

Rusi Mendli Vs. Sundar Mendli

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Court : Kolkata

Decided On : Apr-28-1910

Reported in : (1910)ILR37Cal703

Judge : Brett and ;Sharfuddin, JJ.

Appellant : Rusi Mendli

Respondent : Sundar Mendli

Disposition : Appeal allowed

Judgement :

Brett and Sharfuddin, JJ.

1. The present appeal arises out of a suit brought by the plaintiff to recover possession of certain lands to which he claimed title by survivorship. It appears that the family to which the plaintiff belongs originally consisted of three uterine brothers and three step-brothers. The uterine brothers were Khedu, father of the plaintiff, Ruttan, and Badan, and the three step-brothers were Rusi, Firinghi and Busla. There was a partition of the family property about twelve or fourteen years ago between these six brothers, and, according to the statement made in the judgment of the Court of first instance, the property was divided into six different shares, the area and boundaries of each share being set out in the award of partition. After this partition the uncles of the plaintiff, namely Ruttan and Badan,

who at the time of the partition are said to have been mere boys, continued to live with their brother Khedu. After some time Khedu died, and the plaintiff, his son, continued to live with his uncles Ruttan and Badan. During this time, these persons lived together, and the profits of their property were collected jointly. Afterwards, Ruttan and Badan died, and the plaintiff claims title to the lands in suit as the nearest relation of those two persons, on the ground that, after the separation of the family, there had been a reunion amongst the three uterine brothers, and that he is entitled to succeed by survivorship as a member of the joint family with Ruttan and Badan in preference to the step-brothers.

2. The Court of first instance found that the plaintiff had failed to establish that there had been any reunion of the family after the partition, and that, therefore, the suit must fail. On appeal, the lower Appellate Court has come to a different conclusion, and has given the plaintiff a decree.

3. The main question that we have to determine in this appeal is whether the conclusions of the lower Appellate Court are based on findings and inferences of law, which are correct. The learned Subordinate Judge has come to the conclusion that there was a reunion, apparently on two findings of fact. The first is that, after the partition, the three brothers, Khedu, Ruttan and Badan, continued to live together as was quite natural, Ruttan and Badan being then minors and not in a position to manage or to manage their property separately. On this finding that the two minors lived with their brother, and that their property was managed jointly, the learned Subordinate Judge comes to the conclusion that there was a reunion of the members of this branch of the family. He also states as a fact--though it is suggested by the learned pleader for the respondent that it is a finding of fact--that the separation was only into two shares, each share being allotted to each set of brothers. This statement, from the description of the partition award given in the judgment of the Court of first instance, appears to us to be incorrect. If it is a finding, it is not supported, so far as we can ascertain, by any substantial ground. As a statement of fact, it appears to be contrary to what was the real state of affairs. On this statement, we think no argument whatever can be based, and it is for us to determine whether the conclusion which the learned Judge has drawn from the facts which he finds is a correct conclusion in law. The finding is that,

after the partition, the two minor brothers continued to live with their elder brother, as was only natural, and the elder brother managed the properties of all three. From these facts he concludes that there was a reunion of the family. In our opinion, this conclusion is not sound in law.

4. In the case of *Kuta Bully Viraya v. Kuta Chandappa Vuthamulu* (1864) 2 Mad. H.C. 235, it has been held that the mere circumstance that after partition the father and the minor son continued to live together, and their shares as ascertained at the partition became mixed, does not conclusively constitute a state of reunion between the father and the minor, but is an evidentiary matter only to prove the reunion. In this case, therefore, the fact that the two minor brothers continued to live with their elder brother is not in itself sufficient to prove reunion. In the case of *Gopal Chunder Daghoria v. Kenaram Daghoria* (1867) 7 W.R. 35, it was held that, according to the Hindu law, mere living together at one residence, or carrying on a joint trade, does not constitute a reunion after partition, but there must be a junction of estate. In the present case, the evidence referred to in the judgments of the lower Courts, especially in the judgment of the Court of first instance, so far from proving a junction of estate, goes to indicate that after the partition the share, at least, of Khedu, the father of the present plaintiff, was mortgaged as his separate property. In the case of *Balabux v. Bukhmabai* (1903) I.L.R. 30 Calc. 725, the Privy Council has expressed the opinion that an agreement to reunite cannot be made on behalf of a person during his minority; so that, in the present instance, the mere fact that the two minor brothers lived with their elder brother would not, in itself, be sufficient to indicate an intention or agreement to reunite. In this case, as in the others, their Lordships held that the mere fact of living together is not sufficient to constitute a reunion, but that any agreement to remain united, or to reunite, must be proved like any other fact. In the present case, the learned Subordinate Judge has, in our opinion, concluded from facts, which in themselves are not sufficient to constitute reunion, that there was an intention to reunite. The Privy Council, in the case of *Rajah Setrucherla Ramabhadra v. Rajah Setrucherh Virabhadra Suryanarayana* (1899) I.L.R. 22 Mad. 470; L.R. 26 I.A. 167, goes so far as to say that after a partition, when three Hindu brothers agreed that their separate shares should be kept joint, and that the eldest should manage the same, the true effect of the agreement was not to leave the family as a joint family,

but to render the eldest brother accountable for receipts and expenditures on the footing of ordinary agency and not of joint family management. In that case agreement was made between the three brothers, with reference to their shares, to the exclusion of the separated share of the fourth brother. These authorities, in our opinion, leave no doubt that the facts on which the learned Subordinate Judge has arrived at his conclusion are not sufficient to support that conclusion as a valid conclusion in law.

5. It has, however, been contended on behalf of the respondents that what was in fact done at the time of the partition was that the two branches of the family separated, and that this separation of the three step-brothers from the three uterine brothers had not the effect of causing a separation in the joint family of the uterine brothers, and in support of this contention, the decision of this Court in the case of *Upendra Narain Myti v. Gopee Nath Bera* (1883) I.L.R. 9 Calc. 817, is relied on. This contention, no doubt, would have had weight if the circumstances of the present case in any way supported it; but from the description given of the separation in the judgment of the Court of first instance (which is not modified in any way by anything stated in the judgment of the lower Appellate Court), it is clear that the partition was, in fact, a partition of the properties between the six brothers, and was not a partition into two shares, leaving the uterine brothers as members of an united family. The learned pleader for the respondent, relying on the decision of the Privy Council in the case of *Balabux v. Rukhmabai* (1903) I.L.R. 30 Calc. 725, has argued that, in this case, the plaintiff was entitled to prove that his father and his two uterine brothers remained united after the partition, and that the findings of the lower Appellate Court on that point are sufficient to conclude that question. We are unable to agree that the findings are sufficient, and we hold that, on the description of the partition as given in the judgment of the Court of first instance, which is not contradicted in the judgment of the lower Appellate Court, it is clear that there was a complete partition and separation of the property between the six brothers, and that, in order to support the plaintiff's claim, it was necessary for him to prove a legal reunion of the family. The circumstances which the learned Judge has held to be sufficient to prove such a reunion, we have already held to be insufficient for that purpose. In these circumstances, we are unable to support the judgment and decree of the Court of Appeal below. We think that the view

taken by the Court of first instance is correct. We, therefore, decree the appeal, set aside the judgment and decree of the lower Appellate Court, and restore those of the Court of first instance with costs.

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