

Privy Council Appeal No. 23 of 1919.

T. R. Venkata Row *alias* Ganesha Row, since deceased (now
represented by T. V. Narayana Row) - - - *Appellant*

v.

T. V. Tuljaram Row and others - - - *Respondents*

Same - - - *Appellant*

v.

Same - - - *Respondents*

(Consolidated Appeals)

Privy Council Appeal No. 24 of 1919.

T. V. Tuljaram Row - - - *Appellant*

v.

T. R. Venkata Row *alias* Ganesha Row, since deceased (now
represented by T. V. Narayana Row), and others - - *Respondents*

(Consolidated Appeals)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 8TH NOVEMBER, 1921.

Present at the Hearing :

LORD BUCKMASTER.

SIR JOHN EDGE.

MR. 'AMEER 'ALI.

SIR LAWRENCE JENKINS.

[Delivered by LORD BUCKMASTER.]

The real question for determination on these appeals is as to the effect of a compromise entered into on the 21st November, 1897, between Rajaram Row, purporting to act both for himself and as guardian of his minor son Venkata Row, and

Tuljaram Row. The compromise related to certain claims then existing between Rajaram Row and his son, as constituting a joint Hindu family, against Tuljaram Row, and it arose in this manner. Originally Venkata Row, together with his four sons, Ramachandra Row, Luchmand Row, Rajaram Row, and Tuljaram Row, formed a joint Hindu family, governed by the Mitakshara law. Venkata Row died in 1871, survived by his sons, and in 1881 the joint family was dissolved, and a division of the joint estate took place, leaving the great part of it in the hands and under the control of Tuljaram Row, who was the manager of the family. In 1886 a suit was brought by Atmaram, the son of Luchmand, against Tuljaram Row, for the purpose of ascertaining the extent of the family assets remaining in his hands, for the necessary accounts, partition, and other relief, and to this suit all the members of the family were parties. Two orders were made in that suit, one on the 21st October, 1896, and the other on the 17th August, 1897, and by these orders Tuljaram Row was decreed as liable to pay to Rajaram Row and his branch of the family certain sums of rupees. The compromise to which reference has been made was a compromise of the rights possessed by Rajaram Row and his son under these decrees.

The compromise was a very simple matter. It consisted in releasing Tuljaram Row from all liability to make the payments which he had been ordered by the High Court to make, payments which were on the face of them considerable in extent; and the only consideration mentioned was that Tuljaram would agree not to prosecute an appeal which he then had on foot against these orders. In other words, Rajaram Row, acting in his own interest and on behalf of his infant son, gave up and surrendered, without any further struggle, all the rights to which he was then entitled, together with his son, in the decrees of October, 1896, and August, 1897.

It is not surprising in these circumstances that on Venkata Row attaining his majority in 1906 he should have taken steps to challenge the validity of this compromise. A suit was accordingly instituted by him under the name of Ganesha Row against Tuljaram and Rajaram Row seeking to recover the monies mentioned in the decrees as "the undivided son" of Rajaram Row. He failed both before the Judge of first instance and in the Court of Appeal. The matter then came before the Judicial Committee, and on 7th March, 1913, it was decided that the compromise did not bind, and could not bind, the infant, who ought to be remitted to his original rights under the decrees in the suits referred to, and the case was remitted to deal with the remaining issues on this footing.

Two further sons were born to Rajaram Row before the case came on for hearing on remand, and as they were also members of the joint family with their father and the plaintiff, they were added as defendants and are the third and fourth respondents on these appeals. On behalf of the plaintiff it was argued that the

compromise became wholly ineffectual by virtue of the order, as the family had never been divided, that consequently the new members of the family were entitled to their share and their rights could not be established if the compromise remained.

Wallis, J., before whom the remitted issues were tried, decided that Ganesha could only be entitled to a half-share, but as the further members of the family had come into existence, namely, two further sons of Rajaram, he directed that they should be added as defendants, and on this being done he decreed that Ganesha and his two brothers were together entitled to a half-share of the monies with interest, in other words, he gave Ganesha one-sixth of the whole. The judgment also dealt with other matters no longer material, and it gave rise to as many as four appeals, of which it is only necessary to consider that of Ganesha, whose representatives are the present appellants. His appeal failed because the High Court regarded the order of the Privy Council as rendering the compromise binding on Rajaram Row's then existing share, but, in fact, the order only declared the compromise was not binding on Ganesha Row, who was remitted to all his original rights under the compromised suits.

The appellants urge that in the events that have happened this entitles the whole family to share in the whole fund, as otherwise the rights of the appellants would have been seriously curtailed by the order which intended that they should be preserved.

Their Lordships think that this argument is well founded. The agreement of the 21st November, 1897, did not purport to be a release of individual rights or shares in the fund at all; it did not purport to effect any division of the joint family estate that then existed between Rajaram and his son in the subject matter of these decrees. On the contrary, what it purported to do was to release the whole of the debts that were then owing to the joint family, in consideration of Tuljaram not prosecuting his appeals.

Now it has been held by this Board that that attempted arrangement failed so far as the infant was concerned; and, if it failed so far as the infant was concerned, their Lordships think that in the events that have happened it must also be regarded as failing wholly to convey any of the joint estate at all. They have arrived at that conclusion for these reasons. Rajaram Row, unless he was attempting to divide the joint family, could only deal with this property with the consent of his son or in his capacity as manager of the estate. In his capacity as manager of the estate he was only able to deal with it for certain limited purposes, and none of those purposes are, or can be, suggested as the consideration why these considerable sums were released. It follows, therefore, that the attempt to alienate, or to release, from the estate these substantial portions of the joint family property failed, and that there was no efficacy given to the arrangement that was then contemplated.

Their Lordships have expressly stated that this is their view of this agreement in the events that happened. It might possibly have been that different circumstances would have arisen if

Venkata Row, the son, had predeceased his father, and there had been no further members of the joint Hindu family. In that case it is possible that the arrangement would have been one which Rajaram Row would have been unable to dispute; but those are not the circumstances that exist at the present time. At the present time the joint family continues; the joint family finds that this is a portion of the joint family estate which has been improperly alienated, and which they are entitled to recover. It, of course, follows equally upon that that Tuljaram Row will be entitled to prosecute his appeals, and their Lordships are a little astonished to find that, although liberty has been given to him to proceed, an order has been made which has restrained the prosecution of these appeals until after the hearing of these appeals by this Board. Were this matter ordinary English litigation, of course no tribunal here would consider hypothetical rights, the exact character and extent of which could only be ascertained after the hearing of other pending litigation; but unwillingness to let litigants, who have entrusted their disputes to the Board for determination, from a place so far distant as India, be disappointed in receiving judgment, has led their Lordships to disregard the ordinary rules that are followed in these matters, and to hear the appeal, notwithstanding the fact that it is impossible to know the exact amount upon which they will operate.

In the result their Lordships will humbly advise His Majesty that the decrees of the High Court ought to be set aside and that it ought to be declared that whatever sums may ultimately be recovered in respect of the monies that were ordered to be paid by the decrees of the 21st October, 1896, and the 17th August, 1897, referred to in the agreement of the 21st November, 1897, form part of the joint family estate which was constituted on the 21st November, 1897, by Rajaram Row and his son Venkata Row. If, on the other hand, that family has, as is stated, been dissolved, the declaration will be that the shares in the monies are to be fixed as at the date of its dissolution. As regards the cross-appeal, the cross-appellants are entitled to have the case remitted to the High Court to hear the appeal O.S.A. No. 4 of 1897, and to issue a revised decree in O.S. No. 266 of 1886, finally determining the sum, if any, that is due.

As regards the costs, the respondent, Tuljaram Row, must pay one set between the appellants and the respondents, Ramachandra Row and Radha Bai.

In the Privy Council.

T. R. VENKATA ROW *alias* GANESHA ROW, SINCE
DECEASED (NOW REPRESENTED BY T. V.
NARAYANA ROW)

v.

T. V. TULJARAM ROW AND OTHERS

SAME

v.

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(*Consolidated Appeals.*)

T. V. TULJARAM ROW

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DELIVERED BY LORD BUCKMASTER.

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