in giving the plaintiffs decrees for the recovery of the property conditional on their payment to the defendant of the sums of Rs. 11,198 and Rs. 6,400. We would only say that we do not think he was. The plaintiffs made no offer to pay off any sums, which might be found to have been borrowed for legal necessities. The plaintiffs deliberately chose to rest their cases upon allegations of wasteful, extravagant and unnecessary borrowing and they have failed to substantiate their allegations. They never offered to **[448]** repay any portion of the purchase-money, and we do not consider that the alienations were in excess of the legal requirements of the case, and that the purchasers in any way failed to make proper enquiries.

We therefore dismiss Appeals 85 and 86 with costs in both Courts, and decree Appeals 67 and 79 with costs in both Courts. We allow one set of costs for both suits.

Appeals 67 *and* 79 *decreed; Appeals* 85 *and* 86 *dismissed.*

---

31 C. 448.

APPELLATE CIVIL.

Before Mr. Justice Hall and Mr. Justice Stevens.

SARADA PROSAD RAY *v.* MAHANANDA RAY.*

[6th January, 1904.]

Hindu Law—Dayabahga—Joint Family—Presumption of joint property—Father—Burden of proof.

* Appeal from Appellate Decree No. 438 of 1901, against the decree of Arthur Goodeve, District Judge of Birbhoom, dated the 12th of December 1900, modifying the decree of Atul Chunder Batabyal, Munsiff of Dubrajpore dated the 28th of June 1900.

1904
JAN. 6.

APPELLATE CIVIL.

31 C. 448.

The presumption of law that, while a Hindu family remains joint, all property including acquisitions made in the name of individual members, is joint property does not apply to the case of a joint family governed by the Dayabhaga.

Certain property in dispute was acquired in the name of one of several brothers during the lifetime of their father, and was in the possession of that brother. *Held*, the burden of proof in such a case rests upon the party, who asserts that the property in reality belonged to the father.

[**Ref.** and **Com. on**: 4. C. L. J. 56; 60 I. C. 729; 62 I. C. 348; 33 C. L. J. 201=25 C. W. N. 544; **Foll** 6 A. L. J. 591=31 All. 477.]

SECOND APPEAL by the defendant No. 2, Sarada Prosad Ray.

This was a suit for establishment of the plaintiff's title to one-sixth share of certain immoveable properties alleged to have been left by his father, who died on the 8th November 1898, leaving 5 sons, *viz.*, the plaintiff and the defendants Nos. 1 to 4, and a widow, the defendant No. 5.

The defendants Nos. 1 to 4 resisted the claim by alleging that, during their father's lifetime, he divided all his properties amongst his sons, giving 9 bighas of land to the plaintiff and **[449]** the rest to them. They also alleged that plot No. 31 of the plaint was the self-acquired property of the defendant No. 2.

The Munsif held that there was no division of the properties during the lifetime of the father, as alleged by the defendants, and that all the disputed properties remained in the possession of the father up to his death, with the exception of plot No. 31. As to plot No. 31, he found that it was held in the name of the defendant No. 2 and that he had possession of it, and as there was no satisfactory evidence to prove that it was acquired by the plaintiff's father, he held that it was the self-acquired property of that defendant. The suit was accordingly decreed except as regards plot No. 31.

The defendants Nos. 1 to 4 appealed to the District Judge and the plaintiff preferred a cross-appeal as regards plot No. 31. The District Judge dismissed the appeal and decreed the cross-appeal. As regards the cross-appeal, he observed as follows:—

"As regards the third point for determination, the learned Munsif appears to have gone astray. He has found that the family remained joint in property during the lifetime of the father, but has nevertheless held that the burden of proving that property No. 31 was self-acquired by the father lay on the plaintiff. The presumption of Hindu law is, however, that while a Hindu family remains joint all property, including acquisitions made in the name of a single member, is joint family property. The burden of proving that property No. 31 was self-acquired lay on the defendant No. 2, and as he does not appear to have satisfactorily discharged that burden, I am of opinion that property No. 31 must be regarded as joint family property and therefore liable to partition."

Babu *Nalini Ranjan Chatterjee*, for the appellent. The District Judge has misunderstood the finding of the Munsif, who did not find that the family had remained joint *in property*. The presumption of Hindu law, referred to by the District Judge, is not applicable to the present case. Under the Dayabhaga, there is no *jointness in property* between the father and the sons, so that there cannot be a real joint family during the father's life time. The onus has been wrongly placed by the District Judge on the defendant No. 2.

Babu *Jadu Nath Kanjelal*, for the respondent: Even under the Dayabhaga, the father and sons constitute a joint family and acquisitions in the name of any member may be presumed to be the property of

the joint family. See *Chunder Nath Moitro* [450] v. *Kristo Komul Singh* (1) and *Nabin Chunder Chowdhry* v. *Dokhobala Dasi* (2). In the lifetime of the father, the presumption that there is a joint fund is stronger than in the case of a family consisting of brothers only.

Babu *Nalini Ranjan Chatterjee*, for the appellant, in reply, submitted that the cases cited by the other side were distinguishable, as they related to *benami* purchases made in the names of the female members of the family.

HILL AND STEVENS, JJ. This was a suit by one of several brothers claiming by right of inheritance from his father one-sixth share in certain property, which, he asserted, had belonged to his father at the time of his death. The Munsif held that in respect of all the property in suit, save and except a parcel of land described as No. 31, the plaintiff has made good his case, and gave him a decree accordingly. With respect to the property No. 31, however, which, it was asserted by the defendant No. 2, to have been purchased by him during the lifetime of the father, and of which he had since remained in exclusive possession, the Munsif found that the plaintiff had failed to establish his case that that property constituted any part of the estate of the father, and so he dismissed the suit in respect of it. The plaintiff then appealed to the learned Judge. With regard to property No. 31, with which I may say we are now alone concerned, the learned Judge reversing the finding of the Munsif held that the burden of proving that it was his exclusive property lay upon defendant No. 2, but that as he had apparently given no evidence upon the point, the plaintiff, by virtue of the presumption that while a Hindu family remains joint, all the property of the family including acquisitions made in the name of individual members is joint family property, was entitled to a share in this property as well as in the rest. The appeal is confined altogether to the question whether in applying that presumption in the circumstances of the present case, the learned Judge was or was not right. I may mention that he appears, at the outset of his discussion of this point, to have misunderstood or misinterpreted [451] the finding of the Munsif, to which he refers: for the Munsif has not apparently committed himself to the proposition that the family remained joint in *property* during the lifetime of the father, but was merely of opinion that during the lifetime of the father the family continued to be a joint Hindu family, if no separation has taken place. However, with regard to the question with which we are now immediately concerned, we think that the contention of the learned vakil for the appellant is well founded, and that to apply the presumption to which we have referred in the state of things existing during the lifetime of the plaintiff's father would not be a correct application of it: and that in law the burden, as the Munsif held, lay upon the plaintiff of making good his case, that this property No. 31, which has stood in the name of the second defendant and has been in his exclusive possession from a time anterior to the death of the father, in reality belonged to the father. It is only necessary, I think, to state that presumption in the terms in which the vakil for the respondent stated it to us, to perceive that it is inapplicable here. It is to be presumed, he said, that all property acquired by the members of a joint Hindu family is the property of the family as a whole. If this be true without qualification, it would obviously

(1) (1871) 15 W. R. 357.

(2) (1884) I. L. R. 10 Cal. 68.

1904 JAN. 6.

APPELLATE CIVIL

31 C. 448.

apply to the case of the father himself; while it must be conceded and is conceded that all his acquisitions are to be regarded as his own exclusively and that the sons take no interest in the property of the father, until his death, when their right arises by inheritance. It is perhaps hardly necessary that we should add that we are speaking only of families such as the family of the parties to the suit, which are governed by the Dayabhaga system of law and not of such as are governed by the Mitakshara.

For the reasons we have stated we think that the decision of the learned Judge cannot be sustained, and his decree accordingly must be set aside and the case remanded to him for decision in respect of the right to the ownership of the property No. 31, in the light of the observations which we have now made. In other respects his decree will be maintained.

Appeal decreed, Case remanded.

---

31 C. 452.

[452] ORIGINAL CIVIL.

Before Mr. Justice Henderson.

BEPIN CHANDRA BISWAS *v.* THE CORPORATION OF CALCUTTA.*

[18, 19, 22, 23 and 24th February, 1904.]

Municipal Act (Bengal Act III of 1899) ss. 153, cl. (b), 159, 175 and 225—Bustee land—Assessment—Distress—Irregularity—Damages.

A plot of land assessed by the Municipality was divided into separate shares. The plaintiff as owner of one of these shares applied for a separate assessment and number. The shares were thereupon separately valued by the Corporation and the valuation treated as a re-valuation of the whole plot under s. 153, cl. (b) of the Municipal Act. The plaintiff was informed by a notice under s. 159 that his share was separately valued and assessed from the commencement of the 3rd quarter of the year 1901-1902. The Corporation demanded from the plaintiff after receipt of the notice, payment of rates on the basis of the assessment prior to such notice, and it was contended on behalf of the Corporation that, as the owners of certain other shares into which the plot was divided objected to the assessment made of their shares, effect could not be given, until the disposal of such objections, to the notice of separate assessment.

Held, that the Corporation were justified in refusing to give effect to the notice of separate assessment, until the disposal of such objections.

The objections in question were disposed of during the currency of the quarter commencing on the 1st October 1901, and the assessment book was amended during that quarter.

Held, that the separate assessment under s. 170 of the Municipal Act took effect from the commencement of the next quarter.

The Corporation also distrained for rates claimed on the basis of the previous assessment, such distraint being made without previous presentation of rate bills, or notice of demand, as required by the provisions of the Act.

Held, that the omission to present such bills, and to serve notice of demand, amounted to a mere irregularity under s. 225 and the only damages recoverable would be the special damages actually sustained.

[453] BEPIN CHANDRA BISWAS sued to recover the sum of Rs. 4.000 as damages, for alleged illegal distress made by the defendant Corporation.

* Original Civil Suit No. 204 of 1902.