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satisfaction of the Court, the decree shall not be executed." The result, therefore, is that if the tenant pays the compensation for which he has been declared liable he cannot be ejected; if the misuse or breach is capable of being remedied, and he does not comply with the injunction of the Court to remedy it, he is liable to be ejected, and if he fails to pay the compensation awarded he is of course liable also to ejectment; but where he pays the compensation, or where the act is capable of being remedied, and he has remedied it, there is no ejectment. It seems to me, looking at the scope of the section and the character of the Tenancy Act which covers all disputes between landlords and tenants, that any action of the landlord must proceed under and be governed by the rules laid down by the Legislature in the Tenancy Act, but, as already pointed out, it is not necessary to go into these questions, because the case of the plaintiff was really one for ejectment; he gave a notice for ejectment and asked for ejectment; and, although there were other prayers in the plaint, they were merely ancillary to the prayer for ejectment. I quite agree with the view that a demand in the notice for compensation was necessary. English cases on the construction of English Statutes are of great assistance, sometimes in construing acts of the Indian Legislature where the Statutes are in *pari materia*, but excepting a verbal similarity between a portion of section 155 of the Tenancy Act and a portion of section 14 of the English Statute, which was referred to in argument, they do not seem to me to run on parallel lines. I agree, therefore, in dismissing the special appeal with costs.

J. V. W. *Appeal dismissed.*

PRIVY COUNCIL.

PRIT KOER (PLAINTIFF) *v.* MAHADEO PERSHAD SINGH AND OTHERS (DEFENDANTS.)

P.C.* 1894 *June* 14. *July* 14.

[On appeal from the High Court at Calcutta.]

Onus of proof—Hindu law—Joint family—Evidence as to the continuance of the joint holding of property—Inheritance and survivorship under the Mitakshara Law.

* *Present*: LORDS HOBHOUSE, MACNAGHTEN and MORRIS, and SIR R. COUCH.

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A daughter in the absence of sons claimed to inherit, after the deaths of her father's widows, estate which she alleged to have belonged to him separately. This estate had been at one time in his possession jointly with his only brother, they having been members of a joint family under the Mitakshara. On the death of one of the brothers, who died before the claimant's father leaving sons, the latter became entitled thereto jointly with the survivor. In order to establish this claim to inherit her father's share on his subsequent death, it was held that it was for her to adduce evidence that there had been a separation between her father and his co-sharer or co-sharers. As the evidence stood, the inference was that the previous joint holding had continued till her father's death.

APPEAL from two decrees (1st September 1890) of the High Court, reversing a decree (31st August 1888) of the Subordinate Judge of Patna.

On this appeal by the plaintiff, a daughter claiming to inherit the estate of her deceased father in the absence of sons, the question was whether that estate was held by him at his death as his separate estate, or was held by him as a sharer in family estate jointly with the sons of his deceased brother. The property consisted of four entire villages, with shares in two others, all in the Patna district. The plaintiff-appellant, daughter of Dharam Singh, who died in 1843, claimed to inherit them as having been her father's separate estate, in accordance with the Mitakshara. He left two widows, one of whom, Bhup Koer, the plaintiff's mother, died in the year 1875, the other widow, Chowrasu, having died before her without children, and it was alleged in the plaint, but disputed in the case, that the widows had title to and possession of the property in question, for their estates for life. The daughter, Prit Koer, brought this suit on the 21st March 1887, within twelve years from her mother's death, alleging separation of her father's possession from that of Ramdyal, his only brother, who died in 1839. The elder of two sons whom Ramdyal left, named Ram Lal, was the first defendant. He died before the hearing. Sheodyal, the second son, died before the suit was brought. Their representatives, with certain purchasers and lessees of the property in suit, who were added as parties, made up the number of the defendants-respondents. The plaint also alleged that, on the 5th March 1845, the widows Chowrasu and Bhup Koer had been induced by Ram Lal and Sheodyal to execute an *ikrarnama*,

which ought not to operate against the present claim. The defence mainly was that Dharam Singh had been joint in estate with his brother Ramdyal, the property in question being jointly held by them, except some part that had been acquired by Ram Lal and Sheodyal in 1854 and 1855, none of it having been separate estate; and that as joint family estate, the property was not the inheritance of Dharam's daughter, but devolved on the descendants of those nephews who had come into co-parcenary with him in his lifetime. The defence also relied on the law of limitation; but the Courts below concurred in finding on the evidence that Bhup Koer died at the date alleged by the plaintiff, *viz.*, the 3rd April 1875, so that twelve years from her death had not elapsed when this suit was commenced in 1887, and limitation, under Art. 141, Sch. II of the Limitation Act, XV of 1877, did not apply. The Courts below also concurred in finding that Dharam was joint with his father Doman Singh, deceased in 1806, and with his brother Ramdyal, deceased in 1839, when the village lands, forming the estate claimed, were acquired. They differed as to the subsequent separation of Dharam from his brother.

The Subordinate Judge was of opinion that there had been a separation of the property in Dharam's lifetime although he could not determine the date of it. This separation had the effect of entitling Dharam's widows to their estates for their lives, and of entitling his daughter to inherit the property. His decree was in favour of the plaintiff for one-half of her claim, or thereabouts, in all the villages mentioned in the schedule to his plaint.

On an appeal by the defendants to the High Court, the result of the judgment of a Division Bench (PIGOT and GORDON, JJ.), after an examination of the documentary evidence in particular, was that they found that the joint holding, originally joint in the time of the brothers, had not been shewn to have been brought to an end. They found, upon the whole evidence, that the right inference was that the joint holding continued down to Dharam's death. They did not concur in the opinion of the first Court (though there was much, in the investigations of both Courts, in which the Appellate Court agreed with the lower Court), that the following proposition was correct, *viz*, that certain acts on Sheodyal's

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part, and dealings with the estate, or portions of it, after the death of Dharam, purporting to acknowledge a title in one of the widows, Chowrasu Koer, went to prove that at some time, during Dharam's life, there had been a partition. On this point they differed from the conclusion of the Court below, and, reversing the decree, dismissed the suit with costs.

On the plaintiff's appeal—

Mr. *J. H. A. Branson*, for the appellant, argued that the evidence supported the conclusion of the Subordinate Judge. He referred to the evidence showing how Chowrasu Koer, the senior widow, had dealt with the estate, as well as to the conduct and declarations of Sheodyal, and other matters inconsistent with the whole estate having already, at that time, vested in Dharam's nephews, as his survivors in a joint holding. At this stage, now that evidence had been adduced on both sides, the answer to the question, whether there had been a separation or not, was a matter of inference from the general facts, and the documentary proofs. There was enough, in favour of the affirmative regarding separation, to support the plaintiff's claim.

Mr. *R. B. Finlay*, *Q.C.*, Mr. *R. V. Doyne*, and Mr. *W. H. Rattigan* for the respondents, were not called upon.

Afterwards, on the 14th July, their Lordships' judgment was delivered by

SIR R. COUCH.—Doman Singh, who died in 1806, had two sons, Dharam Singh and Ramdyal Singh. Dharam Singh died on the 13th July 1843, leaving two widows, Mussummats Chowrasu Koer and Bhup Koer, and a daughter who is the plaintiff in the suit and the present appellant. He had no other issue. Ramdyal Singh died on the 24th December 1839, leaving two sons, Sheodyal Singh and Ram Lal Singh. Sheodyal died in 1281 F.S, (1873-74) leaving sons and grandsons, who are defendants in the suit and now respondents. Ram Lal Singh was the first defendant. He died after the filing of his written statement in defence, and is now represented by his son Mahadeo Pershad, the first respondent. Both the widows of Dharam Singh are dead. Bhup Koer the plaintiff's mother survived Chowrasu. The date of her death was disputed, the defendants alleging that she

died about 1865 and relying on the law of limitation. But it has been found by the first Court and the High Court that she died on the 3rd April 1875, as alleged by the plaintiff, and the suit having been commenced on the 21st March 1887 is not barred by the law of limitation.

The plaintiff claimed as heiress of her father Dharam Singh, alleging that he was separate from h's nephews Sheodyal and Ram Lal at the time of his death, and that the properties in dispute were his separate properties. The family was admittedly governed by the Mitakshara law, according to which a daughter is entitled, in the absence of sons, to inherit the separate estate of her father after the death of his widows. As it could not be disputed that Dharam and Ramdyal were at one time joint in estate, and Dharam and his nephews would also be so, the *onus* was upon the plaintiff to prove that there had been a separation.

The First Subordinate Judge of Patna in an able judgment has stated the evidence produced to prove the separation, as well as that upon the question of the date of Bhup Koer's death, and has evidently given a very careful consideration to this evidence. As to the oral evidence he says that in his opinion the oral evidence on either side was not of much worth, and could not be relied upon unless corroborated by something more reliable; that none of the witnesses appeared to him as truthful or unbiassed; that "they pretended to recollect occurrences which took place upwards of forty years ago, with as much vividness as if they had witnessed them only a few months ago;" and that the question of separation had to be decided mainly upon the documentary evidence. The High Court agreed in this.

The earliest documentary evidence is a bond dated the 15th September 1843. It purports to be made by Dusruth Lal, *mokhtar* of Mussummat Chowrasu Koer, wife of Dharam Singh, in favour of Kanhai Lal, who was then in possession of Sherpore, one of the disputed properties, under a *zurpeshgi ijara* granted by Dharam Singh. The bond alludes to the *ijara*, and creates a further charge upon Sherpore for the money then borrowed. It purports to be signed "Mussummat Chowrasu Koer, widow of Babu Dharam Singh. By the pen of Sheodyal Singh," and is witnessed by

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Dusruth Lal and Sheodyal Singh. The next document is a *zurpeshgi ijara*, dated the 28th June 1814. It purports to be made by "Dusruth Lal, *mokhtar* of Mussummat Chowrasu Koer, widow of Babu Dharam Singh, deceased." It refers to the *ijara* by Dharam Singh, and the further charge of the 15th September 1843, and to the term of the *ijara* having expired, and renews it for a further term of three years. This is signed by Dusruth Lal only, and has the seal of Chowrasu Koer. Sheodyal neither signs nor witnesses it.

Another document is a judgment of the Additional Principal Sudder Amin of Patna, dated the 11th September 1844, in a suit by two persons against Chowrasu Koer, Sheodyal Singh and Ram Lal Singh and others for a share of the produce of a village in *mouza* Darnara Buzurg, which was stated in the plaint to have belonged to Dharam Singh. In the judgment it is stated that Chowrasu Koer had filed her answer, denying the connection of Sheodyal Singh and Ram Lal Singh with the inheritance of Dharam Singh, and that Sheodyal, for himself and as guardian of his minor brother, Ram Lal, had personally filed his answer in support of the defence of Chowrasu Koer, to the effect "that the heir of his uncle Dharam Singh is Mussummat Chowrasu Koer, the widow of Dharam Singh, and accordingly suits have been disposed of and are pending from the *zillah* to the Sudder Court on the establishment of her heirship; and that the plaintiffs' suit against him, the defendant, on the allegation of being the heir of Dharam Singh, deceased, is wholly an act of selfishness on their part."

The order made in the suit is "that the suit be decreed against Mussummat Chowrasu Koer, and the remaining defendants be exempted from liability in this case."

Another document is a judgment of the Munsif of Hilsa of the 23rd August 1844, in a suit by one Fyez Ali Khan against Chowrasu Koer, Sheodyal Singh and Ram Lal Singh, and others not members of the family, for the recovery of a share of the produce of property in *mouza* Mahomedpore, said to have been forcibly cut and carried away by a servant of Dharam Singh under the orders of him, and the other defendants. The defendants denied the plaintiff's title, and said that the land from which the produce

was taken was in their *mouza* Mahomedpore. The Subordinate Judge says this shows that Chowrasu had some interest in that *mouza*. The suit was dismissed on the ground that the plaintiff had not proved his title, and the question, who were the heirs of Dharam Singh, appears to have been immaterial.

Another document is a decree of the Sudder Court, dated the 14th September 1844, in a suit relating to property of considerable value. Dharam Singh had instituted a suit to establish his title to it, and had obtained a decree on the 29th April 1843. An appeal was preferred against it, and after the death of Dharam, Chowrasu Koer was made respondent as his representative. The Subordinate Judge says that no attempt was made on the part of Sheodyal and Ram Lal to have their names substituted for that of Dharam, and that they would in all probability have done so, if they had been joint with him and had become entitled to the property by right of survivorship. Their Lordships do not see any weight in this, if indeed there is any such probability. Ram Lal was a minor and Sheodyal may have had reasons, other than knowing he had no title, for not becoming a respondent. If the decree of the 29th April 1843 had been reversed, he would not have been bound by the decree of the Sudder Court.

In truth the only documentary evidence of importance is the statement by Sheodyal that he and Ram Lal were not heirs of Dharam. This was made more than 40 years ago, and Sheodyal being dead, and there being no documentary evidence to explain the statement, reasons for his setting up Chowrasu Koer as the heiress of Dharam Singh can only be suggested. In Ram Lal's written statement it is said that the reasons were, the existence of litigation about the time of Dharam Singh's death, the indebtedness of Sheodyal, and attempts said to have been made by his creditors to sell properties belonging to the family. Ram Lal was a minor when the statement was made, and may have known nothing about the matter. Chowrasu Koer was set up as the sole heiress, which was untrue, Bhup Koer being equally an heiress. The statement was therefore partly untrue, and this suggests that there may have been some reason, not now capable of being proved, for setting up a sole title in Chowrasu Koer. The Subordinate Judge thought there were two alternatives: that the assertions of her

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title by Chowrasu Koer should be regarded as *bonâ fide* acts, or that they should be regarded "as blinds contrived by Sheodyal Singh to deceive the world and conceal his own title." But the assertion of her title by Chowrasu Koer being partly false makes the *bona fides* of it doubtful. Then, as is observed by the High Court, the fact that there is no evidence of any documents of partition or separation of any kind is of great importance, having regard to the value of the family property, and to the family being obviously one very much versed in the conduct of business affairs. It was clear that on the death of Doman, Dharam and Ramdyal were joint in estate, and on Ramdyal's death, Dharam became joint in estate with his nephews. The plaintiff had to meet the presumption that this continued, and to prove a separation in estate. The documentary evidence—the only reliable evidence in the case—is in their Lordships' opinion insufficient to prove this, even when considered with the oral evidence of the plaintiff and her two witnesses, which it is plain the Subordinate Judge thought was of no value. The High Court on appeal by the defendants dismissed the suit, and also dismissed a cross-appeal of the plaintiff, and their Lordships will humbly advise Her Majesty to affirm the decree of the High Court and dismiss this appeal. The appellant will pay the costs of it.

Appeal dismissed.

Solicitor for the appellant: Mr. *J. F. Watkins.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

ORIGINAL CIVIL.

Before Mr. Justice Sale.

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April 5.

SHAM CHAND GIRI *v.* BHAYARAM PANDAY.*

Abatement of suit—Civil Procedure Code (Act XIV of 1882), sections 361, 362, 365, 371—Survival of right to sue—Application to revive suit by person whose claim is in conflict with that of original plaintiff—Parties—Substitution of parties.

The language of sections 361 and 371 of the Code of Civil Procedure relating to abatement of a suit show that, where it is sought to revive a suit on the death of the plaintiff, the cause of action of the original and revived

* Application in Original Civil Suit No. 179 of 1893.