

Privy Council Appeal No. 112 of 1920.

Patna Appeal No. 18 of 1919.

Bandhu Ram and others - - - - - *Appellants*

v.

Chintaman Singh and others - - - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 9TH JUNE, 1921.

Present at the Hearing :

— VISCOUNT CAVE. —

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* VISCOUNT CAVE.]

This appeal has been fully argued on behalf of the appellants, and all the material facts have been brought to their Lordships' notice, but in the result their Lordships see no reason to differ from the conclusion reached by the High Court at Patna.

The question raised is one of fact, and it is unnecessary to state the circumstances at length. It is sufficient to say that the title to the land in dispute must, in their Lordships' opinion, depend on the title to the bond given by Pyare Mander to Rajdhari on the 17th August, 1891. If that bond was the separate property of Rajdhari, then the land which he purchased in the suit brought by him to enforce the bond was also his separate property, and he could give a good title to the appellants. But if he held the bond on behalf of himself and his two brothers, Chintaman and Gobardhan, then he could in the circumstances of this case have no better title to the land, and the first respondent is entitled to retain the decree granted by the High Court.

Now it is plain that at the date of the bond Rajdhari and his brothers were members with their three cousins (sons of their uncles) of a Mitakshara joint family, and that when in the year 1892 the cousins separated from the family and disclaimed all interest in the bond, Rajdhari and his two brothers continued joint. Rajdhari was the managing member throughout.

and the presumption is that the bond held in his name was joint property ; and it is for those who (like the appellants) assert the contrary to make good their case.

It is said on behalf of the appellants that the members of the family had some separate business transactions, and this appears both from a statement in the terms of compromise dated the 28th July, 1892, and from other evidence. But proof that some of the members had some private transactions by no means proves that the particular bond in question was the private property of Rajdhari ; and there are several circumstances which tend to show that this was not the case. Thus in the first partition suit in 1892 the plaintiff claimed as joint property a bond of Pyare Mander for 945 rupees, which must be assumed, in the absence of any evidence to the contrary, to be the bond in question ; and by the terms of compromise in that suit it was admitted that all the debts (which would include that bond) belonged to the defendants 1 to 3, that is, to Rajdhari and his two brothers. If the bond had been the separate property of Rajdhari, this would almost certainly have been stated.

Again, in the second partition suit of 1902, the plaintiff Chintaman claimed as joint property a sum due to Rajdhari under a bond from Pyare Mander, and the award in that suit, dated the 30th March, 1904, found that the three brothers were members of a joint family, and that all the moveable and immoveable properties were joint between them. It is not clearly shown that the bond here mentioned was the bond in question ; but it appears unlikely that, if Rajdhari held a separate bond from Pyare Mander, it would not have been referred to and excepted from the award.

Further, in the subsequent proceedings in the same suit Rajdhari admitted that Chintaman was entitled to be credited with 1,000 rupees, being one-third of the purchase money for the property comprised in the bond, an admission which could only have been made if the bond was joint property ; and while it is true that this was after the sale to the appellants, it cannot be assumed without proof that Rajdhari was a party to a fraud.

Lastly, it is (to say the least of it) remarkable that, when in 1908 Ram Gulam made an attempt to execute the order which he had obtained against Rajdhari by a sale of this property, and Chintaman objected, no further proceedings were taken in execution, but a private sale was made to the first appellant, who appears to be connected with Ram Gulam. Neither Rajdhari nor anyone else gave evidence that the bond was the separate property of Rajdhari, nor was any document produced in which it was referred to as his private property.

Upon the whole, while the evidence on both sides is somewhat meagre, it appears to their Lordships that the presumption in favour of joint ownership is not displaced, and therefore this appeal should be dismissed ; and they will humbly advise His Majesty accordingly.

As the respondents have not appeared there will be no order as to costs.

In the Privy Council.

BANDHU RAM AND OTHERS

v.

CHINTAMAN SINGH AND OTHERS.

DELIVERED BY VISCOUNT CAVE.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.
1921.