Hakim Khan Vs. Gool Khan and ors.

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Court : Kolkata

Decided On : Apr-04-1882

Reported in : (1882)ILR8Cal826

Judge : Prinsep and ;O'Kinealy, JJ.

Appellant : Hakim Khan

Respondent : Gool Khan and ors.

Judgement :

O'Kinealy, J.

1. In this case the plaintiff, who is the appellant before us, sued for possession of property which he said formed part of a joint family property. The defendants denied the title of the plaintiff, and asserted that the plaintiff 's claim was barred by the law of limitation, In the first Court, the Munsif, it seems to us, dealt with the case on a proper basis. He said: 'It must be borne in mind that the parties to the case are Mahomedans, and the presumption of Hindu law in favour of joint acquisition and joint family does not arise in this case.' He, therefore, proceeded to deal with the case as a case of partnership between ordinary individuals not subject to Hindu laws and customs, and he dismissed the suit both in regard to the question of title and the point of limitation. In appeal the Subordinate Judge came to the conclusion that the lower Court was wrong, and applying the principles of Hindu law relating to joint families to the case, he decided that, inasmuch as the

members of the family lived in commensality they formed a joint family, and the property which forms the subject of the present suit must be presumed to form a portion of the joint property.

2. Now it seems to us that the Subordinate Judge, in dealing with this question, was, undoubtedly, influenced by the case of Rupchand Chowdhry v. Latu Chowdhry 3 C.L.R. 97 in which it has been laid down as settled law that, with Mahomedans living in a Hindu country, the presumption of joint family and commensality arises. In that case it does not appear that the Judges had their attention drawn to the case of Jowala Buksh v. Dhara Sing 10 Moore's I.A. 511. at p. 538 in which their Lordships of the Judicial Committee, referring to the case of Abraham v. Abraham 9 Moore's I.A. 195 said: 'Whether it is competent for a family converted from the Hindu to the Mahomedan faith to retain for several generations Hindu usages and customs, and by virtue of that retention to set up for itself a special and customary law of inheritance, is a question, which so far as their Lordships are aware, has never been decided. It is not absolutely necessary for the determination of this appeal to decide this question in the negative, and their Lordships abstain from doing so. They must, however, observe that, to control the general law--if, indeed, the Mahomedan law admits of such, control--much stronger proof of special usage would be required than has been given in this case.' As in that case, so in this, it is not absolutely necessary for us to decide whether the Mahomedan law of inheritance can be controlled by the usages of the country in which the individual may happen to reside, but the present inclination of our minds is, that if it were necessary to decide that point, we should feel some difficulty in following the case of Rupchand Chowdhry v. Latu Chowdhry 3 C.L.E. 97.

3. The Mahomedan law of inheritance is based on Sura-i-Nissa in the Koran, which was revealed in order to abrogate the customs of the Arabs, and on the Hadis or traditions of the Prophet. According to the principles of Mahomedan law any attempt to repudiate the law of the Koran would amount to a declaration of infidelity, such as would render the individual concerned liable to civil punishment by the Kazee in this world, and to eternal punishment in the next.

4. No custom opposed to the ordinary law of inheritance, which was created to destroy custom, would be recognized by the Doctors of the Mahomedan law, and in our opinion it follows as a natural consequence, that no such custom should be recognized by our Courts which are bound by express enactment to administer Mahomedan law in questions of inheritance among Mahomedans.

5. In this case the Subordinate Judge has, we think, erred in deciding the question of title according to the principles of Hindu law, and so far as he has set aside the decision of the lower Court, we are compelled to reverse his judgment. On this point the decision of the first Court will stand. But in regard to the question of limitation there has been, we find, a concurrent finding of both Courts, and we see no reason to set it aside. We affirm the decision of the lower Appellate Court and dismiss the appeal with costs.