

**(1914) 04 CAL CK 0054****Calcutta High Court****Case No:** None

Protap Chandra Chakravarty

APPELLANT

Vs

Sarat Kamini Debya

RESPONDENT

**Date of Decision:** April 30, 1914**Citation:** AIR 1914 Cal 817 : 24 Ind. Cas. 90**Hon'ble Judges:** Holm wood, J; Chapman, J**Bench:** Division Bench**Judgement**

1. This appeal is by the plaintiff. He claimed as heir of one Madhab Chakravarty and to be entitled as such to 1/3rd share of certain property which he alleged was held by Madhab and his two brothers, Jadab and Tara Nath, as joint family property.

2. Madhab died in 1851, leaving a widow who survived till 1903. The plaintiff's case was that his right of possession as reversionary heir began upon the death of the widow. The property in dispute consists of two plots of land which admittedly had since 1879 been in the possession of Madhab's brother, Tara Nath, till the death of that brother in 1891 and thereafter in the possession of Tara, Nath's daughter as separata property. There was no evidence when the disputed property was acquired, and admittedly there is no presumption, that it was acquired during the life-time of Madhab. In so far as it was necessary to the plaintiff's case to prove that the property was acquired in the life-time of Madhab it must be held that he failed to prove it.

3. The facts of the case may thus be stated as follows :

The two brothers, Jadab and Tara Nath, and the widow of the deceased brother, Madhab, were living together until the death of Jadab in 1865. Jadab died without heirs find such property as he had was inherited by his brother Tara Nath. Madhab's widow, Bama Sundari, left the family dwelling house and enjoyed a separate share of her hus-. band's property from the year 1879, she did not after that date at any rate lay any claim to or enjoy any sort of possession of the

properties which formed the subject of the present suit. These properties, however, admittedly were acquired at some time prior to the date when the widow left the family dwelling house in 1879. There is also the fact that at some time before 1879 Tara Nath was granted by the zemindar the brahmatten of one of the plots which formed the subject of the suit, and the finding is that this was a grant made personally to him in consideration of his being the priest.

4. The learned Subordinate Judge has somewhat obscured the case by trying to deal with the application of the general rule under which the jointness of a Hindu family is presumed. It is enough for the purposes of this case to refer to the judgment of their Lordships of the Privy Council in the case of Bannoo v. Kashee Ram 3 C. 315. in which their Lordships said that the presumption referred to could not be safely relied upon in a case in which the disputed property was in the possession of the person under whom the defendant claimed and was ostensibly that person's own property at the time of his death. In this case also the property which forms the subject of the suit was in the possession of Tara Nath as his own property from the year 1879 and in addition to that the widow, although she was given a share in certain properties which were undisputedly her husband's property in that year 1879, was given no share in this property and laid no claim to it since that date. There is also the fact that Tara Nath obtained a grant in respect of a portion of this property and it has been found that the grant was a personal grant to himself. The finding of both the lower Courts is that the property was the self-acquired property of Tara Nath, and upon the facts we have stated we are of opinion that the finding was justified. It is not necessary to discuss the application of any general presumption of joint-ness, if indeed it be correct to say that any such general presumption can be applied to particular pieces of property without regard to the facts of the case.

5. The result is that the appeal is dismissed with costs.