(1877) 05 AHC CK 0002

Allahabad High Court

Case No: None

Ambika Dat		APPELLANT
	Vs	
Sukhmani Kuar and Another		RESPONDENT

Date of Decision: May 25, 1877

Citation: (1875) ILR (All) 437

Hon'ble Judges: Turner, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Turner, J.

On the question of the character of the family whether in union or divided there is not much reliable evidence either way. It is for the defendants to make out a sufficient case showing partition, but with the exception of the facts that there was a quarrel between Maneshar Ram and Dhaneshar Earn in 1854, and that they then denned their interests in the property which they then hold, and which at their deaths came to be recorded in the same way in their sons'' names, there is really no reliable evidence. There is nothing definite to show the very important fact that the definement of shares was ever followed by separate enjoyment of profits.*

2. The fact that there was a definement of shares followed by entries of separate interests in the revenue records in some estate only is an important piece of evidence towards proving separation of title and interests, but it will not necessarily amount to such separation; it must be shown that there was an unmistakable intention on the part of the shareholders to separate their interests, and that the intention was carried into effect. The best evidence is separate enjoyment of profits and dealings with the property; and if we find through a long course of years nothing'' to show that the definement of shares which took place in 1854 has been acted on, and that the parties continued to enjoy the property on the same footing as before, it is but reasonable to suppose that, although they may have taken some

steps towards separation, from some cause or other--it may be a reconciliation--the intention to separate was abandoned.

3. It appears to be the fact that Dhaneshar Ram, who was devoted to religion, never managed his own affairs; the management was in the hands of Maneshar Ram, apparently both before and after 1854, and until Maneshar''s death. Maneshar was succeeded in the management by Debi Prasad, who continued to be sole manager during and after the cessation of plaintiff''s minority and until he died in 1872. Had what occurred in 1854 operated as a separation, we think it probable that something would have been done to relieve Maneshar of the management, and it would not have been continued in Debi Prasad while Dhaneshar was alive, nor is there any satisfactory evidence to show any separate enjoyment of profits or separate dealings with the property. There are no accounts which show it; such as there are point the other way, the oral evidence is indefinite and contradicted by oral evidence on the side of defendants, and the documents which show purchases, etc., in Debi Prasad''s sole name cannot be relied on to show either separation or union of interest, for he was manager of the entire property and head of the family, and the plaintiff was a minor, and transactions might have been done in his name in his capacity as a manager.

4. On the other hand we have the statement of Debi Prasad himself, made on the 5th July 1871, to the effect that there was no kind of separation, and the profits of the villages were without any specification considered by him to be the common property of himself and Ambika Dat. We do not see any reason why this statement should be distrusted because it was given for the purpose of the Income Tax assessment. We consider the last plea in appeal as to costs is so farvalid, that each party should pay their own costs, and with this modification we shall affirm the judgment of the Lower Court and dismiss the appeal, each party paying their own costs.

-------------------------------------Foot Note----------------------------------

*Sue Appovier''s case 11 Moore''s Ind. Ap. 75 (89), and Raja Suraneni Venknta Gopala Narasinha Roy Bahadur v. Raja Suraneni Lakshmi Venkama Roy ILR (P.C.) 41.