

(1938) 12 AHC CK 0008

Allahabad High Court

Case No: None

Parma Nand Ram and
Others

APPELLANT

$$V_S$$

Thakur Prasad and
Another

RESPONDENT

Date of Decision: Dec. 6, 1938

Citation: AIR 1939 All 217 : (1939) 9 AWR 146

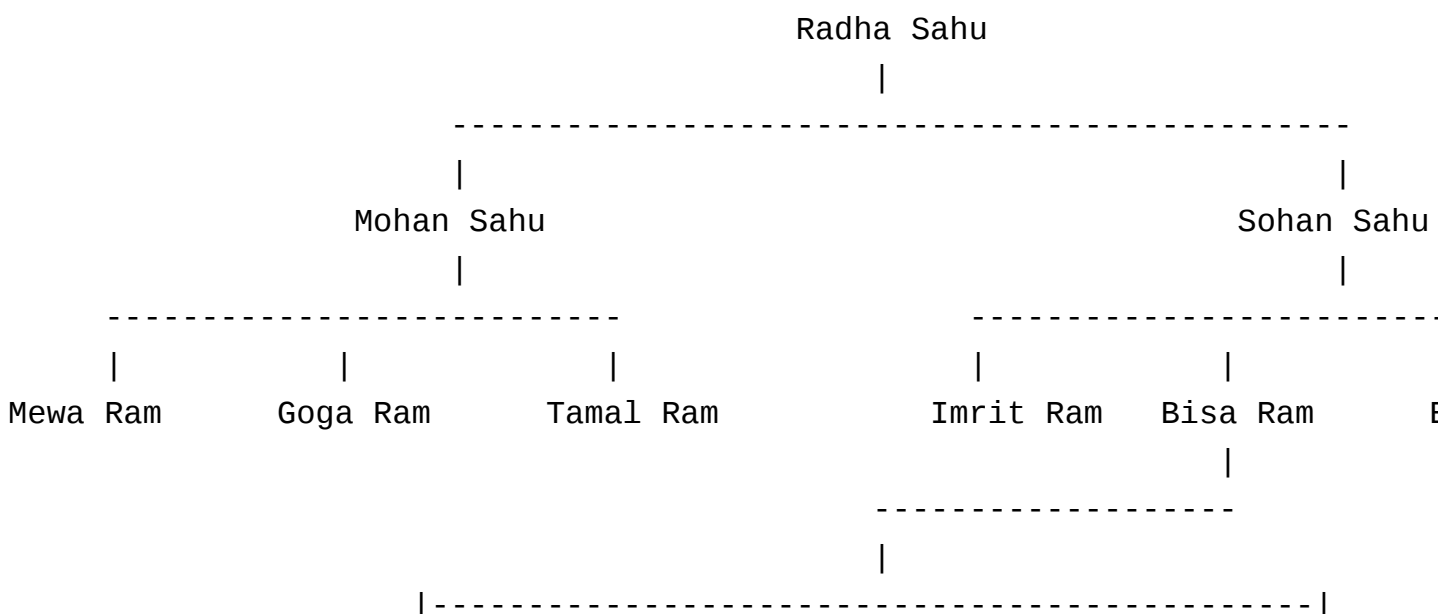
Hon'ble Judges: Collister, J

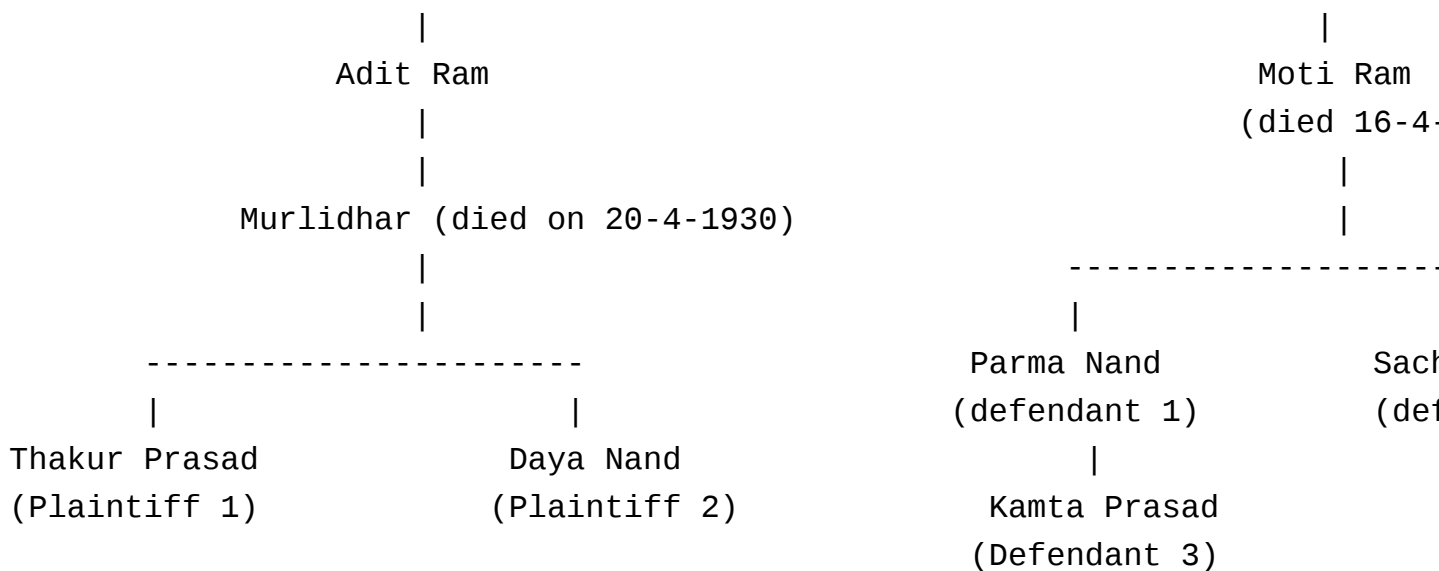
Bench: Division Bench

Judgement

Collister, J.

This is a defendants' second appeal arising out of a suit for dissolution of partnership and for rendition of accounts. The parties are closely related to each other and in order to understand the relationship, the following pedigree may be set out.





2. It is an admitted fact that in 1919 there was a partition between the six branches of the family representing the grandsons of Radha Sahu. The plaintiffs contend that their family, i.e. Adit Ram and his sons and grandsons, and the family of the defendants, i.e. Moti Ram and his two sons, also separated inter se and that soon after the partition of 1919 Moti Ram and Murli Dhar - the latter's father Adit Ram being then dead - entered into a partnership. Paras. 6 and 7 of the plaint read as follows:

(6) That soon after the agreement of 1919 Moti Ram and Murli Dhar entered into the partnership and started a firm under the name and style of Moti Ram Murli Dhar with their separate funds and for their own exclusive benefit.... (7) That in the firm of Moti Ram Murli Dhar the plaintiffs' father and the plaintiffs were co-partners of eight annas and the defendants and their father were and are co-partners of the remaining eight annas.

3. These allegations in the plaint seem to imply that Moti Ram and Murli Dhar entered into this partnership as the heads of their respective families, the partnership being for the benefit of each of these two persons and their sons. The defence was that there had never been any separation at all between Murli Dhar and his sons on the one side and Moti Ram and his sons on the other. The two families have always been and are still joint, and therefore there was no firm or partnership, and a suit for dissolution and for rendition of accounts is misconceived and is not maintainable. In the alternative they pleaded that, since Murli Dhar, the father of the plaintiffs, died on 20th April 1930, the suit is barred by limitation u/s 106, Limitation Act. Both the Courts below have decreed the suit and the defendants have come to this Court in second appeal. The first plea taken by learned Counsel for the defendants-appellants is that the learned Judge of the lower Appellate Court has misdirected himself in taking the view that by reason of the partition of 1919 there is no longer any presumption of jointness as between the parties to this litigation. Assuming without deciding, that this plea is well founded, it is obvious from a perusal of the judgment of the lower Appellate Court that the

finding of the learned Judge that the parties are separate from each other is based on the evidence which is on the record. The learned Judge says:

In view of all the above documentary and oral evidence I agree with the finding of the learned Munsif that the parties have been living separata from the year 1919 or even before that and that they are only partners of the firm Murli Dhar Moit Ram.

4. This is a clear finding of fact, and I am satisfied that in arriving at it the learned Judge was not influenced by the opinion which he had expressed as regards the presumption of jointness, for, after stating that opinion he says: "However the question is not material, as parties have produced evidence in support of their respective allegations." He then goes on to discuss that evidence and ultimately records the finding of fact as regards separation which I have already quoted. The finding of the lower Appellate Court on this question is binding on me and cannot be interfered with in second appeal. The next point is more strenuously urged by learned Counsel for the defendants-appellants. He pleads that, when Murlidhar died on 20th April 1930, there was a dissolution of partnership u/s 253(1), Contract Act. I am referred to the case in AIR 1934 192 (Privy Council), where their Lordships of the Privy Council at p. 899 have supported the following observations in Mayne's Hindu Law. Edn. 9 at P. 398:

Where a managing member of a joint family enters into a partnership with a stranger, the other members of the family do not ipso facto become partners in the business so as to clothe them with all the rights and obligations of a partner, as defined by the Contract Act. In such a case, the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger; the partnership will be governed by the Act.

5. This case is thus authority for the proposition that, where the karta of a joint Hindu family enters into a partnership with an outsider, the karta alone becomes a partner, and not the other members of his family, unless there is an agreement between them and the other partners. Learned Counsel for the defendants-appellants then relies on another Privy Council decision, namely *Mt. Jatti v. Banwari Lal* AIR (1923) P.C. 136. In that case there was a partnership between three separated Hindu brothers. One of the brothers died in 1905, leaving a widow. In 1914 the widow sued the remaining brother and the sons of the other brother claiming accounts and payment of one-third of the partnership assets. At page 353 their Lordships observe:

There remains however the question of limitation. The position here seems clear. Separation having been effected in 1876, and the business being carried on by the three brothers, the business became an ordinary partnership subject to the Contract Act. On the death of Rup Chand, the plaintiff's husband, the partnership was dissolved and a right to an accounting arose. But Rup Chand died in 1905, and this suit was not raised until 1914. It is therefore time barred as a suit for such an

accounting. If, however, on Rup Chand's death the widow was admitted as a partner to a new partnership, then the date of dissolution would only be the raising of the suit and no limitation could apply. It is possible to read the averments of the plaintiffs as alleging such a partnership. But the existence of such a partnership was denied. The case went to trial, and not a scrap of evidence directly proving such an agreement was produced. All that the widow got was a mere allowance of Rs. 51 a month. The fact that Rup Chand's share still continued to be dealt with in the books is no evidence of a partnership with his widow.

6. I do not think that this case will be of much assistance to the defendants-appellants, for the facts are quite different from the case with which I am now dealing, as will appear hereafter. In *S. Vannimundar v. S. Vannimundar* (1905) 28 Mad. 344, a man named Kandasami obtained a sublease of fishery rights and he agreed with the plaintiff to hold these rights in partnership with him. Kandasami and the defendants were members of a joint Hindu family and the sub-lease was obtained for the benefit of all the members of the family. The plaintiff sued for accounts, and it was pleaded that the partnership was dissolved on the death of Kandasami and that the suit was barred by limitation. At page 346 the learned Judges observed:

Therefore whether the contract of partnership entered into between the plaintiff and Kandasami he taken as creating that relation only between the two or between the plaintiff on the one hand and the adult members of the family on the other or gain between the plaintiff and all the members of the family including the minors, the death of Kandasami necessarily caused a dissolution of the relation which was the creature of a contract as between the plaintiff on the one hand and the rest on the other. Consequently, the suit viewed as one for a general account and a share of the profits, was under Article 106 of Schedule 2 to the Limitation Act out of time, unless a fresh contract to continue the business could be inferred from the conduct of the parties.

7. The last authority which I shall refer to is [Haramohan Poddar and Another Vs. Sudarsan Poddar and Others](#), That was a suit for dissolution of a partnership, for winding up its business and for taking accounts and other reliefs. The Bench of the High Court of Calcutta which heard the appeal made the following observations:

No doubt Clause 10 of Section 253 (Contract Act) provides that a partnership, whether entered into for a, fixed term or not, is dissolved by the death of any partner. But this rule is subject to the important qualification embodied in the opening words of the Section, namely "in the absence of any contract to the contrary." Partners may accordingly agree that on the death of any of them his nominee or legal representative shall be entitled to take his place. Whether in a particular case there has or has not been such an agreement may be proved by an express declaration to that effect or may be determined from the conduct of the parties... Now, in the case before us, it has been found by the Subordinate Judge

that on the death of the father of defendants 2 and 3 the latter stepped into his place; they were accepted by the other members, without question, as partners in a continuing firm and in that character contributed capital and withdrew sums of money from time to time.

8. Their Lordships accordingly held that the suit was not barred under Article 106, I limitation Act. In the present case, whether the sons of Murli Dhar, who are the plaintiffs, also entered into this partnership along with their father or whether - as seems more likely - the plaintiffs were not originally partners, though the partnership was entered into by their father as karta and for the benefit of the family, there can be no doubt on the findings of the Courts below that after the death of Murli Dhar the partnership business was continued by the defendants on the one hand and the plaintiffs on the other. In fact, the defendants themselves admit in their written statement that the business went on as before until this litigation brought it to a standstill. In my opinion, the only inference that can be drawn from the conduct of the parties is that a fresh partnership came into existence between the plaintiffs on the one hand and the defendants on the other, upon the death of Murli Dhar, and I think that the view which has been taken by the two Courts below is correct and the suit was not barred under Article 106, Limitation Act. In the result this appeal fails and is dismissed with costs. Leave to appeal under the Letters Patent is refused.