

APPELLATE CIVIL.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Glover,

TARUK CHUNDER PODDAR AND OTHERS (PLAINTIFFS) v. JODESHUR
CHUNDER KOONDOO (ONE OF THE DEFENDANTS).*

1873
Feb'y. 11.

Hindu Law—Joint Family—Separate Acquisition—Presumption—Onus.

See also
14 B L R 349
12 B L R 339

The plaintiffs sued to have their rights declared under a mokurari maurasi lease obtain by *I*, father of the defendant, but it was said with joint funds and for the joint family consisting of *I* and his two brothers, fathers of the plaintiffs. The defence was that the lease was granted to *I* after the dissolution of commensality. The existence of any nucleus of joint property was not proved. Held that, where one member of a joint family is found to be in possession of any property, the family being presumed to be joint in estate, the presumption is, not that he was in possession of it as separate property acquired by him, but as a member of joint family. Therefore, the burden of proof was on the defendant to show that *I* had acquired the property separately, and that it was property which could by law be treated as a separate acquisition.

THE plaintiffs brought the suit to obtain possession of a share of certain lands taken on a maurasi mokurari lease by one Isserchunder, father of one of the defendants, but with joint funds it was said, and for the benefit of the joint family consisting of Isserchunder and his two brothers, Brijkishur and Hurishchunder, through whom the plaintiffs claimed. The defence was that the potta had been granted to Isserchunder after the dissolution of commensality.

The facts of the case are fully stated in the judgment of the Court.

The Munsif decreed the suit in favor of the plaintiffs. On appeal, the Judge throwing the *onus* on the plaintiffs dismissed their suit.

The plaintiffs appealed to the High Court

Baboo Bhuggobutty Churn Ghose for the appellants.—The Judge was wrong in throwing the *onus* on the plaintiff in this

* Special Appeal, No. 592 of 1872, from a decree of the Subordinate Judge of Furreedpore, dated the 1st January 1872, reversing a decree of the Munsif of that district, dated the 31st July 1871.

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KOONDOO.

case. Every Hindu family is presumed to be joint in food, in worship, and in estate until it is separated. The separation must be proved by the party who asserts it—*Dhurm Das Pandey v. Mussamut Shama Soondri Dibiah* (1), *Koonjbeharee Dutt v. Khetturnath Dutt* (2), and *Nilkristo Deb Barmano v. Bir Chandra Thakur* (3).

Baboo Chunder Madhub Ghose for the respondent. The *onus* of proving that the acquisition was made with joint funds and for the joint family, and that the property was held as joint family property, was upon the plaintiffs, and this *onus* they have not discharged, and their case has been rightly dismissed. This is not a case where a family is shown to have possessed any ancestral property, or any joint property or funds which might have served as a nucleus for the acquisition of the property in suit—*Mussamut Soobheddur Dossee v. Boloram Dewan* (4), *Khilut Chunder Ghose v. Koonj Lall Dhur* (5), *Dhunookdharece*

(1) 3 Moor's I. A., 229.

(2) 8 W. R., 270.

(3) 3 B. L. R., P. C., 13; S. C., 12
Moor's I. A., 523.

(4) W. R., Sp. No., 57.

(5) Before Mr. Justice Loch and Mr. Justice
Mitter.

KHILUTCHUNDER GHOSE (DEFEND-
ANT) v. KOONJ LALL DHUR
(PLAINTIFF)*

The 2nd September 1868.

*Hindu Law—Joint family property—
Presumption—Burden of Proof.*

Baboo Mully Lall Mookerjee for the
appellant.

Baboo Girish Chunder Ghose for the
respondent.

THE following judgments were deli-
vered.—

LOCH, J.—It appears that the Judge
has thrown the *onus* of proof on the
wrong party. He required the defendant

to prove that the property in dispute was
purchase by Bholanath out of his own
means. It appears that one Bholanath
purchased the property connected with
this case in execution of a decree. His
rights and interests were subsequently
sold and purchased by one Unooda, who
sold it to the defendant. The plaintiff
in this case has purchased the rights and
interests of Bhojrubnath, a brother of
Bholanath, in this property, and sued to
recover possession of his share. The first
point before the lower Court was whether
the property was the sole property of
Bholanath, or the joint property of
Bholanath, Bhojrubnath, and Brojonath.
It appears to have been admitted that the
three brothers, Bholanath, Bhojrubnath
and Brojonath, lived in commensality;
and the lower Appellate Court has con-
sidered this fact sufficient to warrant the
presumption of Hindu law that a property
purchased by one member of a family
was purchased for the benefit of all the
members, without ascertaining whether

* Special Appeal, No. 1335 of 1868, from a decree of the Judge of Sylhet, dated the 28th February 1868, reversing a decree of the Principal Sudder Ameen of that district, dated the 17th May 1867.