

Nath Nath Radhika Rani Nath Tej Rani| | (died on (died in 1930) (died in| | 22-7-1938) 1919)| _|_____ || | | | | | | | | Autar Tribhawan Shambhu Ram Nath = Mussammat| Nath Nath Nath (dead) Janak Dulari | (defendant 2) (defendant 3) (plaintiff)_____ | | | |Hirdey Nath = Mussammat Pushkar Nath Dina Nath(died on Iqbal Rani (defendant No. 1) |28-4-1938) |Brij Mohan Nath.

2. Defendant No. 4, Pran Kishori, was a niece (the daughter of the deceased man's wife's sister).

3. Among the assets left by the deceased were the following :

(1) Fixed deposit receipt of the Central Bank of India, Limited, for Rs. 48,500, in the joint names of the deceased and defendant No. 1.

(2) Ditto for Rs. 7,000 in the joint names of the deceased and defendant No. 2.

(3) Five postal cash certificates of Rs. 1,000 each, in the joint names of the deceased and defendant No. 2.

(4) Four ditto, in the joint names of the deceased and one Hirday Nath, elder brother of defendant No. 1, then deceased.

(5) Hundred shares in the Central Bank of India, Limited, value Rs. 3,130-4-0 in the joint names of the deceased and defendant No. 1.

(6) Fixed deposit receipt of the Punjab National Bank, Limited, for Rs. 4,000, in the joint names of the deceased and defendant No. 4.

(7) Rs. 279-10-6 in the Home Saving Safe Account of the Central Bank of India, Limited, in the joint names of the deceased and defendant No. 1.

(8) Rs. 450 in cash (spent on funeral expenses).

(9) A pucca house No. 1550-Ward No. 9, in Delhi.

4. As appears from this list, certain of the assets were held in joint names, and the question which their Lordships have to determine is whether the learned Subordinate Judge was right in saying that these assets were nevertheless the absolute property of the deceased man at the time of his death or whether his object was that they should be so held for the advancement of those whose names were joined with his in the several instances.

5. The first Court held that all the joint holdings stood in the names of the parties to the suit as nominees except that in the name of defendant No. 4 Pran Kishori. The High Court agreed in the last result but held that all the joint holdings like hers were for the advancement of those whose names were joined with that of the deceased and should be excluded from the partition.

6. The law in India in this matter is not in doubt and is authoritatively stated by their Lordships in *Guran Ditta v. Ram Ditto* (1928) L.R.55 IndAp 235: 30 Bom. L.R. 1384 in the words (head-note):

The deposit by a Hindu of his own money in a bank in the joint names of himself and his wife, and on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife. There is a, resulting trust in his favour in the absence of proof of a contrary intention, there being in India no presumption of an intended advancement in favour of a wife.

7. The rule, however, is not confined to assets in the joint names of the deceased man and his wife. It is conceded that it is of universal application, whatever the property and whatever the relationship.

8. It was common ground therefore before their Lordships that' it was for respondent No. 1 to establish a contrary intention. If he succeeded in doing so, he kept the assets standing in the joint names of the deceased and himself. If not, those assets must be included in the partible property.

9. Respondent No. 1 and Pran Kishori had maintained in the original suit as they did throughout that the property in the cases in which their names were to be found had become theirs, the other members of the family contended that it must

all be included in the partition.

10. The question is one of fact, and so far as Pran Kishori is concerned, has been decided in her favour by concurrent findings in two Courts. No appeal is taken from this part of the decision, but it was strenuously argued that no sufficient evidence had been given to discharge the ordinary rule in the case of respondent No. 1.

11. It was said in the first place and truly said that no plea of advancement had been put forward by him either in his written statement or in argument in the Court of the Senior Subordinate Judge : the contention was that the deceased had either made an out-and-out immediate gift or that there had been a donation mortis cause, and that neither contention had been established. The Subordinate Judge so found, the High Court agreed with him and their Lordships take the same view.

12. The changes which the deceased made in the names associated with his from time to time and the fact that the interest was directed to be paid and was paid to him sufficiently establish that there was no immediate gift. The evidence that the assets or the titles to them were handed over to the persons in whose joint names they stood is unsatisfactory and was not accepted by the Subordinate Judge and the evidence that when the joint names were inserted the deceased man had any immediate expectation of death is open to the same criticism. Is there then evidence of an intention to advance? It cannot be fatal to such an argument that the true legal position was not recognised in the first instance or adopted before the Subordinate Judge, and it is not suggested that any further evidence could have been given, or if given would have affected the result.

13. It was open therefore for the High Court to consider the evidence as a whole and for their Lordships to appraise the correctness of their conclusion.

14. The High Court in the first place was influenced by its view that the relations between the deceased and respondent No. 1 and his branch of the family were closer than those with the appellant and his branch. It is true that there is some evidence both ways, but their Lordships agree with the High Court that the evidence taken generally does establish the closer relationship of which the High

Court speaks.

15. But it is in his dealings with the assets that the intention of the deceased to provide advancement for his relatives and not merely to use their names as nominees is said to be found.

16. It is pointed out that in the first instance, whilst his wife was alive, the deceased man invested his money in the names of himself and his wife. When she died he kept his money in his own name for three or four years. Thereafter he began transferring his investments into the names of his various relatives, beginning with the appellant's branch, in whose names jointly with his own he put comparatively small sums. At this time, however, he owned a valuable house which he is said originally to have intended to transfer to respondent's No. 1 branch, but delayed to do so as the Government were going to acquire it.

17. The Government purchase was ultimately completed in February, 1937, and the compensation money received in July, 1937. The bulk of this money was at once transferred to respondent No. 1's elder brother Hirdey Nath, two other sums added later and a little later still Rs. 4,000 deposited in the joint names of the deceased and Pran Kishori.

18. Hirdey Nath died childless on April 28, 1938, leaving a widow Iqbal Rani, and four days later the deceased wrote to the bank to renew the three deposits standing in the joint names of himself and Hirdey Nath and transfer them to the joint names of himself and respondent No. 1.

19. Pran Kishori may be considered separately, but it is observable that in the case of the two family branches, the property was put in the names of the eldest brother's sons, and when Hirdey Nath died transferred to the name of the eldest brother's surviving son. As the High Court point out, the persons chosen as joint names, combined with the transfers from one to the other, suggest that the deposits were made not benami but for advancement.

20. The dealings with the various sums are most readily traced in an analysis furnished to their Lordships' Board by the appellant's representatives which shows

one instance of transfer from respondent No. 1's branch to the appellant's branch of a sum of Rs. 4,000 at a time when the deceased began to make the smaller deposits in the name of the latter and three deposits in the joint names of the deceased together with (1) Mussammat Tej Rani, widow of his deceased brother, Amar Nath ; (2) Mussammat Janak Dulari, widow of that deceased brother's son; and (3) Pran Kishoji, above mentioned.

21. Their Lordships agree with the High Court in thinking that the deceased would have been unlikely to choose destitute widows as joint holders of property if their names had been made use of as nominees only. In their view the number of the nominees, the transfers from one name to another, the fact that some were pardanashin ladies, unable and unfit to deal direct with the banks, and that the absence at times of the male depositors in distant parts of India, all lead to the inference that the deposits were for advancement and that those whose names were used were not merely nominees.

22. Two other matters were, however, argued before their Lordships which were said to lead to the inference that the names were benami only.

23. Firstly, it was said that two postcards written to Autar Nath, the one on July 13, 1931, and the other on September 26, 1933, showed an intention by the deceased man to divide his property amongst his nephews equally. Both undoubtedly show affection for Autar and a desire to benefit him. The first contains the statement : 'All that I possess I have to give away to all of you, who are dear to me. There is no one dearer to me in the world than you,' and the second expresses a desire to deposit Rs. 5,000 in joint names of the deceased and Autar, and a like sum in the names of the deceased and Hirdey Nath.

24. It may be that at that time and to that extent the deceased wished to benefit his nephews alike, but the earlier letter speaks of 'giving', which is inconsistent with the recipients being nominees, but not with the deposits being for their advancement. Secondly, the appellant relies upon a document which was prepared on August 6, 1938, fifteen days after the deceased man's death. It is said to be an agreement to divide up the property equally or at any rate to acknowledge that it is so divisible. Stress is laid upon the statement contained in it. 'The

following articles. belonging to Pandit Basheshwar Nath Shivpuri were found after his death.' And there follows a list containing inter alia the assets in question. Later it says that the respective joint holders will for the present keep the holdings standing in their names and continues : 'In October, 1938, when Autar Nath and Shambhu Nath will return from Simla, we, Pushkar Nath, Autar Nath, Tirbhawan Nath, Shambhu Nath and Brij Mohan Nath will divide Rs. 59,500 bank shares, ornaments, other articles, etc. according to our respective legal rights amongst ourselves privately.'

25. Like the High Court, their Lordships do not think much importance can be attached to the description of the assets as belonging to the deceased man. They had belonged to him and might not unnaturally be so described whether they had been intended for advancement or not. Moreover, the undertaking to divide Rs. 59,500, bank shares, ornaments, other articles, etc., according to the respective legal rights is at least not inconsistent with a contention that they were not divisible in equal shares.

26. Apart from this, it appears in evidence that the parties were at issue as to whether such of the estate as was divisible was to be divided per stirpes or per capita and were ignorant as to whether Brij Mohan was entitled to a share. In such circumstances they might well desire to postpone the distribution until the legal rights of the parties were ascertained, and it is consistent with this view that after taking legal advice respondent No. 1 claimed the assets standing in his name as his own. In their Lordships' opinion this document carries the matter no further. Like the High Court they think the evidence and circumstances point to an intention on the part of the deceased man to advance the joint holders; and will therefore humbly advise His Majesty to dismiss the appeal.