
(1877) 12 PRI CK 0001

Privy Council

Case No: None

Bannoo and Others

APPELLANT

Vs

Kashee Ram

RESPONDENT

Date of Decision: Dec. 7, 1877

Citation: (1878) 3 ILRPC 316

Hon'ble Judges: J. W. Colviel, B. Peacock, M. E. Smith, R. P. Collier, JJ.

Judgement

M.E. Smith, J.

1. This is a suit brought in the Court of the Civil Judge of Lucknow, by Kashee Ram, a nephew of Ram Dyal, who died in the year 1873, against Mussamut Bannoo and Mussamut Munna, the widows of Ram Dyal, and Munna Lall his grandson, the son of his daughter. The claim is for an eight-anna share, or one-half, of all the property in possession of Ram Dyal at the time of his death. The property consists principally of moveable property, but the claim includes a pucca house and shop.

2. The claim is based on the foundation that Ram Dyal, at the time of his death, was a member of a joint family, consisting of himself and of the plaintiff' Kashee Ram and his brother Kasho Ram,--those two being the sons of Ram Buksh, a brother of Ram Dyal. Kasho Ram did not join in this suit. The state of the family was this : Ram Gholam left four sons, Sheo Buksh, Ram Bilas, Ram Buksh, and Ram Dyal. Sheo Buksh and Ram Bilas are dead; one dying without a widow or children, and the other leaving a widow only. Ram Buksh had two sons, Kashee Ram, the plaintiff, and Kasho Ram. Ram Dyal had no son. The plaintiff admits in his plaint that his grandfather Ram Gholam divided the ancestral property amongst his four sons, though, according to his statement, the four sons did not take separately, but Sheo Buksh and Ram Bilas took one-half jointly, and so formed a separate family, and the other half was allotted to Ram Buksh and Ram Dyal. He contends that Ram Buksh and Ram Dyal remained a joint family. On the part of the present appellants, the defendants, it is stated, that the division by Ram Gholam was not into two parts, as Kashee Ram contends, but that each of the sons took a separate share.

3. There is no distinct proof, one way or the other, as to the nature of that division, but undoubtedly a division was made, and it may be taken as against the plaintiff that at all events the family was divided into two groups at that time. It further appears that, in the lifetime of Ram Dyal, Kashee Ram, the plaintiff, and his brother Kasho Ram, as between themselves, separated, and therefore the family was still further broken up. It also appears that, whatever the division of the property may have been by Ram Gholam, all the members of the family lived separately, and there was no commensality between them. In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that all that any one member of the family is found in possession of, belongs to the common stock. That is the ordinary presumption, and the onus of establishing the contrary is thrown on the member of the family who disputes it. Having regard, however, to the state of this family when the present dispute arose, their Lordships think that that "presumption cannot be relied upon as the foundation of the plaintiff's case, and therefore, as he seeks to recover property which was in the possession of Ram Dyal and was ostensibly his own at the time of his death, it lies upon him to establish by evidence the foundation of his case, viz., that the property was joint property to which he and his brother Kasho Ram, as surviving members, were entitled. It may be stated that the issue in the case, which is the only one material to be decided, raises distinctly that question. The issue is, "Was the plaintiff joint with Ram Dyal at his death?" The evidence is extremely scanty, and what there is of it is very unsatisfactory. That remark was made by the Commissioner upon the appeal from the Civil Judge, and was also made by the Judicial Commissioner when the question came before him on the right of appeal.

4. Their Lordships, after analysing the evidence relied on by the plaintiff, and commenting on the judgments of the lower Courts, concluded by advising Her Majesty to reverse these judgments and to dismiss the plaintiff's suit with costs in the Courts below, and they allowed the appellant the costs of the appeal.