Lakshmi Ram Jani and Others Vs Hari Ram Dube

Court: Allahabad High Court

Date of Decision: March 10, 1919

Citation: AIR 1919 All 351(2) : 52 Ind. Cas. 25

Hon'ble Judges: Rafique, J; Lindsay, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The defendants in the suit out of which this appeal has arisen are the sons and grandsons of one Gulab Ram Jani, who died in the year 1958

Sambat corresponding to 1901-1902.

2. The plaintiff is the daughter''s son of Gulab Ram Jani by the latter''s daughter Gopi Kuar, who died in the lifetime of her father. Gulab Ram''s

wife was a lady whose name was Ballabh Kuar. The family to which the parties belonged is a family of Nagar Brahmins, who came originally from

Gujarat and settled in Benares some 150 or 200 years ago.

3. The suit was brought for the purpose of recovering a sum of Rs. 9,567 8 9. This sum is made up of four items which are exhibited in the

statement of account attached to the plaint. The first item is one for Rs. 3,791-14-0 said to have been deposited with the firm of the defendants by

Ballabh Kuar; the second, item is a sum of Rs. 2,207 said to have been similarly deposited by Musammat Gopi Kuar; the third item of Rs. 533 is

also alleged to have been deposited by Gopi Kuar and the fourth item of Rs. 2,500 is said to have been deposited by the plaintiff himself.

4. The cause of action stated in the plaint was that the plaintiff in the month of January 1914 had demanded payment of these deposits which had

been refused. The claim, therefore, was for the total sum of these items together with interest, the aggregate amount being as above stated Rs.

9,567-8-9.

5. A number of pleas were raised for the defence. First of all it was stated that the item alleged to have been deposited by Ballabh Kuar had been

deposited by Gulab Ram Jani himself in her name by way of a trust fund from which were to be defrayed certain expenses for shradh.

6. With regard to the items Nos. 3 and 4, the case for the defendants was that Gulab Ram Jani before his death had placed these sums to the

credit of Gopi Kuar and the plaintiff by way of favour and for their maintenance. It was pleaded that there was no consideration for these deposits

which had been made by way of charity and that the plaintiff was not entitled to recover them.

7. As to the second item it was admitted that Gopi Kuar had deposited Rs. 2,207 with the defendants" firm, but it was pleaded that on this

account there was a debit against the plaintiff of Rs. 2,621-15-0. Further pleas to be noticed are:

(1) That Gopi Kuar, the mother of the plaintiff, was not the daughter of Ballabh Kuar but of another wife of Gulab Ram Jani;

(2) that the suit was barred by reason of certain arbitration proceedings which had taken place before the claim was brought;

(3) that the claim was barred by limitation; and

(4) that in any case so far as the first item was concerned; the right of the plaintiff was to be determined with reference to the Mayukha and not the

Mitakshara Law.

8. The lower Court found that the first item in dispute was the stridhan of Musammat Ballabh Kuar. The learned Subordinate Judge held that the

defence had failed to prove that this money constituted a trust fund for the purposes of meeting the expenses of shradh. He next held that the

arbitration proceedings upon which the defendants relied, were no bar to the suit inasmuch as the plaintiff had been no party to the reference to

arbitration. The Subordinate Judge "held also that Gopi Kuar was the daughter of Ballabh Kuar.

9. As regards the two deposits of Rs. 533 and Rs. 2,500, items Nos. 3 and 4, the finding of that Court was that Gulab Ram himself had made

these deposits but that they had been made for the benefit of Gopi Kuar and her son and, therefore, the plaintiff was entitled Jo get them.

10. With reference to the second item, namely, the deposit of Rs. 2,207, the Subordinate Judge found that this money had been put in deposit by

Gopi Kuar but that there was owing to the defendants on this account a still larger sum, namely, Rs. 2,621-15-0. On the issue of limitation, the

Subordinate Judge found that the suit was not time-barred and lastly he held that the Mitakshara Law governed the relations of the parties. He

gave a decree, therefore, to the plaintiff for Rs. 6,409-15-0 with proportionate costs and interest pendente lite and future at the rate of five annas"

four pies per cent. per mensem.

11. Pausing here it may be observed that on the face of it, the decree of the lower Court is wrong. The Subordinate Judge was of opinion that

items Nos. 1, 2 and 4 carried interest and yet in making up the account between the parties he has not allowed interest on these sums up till the

date of suit.

12. The defendants come here'' in appeal and two pleas have been raised on their behalf. The first plea is contained in the first and second grounds

set out in the memorandum of appeal, that is the plea -of limitation. The third and fourth grounds relate to the law applicable to the parties, the

contention being that the family is governed by Mayukha and not by the Mitakshara Law. The plaintiff''s case is that the Court below ought to have

decreed his claim in full. He objects to the finding of the Court below that there was against him a debit balance of Rs. 2,621-15-0 and says that

this sum ought not to have been deducted from his claim.

13. To deal first with the appeal, it may be observed that there is no longer any dispute about the various items mentioned in the plaint which were

received in deposit by the defendants'' firm. The case which was set up in the Court below regarding the first item, that is to say, the deposit made

in the name of Musammat Ballabh Kuar has not been argued here. It is no longer contended that this item was placed with the defendants in trust

for the performance of shradh ceremonies. We may take it, therefore, that each of the items in the account represents a separate deposit and this

being so, the issue about limitation is disposed of at once. We think the lower Court is right in holding that the suit was not time-barred. The Article

which applies is obviously Article 60 of the First Schedule of the Limitation Act and time begins to run from the date on which demand was made,

that is to say, in the present case from the 16th of January 1914. The suit was filed a few months later. The deposits were in the nature of banking

and the defendants stand in a fiduciary relation to the plaintiff. For these reasons the case falls within the purview of Article CO, and not of Article

62 as was pointed by the Counsel for the appellant.

14. As to the question whether the parties are governed by the Mitakshara or the Mayukha Law, we have already mentioned that this point arises

only in connection with the first item in dispute. On the finding of the Court below this sum of Rs. 3,791-14-0 was the stridhan of Ballabh Kuar. If

this is a case which is governed by the Mitakshara Law, the whole of this sum was inherited by her daughter Gopi Kuar and is now claimable by

the plaintiff as the heir of his mother. On the other hand if the Mayukha Law is to be applied, the stridhan of Ballabh Kuar was divisible between

her sons and her daughters.

15. A number of witnesses were examined in the Court below for the purpose of showing which school of law governs the relations of the parties,

We have been referred to the statements of six witnesses who were examined on behalf of the plaintiff. There was also a deposition given in a

former suit by Ravi Ram who was one of the sons of Gulab Ram Jani. Read as a whole, the evidence is not of very much value for most of it

proceeds from witnesses who admit their ignorance of the differences between the Mayukha and the Mitakshara Law. However, so much is

established from the testimony of these witnesses that the family is a family of Gujarati Brahmins who migrated to Benares 150 or 200 years ago.

Ravi Ram, when examined in the earlier suit, deposed that the family first migrated from Gujarat to Jaipur and came from Jaipur to Bewares about

the year 1804 A. D.

16. The argument for the appellants is that as the parties are Gujaratis, they must be deemed to have brought their own law with them and that law

must have been the law as laid down in the Mayukha. On the other band the contention is that the presumption must be in favour of the application

of the Mitakshara Law, because it is said that the commentary which goes by the name of the Vyavahara Mayukha did not make its appearance till

after the year 1600 A. D. On the authority of the books there seems to be no doubt that the author of this commentary, Nilkantha, lived about the

year 1600 A. D. in Benares and his works are said to have come into vogue about the year 1700 A. D. Support for this argument is derived from

the history of the Mayukha as set out in West and Buhler''s Hindu Law, Volume I, page 19 (3rd Edition), in which the statement of Borradaile is

quoted as authority for the history given. It seems to us that it would be very difficult to say that a family which migrated from Gujarat nearly two

centuries ago is governed by the special rules of inheritance which are set out in Nilkantha''s commentary. The question whether the Mayukha is

the governing authority in Gujarat is one which does not appear to have been definitely settled, although the view taken by the Bombay High Court

seems to be that the Mayukha is the principal authority in that province. This view, however, has been challenged in a work which was cited before

us at the time of the argument--""Codification in British India"" by Bijoy Kishore Acharya (Tagore Law Lactures, 1912) at page 315 and the

following pages. The learned author points out that the Court of highest jurisdiction in Baroda holds that the Mayukha is not of superior authority to

the Mitakshara in the region of Gujarat.

17. On the evidence before us, we are of opinion that the Mitakshara ought to be applied here. The family has long been domiciled in Benares

where the Mitakshara Law prevails, and such evidence as there is before us shows that these people are ignorant of any rules to be found in the

Mayukha commentary. No instance of special succession under the Mayukha has been deposed to by any of the witnesses, and this is a fact of

some significance for the family is a big one and instances might have been expected to be forthcoming if the Mayukha Law applied.

18. On the two points raised in the memorandum of appeal, we find against the appellants and the appeal fails accordingly.

19. Coming now to the cross-objection which relates to a sum of Rs. 2,621-15-0, which the Subordinate Judge debited against the plaintiff, it

appears to us that the lower Court has not dealt correctly with this matter. The Subordinate Judge for some reason or other which is not apparent

treats this sum as a debit, against the deposit account of Rs. 2,207, standing in the name of Gopi Kuar. On the other hand, it is the case of the

defendants that all the items which go to make up this debit total were items advanced to or chargeable against the plaintiff and if this be so, the

debit account should have been made up against) the deposit of Rs. 2,500, which stands in the plaintiff''s name.

20. The sum of Rs. 2,621-15-0 claimed by the defendants is made up of three items:

(1) Rs. 811-9-0 debited to the plaintiff up till Kartik 1957 Sambat, that is to a date prior to the death of Gulab Ram Jani.

(2) Rs. 984-6-0, representing sums paid to the plaintiff since the death of Gulab Ram Jani.

(3) Rs. 826, debited to the plaintiff on account of interest.

21. There has been much argument before us regarding the account of the defendants which relates to this debit item. In order to support their

claim the defendants produced an account which purports to date from 1941 Sambat at a time when the plaintiff can only have been about 16

years of age. This date (1941 Sambat) was 17 years prior to the death of Gulab Ram Jani. The account so produced is not the account from the

very beginning, for it opens with a credit item of Rs. 678 6 0 in favour of Hari Ram carried over from an earlier account. By the end of 1949

Sambat this account had become a debit account and has been shown as such ever since. At the time of Gulab Ram''s death the debit against Hari

Ram is shown as amounting to Rs. 811-9-0.

22. It is proved beyond all doubt that when Gulab Ram died, he directed a sum of Rs. 2,000 to be placed to the credit of Hari Ram in addition to

a sum of Rs. 500 which had been credited previously, and we thick that there is good ground for supposing that it was the intention of Gulab Ram

Jani in giving these directions to wipe out the debt which was then standing against the name of Hari Ram. This debit seems to have arisen by

reason of Gulab Ram''s himself paying sums to Hari Ram from time to time for his support and consequently when we find that Gulab Ram Jani just

before his death left Rs. 2,500 for the support of his grandson, we think he intended this to be a fresh fund not subject to deduction in respect of

any money which had been previously advanced.

23. We may mention here that the award of the arbitrators, who were appointed to make partition of the family business which belonged to the

defendants, is upon the record. The accounts were examined by persons who were more or less experts and we find that the arbitrators in making

up this account of Hari Ram took the same line as we are taking now. We are satisfied, therefore, that this debit item of Rs. 811-9-0, which was

standing against the name of the plaintiff when Gulab Ram Jani died, should be excluded from the account.

24. Next we have to take the account from the time when Gulab Ram Jani died, starting with the fact that there was an opening of a credit balance

of Rs. 2,500 in favour of the plaintiff. At the hearing of the appeal an extract was prepared from the account books of the defendants which is

supported by an affidavit, and according to this extract there have been paid to the plaintiff since the death of Gulab Ram Jani sums the total

amount of which comes to Rs. 1,795-.-0. No interest is included in this sum. The learned Counsel for the respondent objected to one item in this

account, namely, a charge of Rs. 891-8-0 said to represent money advanced to the plaintiff for certain marriage expenses. It was argued that this

sum ought not to be debited in the account but ought to be treated as gift from the family business. In our opinion this contention cannot be

maintained, for we are of opinion that any sums which were paid to the plaintiff after Gulab Ram Jani"s death must, in view of what we have

already said, be a charge against the plaintiff"s account. There was no reason whatever why these defendants should have made a present of this

sum of money to the plaintiff.

25. Over and above this sum of Rs. 1,795-4-0 there is another item of Rs. 131 which represents not money actually paid to the plaintiff, but

debited to his account in the years 1964 Sambat. The history of this transaction appears to be that the plaintiff"s father had pawned certain

ornaments with the firm for Rs. 131. It is said that in 1964 Sambat the plaintiff was given the ornaments upon his agreeing to have the debt

transferred to his own account. We think this is a reasonable and proper explanation of this item and we hold that it constitutes a proper debit

against the plaintiff. We find, therefore, that the total sum which is properly chargeable against the plaintiff"s deposit account of Rs. 2,500 is Rs.

1,926-4-0.

26. As to the item of interest, namely, Rs. 826 to which we have previously referred, we leave that out of consideration altogether. The item

includes certain entries which accrued due before the death of Gulab Ram Jani and for the reasons we have already given, no debit of a date prior

to 1958 Sambat can be charged against the plaintiff. On the other hand, it is quite clear that since Gulab Ram Jani''s death the account of the

plaintiff, which began with a credit balance of Rs. 2,500 carrying interest at Rs. 4 per cent. per annum"", has always been a credit account and

consequently the defendants are not entitled to charge interest as if the account had been overdrawn. The lower Court has, as we have said,

debited the plaintiff with Rs. 2,621-150. Our finding is that the proper debit is Rs. 1,926-4-0 and so the cross-objection must be allowed to the

extent of Rs. 695-11.

27. We have already mentioned in an earlier part of the judgment that the decree of the Court below on the face of it is incorrect, inasmuch as the

Subordinate Judge has not allowed interest in the decree although he finds in his judgment that interest was claimable in respect of items Nos. 1, 2

and 4. The correct amount owing to the plaintiff is Rs. 7,641-4-9 and we vary the decree of the Court below accordingly.

28. A decree will be prepared for this sum With proportionate costs and interest during the suit and future interest at the rate of Rs. 4 per cent. per

annum. The result, therefore, is that the appeal fails and is dismissed with costs, which will include in this Court fees on the higher scale. The cross-

objection is allowed with proportionate costs.