Privy Council Appeal No. 120 *of* 1915.

Metharam Ramrakhiomal and Others - - - *Appellants,*

v.

Rewachand Ramrakhiomal and Others - - - *Respondents,*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH NOVEMBER, 1917.

Present at the Hearing:

LORD BUCKMASTER.
SIR JOHN EDGE.
SIR WALTER PHILLIMORE, BART.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 24th June, 1910, of the Court of the Judicial Commissioner of Sind, which confirmed a decree, dated the 3rd April, 1908, of a single Judge of that Court exercising jurisdiction as the District Court of Karachi.

The suit in which this appeal has arisen was brought in the Court of the District of Karachi on the 26th May, 1905, by the appellants here to obtain a declaration that the property which one Shewaram purported to devise by his will and a codicil was the joint family property of Shewaram, the plaintiffs and some of the defendants, and that the will and codicil were inoperative to pass any title to the property. Other reliefs were claimed, to which it is not necessary to refer. The executors of the will were amongst the defendants to the suit.

Shewaram died on the 27th May, 1899. He had been and was at the time of his death a member of a joint Hindu family, which was governed by the law of the Mitakshara. The plaintiffs were members of the same joint family. The question in the suit was whether the property of which Shewaram purported by his will and codicil to dispose was property of the joint family or was property self-acquired by

Shewaram which had not been thrown by him into the joint stock of the family property.

The plaintiffs, Metharam, Shewaram, and the defendants, Rewachand and Hermandas, were sons of one Seth Ramrakhiomal Jethanand, and they and others, parties to this suit, constituted a joint Hindu family. The family business was that of money-lending, and was carried on at Karachi, Seth Ramrakhiomal being, until his death in 1884, the manager. On his death the money-lending business of the family was continued, and was carried on under the management of the plaintiff Metharam, who was the eldest son. Shewaram, who was the second son, was born in or about 1847. He was educated at the expense of the joint-family at the Government school at Karachi, which in the evidence is referred to as a High School. At that school Shewaram learned to speak and to write English. When he was 22 years old he became a pleader's clerk. He continued to be a pleader's clerk until 1878, when he entered the employment of Messrs. Volkart Brothers. He was subsequently in the employment of Messrs. Rose and Co., and in October 1881 he entered the employment of the firm of Charles Forbes and Co., as their head broker. With the latter firm he continued until he died in 1899. It may be assumed that the knowledge of English which Shewaram acquired at the Government school was of use to him as a pleader's clerk and in the other employments in which he was subsequently engaged. From the savings out of his salaries and brokerage, and from the profits which he derived from a money-lending business which he personally carried on, he acquired a fortune of about 2 lakhs and 50,000 rupees, which is represented by the property of which he purported to dispose by his will and codicil. The money-lending business which Shewaram personally carried on was started by him with capital derived from the savings out of his salary as a pleader's clerk, and without the aid of the joint-fund.

In the plaint it was in effect alleged that the property of which Shewaram purported by his will and codicil to dispose had been acquired by him as a member of the joint family, and was joint family property of which he could not dispose by will, and alternatively that Shewaram had thrown his self-acquired property into the common stock with the intention that it should be treated as joint and not self-acquired property. In the written statements of the executors it was alleged that the property of which Shewaram had by his will and codicil disposed was his self-acquired property, and it was denied that Shewaram had thrown his self-acquired property into the common stock of the family. The learned Trial Judge fixed the following amongst other issues which are now immaterial :—

2. Did Shewaram acquire the property in suit with the assistance of joint family funds ?

3. If not, did Shewaram join the property to the common ancestral property ?

Those issues were agreed to by the parties. No issue was suggested or fixed as to the education which Shewaram had obtained, nor was it contended before the Trial Judge that the property in question had been acquired by Shewaram by means of any special or other education. The Trial Judge, having stated in his judgment that the evidence in the case "covers nearly every year of Shewaram's active life, and details every incident from which an inference can be extorted that Shewaram's property was the property of the family," considered the evidence fully and in detail, and found the second and third issues in the negative, and dismissed the suit. The plaintiffs appealed to the Court of the Commissioner, and in their grounds of appeal did not suggest that the education which Shewaram had received at the expense of the joint family had been such as to entitle the joint family to the gains made by him as a pleader's clerk or in his subsequent employments, or as a money-lender. When, however, the appeal came on for hearing in the Court of the Commissioner the learned counsel who appeared for the plaintiff appellants contended, amongst other things, that it had been proved that Shewaram had obtained the posts from which he had derived his salary and brokerage through the general education which he had received from the joint family funds.

There is no evidence on the record to show what was the nature of the education which Shewaram received at the school at Karachi. Had the plaintiffs been in a position to prove that his education had been of an exceptionally high standard and more expensive than the education which ordinarily would be provided for a member of such a family as he belonged to, they could have raised an issue on that subject and have called evidence in support of it. The learned Judges who heard the appeal considered that the English education received at the Government school at Karachi could not be regarded, for a well-to-do family, as more than a general education, and certainly was not a special education comparable with special training for the Bar or the Civil Service, and they concurred with all the material findings of fact of the Trial Judge, and by their decree dismissed the appeal. From that decree this appeal has been brought.

In this appeal it has been contended on behalf of the plaintiffs that in arriving at their findings on the second and third issues the Courts below have misconstrued a document in writing. The document referred to was a letter which was written by Shewaram to his brother Metharam, and was as follows;—

"My Dear Brother.

"I am ready to join my property with the family property, and take my share from it.

"SHEWARAM.

"Dated 1st October, 1888."

The Trial Judge construed that letter as a conditional offer. "If you will come to partition I shall join my fund to yours";

implying "If you don't come to partition, I shall not join them."

The plaintiffs endeavoured to prove by oral evidence that Metharam had asked Shewaram for a chit showing that the joint family fund and Shewaram's self-acquired fund were liable to be partitioned as a joint family fund, and that thereupon Shewaram wrote the letter of the 1st October, 1888. That story rested solely on the evidence of Metharam and Rewachand, and the Trial Judge entirely disbelieved it. The Judges who heard the appeal construed the letter as an offer made by Shewaram during negotiations for partition, and found that the offer was never accepted. The Courts below rightly construed the letter. In their Lordships' opinion, Shewaram's letter affords strong evidence that on the 1st October, 1888, his contention was that the property which he had acquired was his self-acquired property, and was not the property of the joint family. If Shewaram had, before the 1st October, 1888, thrown his self-acquired property into the joint family fund there was no object in his writing the letter to Metharam, who was the manager for the joint family. In neither of the Courts below did the Judges misconstrue the letter of the 1st October, 1888; and the plaintiffs are concluded, so far as conclusions of fact to be drawn from the evidence are concerned, by the concurrent findings of fact of those Courts that the property in suit was the self-acquired property of Shewaram, and that Shewaram did not join his self-acquired property to the joint family property.

It has, however, been contended on behalf of the plaintiffs that as Shewaram had received an education in English at the school at Karachi at the expense of the joint family, the property which he acquired must be attributed to that education, and must in law be held to be the joint property of the joint family. That contention depends upon the interpretation of texts of the Mitakshara, which are to be found in section 4, chapter 1. Section 4 deals with effects which are not liable to partition. Those texts of the Mitakshara translated by Mr. Colebrooke are as follows:—

"1. The author explains what may not be divided, 'whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he who recovers hereditary property, which had been taken away, give it up to the parceners; nor what has been gained by science.'"

"5. He need not give up to the co-heirs what has been gained by him through science, by reading the scriptures, or by expounding their meaning; the acquirer shall retain such gains.

"6. Here the phrase 'anything acquired by himself without detriment to the father's estate,' must be everywhere understood; and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage, without waste of the patrimony; what is redeemed of the hereditary estate, without expenditure of ancestral property; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend, as the return of an obligation conferred

at the charge of the patrimony; what is received at a marriage concluded in the form termed Ásura or the like; what is recovered of the hereditary estate by the expenditure of the father's goods; what is earned by science acquired at the expense of ancestral wealth; all that must be shared with the whole of the brethren and with the father."

The Sanscrit word which Mr. Colebrooke translated as "science" was translated by Sir William Jones as "learning."

The earliest case, to which their Lordships have been referred, decided in India on the meaning of those texts of the Mitakshara was *Chalakonda Alasani* v. *Chalakanda Ratnachalam*, 2, Mad. H.C.R. 56. That case was decided by the High Court of Madras in 1864. It was a very peculiar case. The plaintiff and the two defendants were dancing girls and constituted a Hindu joint family. The first defendant was the plaintiff's adopted daughter, the second defendant was the plaintiff's natural daughter. The plaintiff brought the suit to obtain possession, as the manager of the joint family, of gold and silver jewels and other personal property which represented gains of the first defendant in her calling of a dancing girl, she also claimed certain household utensils and some other minor articles. The plaintiff had spent a considerable amount of money in educating the first defendant in singing and dancing.

Mr. Collett, who, as the Civil Judge of Vizagapatam, tried the suit, having in a learned judgment considered several Sanscrit texts, as translated, including the texts of the Mitakshara, Mana, Yajnavalkya, Narada, and the Daya Bhaga and the works of some modern writers on Hindu law, said :—

"I am sure I am laying down an equitable rule, and I believe also the rule most consistent with the weight of authority. There is no doubt some conflict of opinion; but I think that the true position is that the mere fact of a Hindu having received a professional education at the expense of his family, as for instance from his father, does not render all his subsequent professional earnings liable to be divided with his brothers. I believe that on a due consideration of the authorities the rule of law is not really different in respect to property acquired by learning to what it is in respect to property acquired by agriculture or by trade. The test is the substantial use of joint property during and for the purpose of the acquisition, if there is none such, then the acquisition does not become joint property."

Mr. Collett made a decree in favour of the defendants with the exception of the house-utensils and some other minor articles. From that decree the plaintiff appealed to the High Court of Madras. Phillips and Holloway, JJ., in their judgment in the appeal, said :—

"We are constrained to say that we feel bound by authority to hold that the gains, at all events the ordinary gains, of learning and science which have been taught at the expense of the family funds, are not impartible. To render them so the science or learning must have been imparted by persons not members of the learner's family,"

and they allowed the appeal.

In *Dhunookdharee Lall* v. *Gunput Lall and Others*, 10 W.R., Civil Rulings, 122, which was decided by the High Court of Bengal in 1868, the defendant proved that in acquiring the property, which was alleged to be joint property, he did not use any of the property which belonged to the joint family, and L. S. Jackson and Dwarkanath Mitter, JJ., in appeal dismissed the suit. Dwarkanath Mitter, J., added :—

"His (the plaintiff's) case in the Court below was that the defendant received his education from the joint estate, and that he is consequently entitled to participate in every property that has been acquired by the defendant by the aid of such education. But this contention is nowhere sanctioned by the Hindu law, and I see nothing in justice to recommend it."

In *Bai Manchha* v. *Narotamdas Kashidas and Others*, 6 Bom. A.C.R. 1, which was decided by the High Court of Bombay in 1869, one Jamnadas, a deceased member of a joint Hindu family, had made money as a vakil and as a money-lender, and it was held by Couch, C.J., and Newton, J., that the onus of proving that the property so acquired by Jamnadas was his self-acquired property was upon the party alleging that it had been self-acquired. Those learned Judges approved of the judgment of the High Court of Madras in *Chalakonda Alasani* v. *Chalakonda Ratnachalam and Another*.

In *Durvasulu Gangadharudu* v. *Durvasula Narasammah and Others*, 7 Mad. H.C.R. 47, which was decided by the High Court of Madras in 1872, it was proved that a vakil had received from his father nothing more than a general education, and it does not appear that the vakil was distinguished by his professional learning. Kindersley, J., considered that the fair presumption was that such attainments as the vakil possessed had been acquired with the assistance of the family means, and that presumption not having been rebutted by evidence of the acquisition of such attainments without such assistance, he held that the professional earnings of the vakil were subject to partition. The judgment of Kindersley, J., suggests that he considered that if the professional gains of the vakil had not been merely the result of the general education which he had received at the expense of the joint family to which he belonged, but had been the result of much legal learning or skill, his professional gains would have been his self-acquired property. Holloway, J., entertained no doubt that the fund representing the professional earnings of the vakil was partible, and expressed his full adherence to the judgment of the High Court of Madras in *Chalakonda Alasani* v. *Ratnachalam and Another*, and especially to the statement in that case, that the ordinary gains of science by one who has received a family maintenance are certainly partible, and concluded his judgment by observing, "I do not believe, moreover, that within the meaning of the authorities the vakil's business is matter of science at all."

Apparently Holloway, J., regarded the learning in the law required by a vakil of his day as inferior to the science necessary to her success in her line of life of an Indian dancing girl.

In *Pauliem Valloo Chetty* v. *Pauliem Sooryah Chetty*, 4 I.A. 109, which came before this Board in 1877, the Board, on the evidence, found that the son had not been educated by means of any joint fund of the family, but out of the separate estate of his father, over which the father had an absolute power of disposition. In that case the Mitakshara, chapter 1, sections 4, 6, 7, and 8, and the decisions in *Chalakonda Alasani* v. *Chalakonda Ratnachalam and Another*, *Dhunookdharee Lall* v. *Gunput Lall and Others*, *Bai Manchha* v. *Navotamdas Kashidas and Others*, and *Durvasula Gangadharudu* v. *Durvasula Narasammah and Others* were referred to in argument before the Board, and their Lordships with reference to them observed —

"it does not become necessary to consider whether the somewhat startling proposition of law put forward by the appellant, which, stated in plain terms, amounts to this: that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property, is or is not maintainable. Very strong and clear authority would be required to support such a proposition. For the reasons that they have given, it does not appear to them necessary to review the text-books or the authorities which have been cited on this subject. It may be enough to say that, according to their Lordships' view, no texts which have been cited go to the full extent of the proposition which has been contended for. It appears to them, further, that the case reported in the tenth volume of *Sutherland's* 'Weekly Reporter,' in which a judgment was given by Mr. Justice *Jackson* and Mr. Justice *Mitter*, both very high authorities, lays down the law bearing upon this subject by no means so broadly as it is laid down in two cases which have been quoted as decided in *Madras*, the first being to the effect that a woman adopting a dancing girl and supplying her with some means of carrying on her profession was entitled to share in her gains; and the second, to the effect that the gains of a vakil who has received no special education for his profession are to be shared in by the joint family of which he is a member: decisions which have been to a certain extent also acted upon in *Bombay*. It may hereafter possibly become necessary for this Board to consider whether or not the more limited and guarded expression of the law upon this subject of the Courts of *Bengal* is not more correct than what appears to be the doctrine of the Courts of *Madras*."

That intimation appears to have had its effect upon Courts in India.

In *Boologam* v. *Swornam*, I.L.R. 4 Madras, 330, which was decided in 1881, Innes and Kernan JJ., on the evidence having found that the earnings of the dancing girls, who had received an ordinary education sufficient to fit them to earn a living as dancing girls, were acquired by them without detriment to the family estate and without any scientific acquire-

ments which had been imparted by the aid of the family fun held that the earnings of the girls were their self-acquired property.

In *Lakshman Mayaram* v. *Jamnabai*, I.L.R. 6 Bom. 225, which was decided in 1882, Melvill and Kemball, JJ., who considered that the dictum of Mitter, J., in *Dhunookdharee Lall* v. *Gunput Lall and Others*, that the Hindu law nowhere sanctions the contention that acquisition of a member of a Hindu family who has received education is liable to partition, is not strictly accurate, held that when the Hindu texts "speak of the gains of science which has been imparted at the family expense, they intend the special branch of science which is the immediate source of the gains, and not the elementary education which is the stepping stone of all science," and consequently that the property which was acquired by a Subordinate Judge who had received a mere elementary education at the family expense, but had obtained in a lawyer's office and in the Sadar Adalat that knowledge of law and judicial practice which had qualified him for the post of a judge, was his self-acquired property and was impartible.

In *Krishnaji Mahadev* v. *Moro Mahader*, I.L.R. 15 Bom. 32, which was decided in 1890, Birdwood and Candy, JJ., held that the gains made as *karkuns* by two members of a joint Hindu family who had received only a rudimentary education at the expense of the joint family were their self-acquired property.

In *Lachmin Kuar and Another* v. *Debi Prasad*, I.L.R., 20 All. 435, Burkitt and Dillon, JJ., in 1897, approved of the decision in *Krishnaji Mahadev* v. *Moro Mahader*, and following it held that the gains from employment in the Commissariat Department of a member of a joint Hindu family, who was not shown to have had any assistance from the joint family funds except his support in early years and the usual rudimentary education, were his self-acquired property.

With the exception of the cases to which they have referred, no case decided in India, or in which this Board has expressed an opinion on the question as to whether the gains of a member of a joint Hindu family, who had been educated at the expense of the joint family, are in law to be considered as his or her self-acquired property or as belonging to the joint family, has been brought to the attention of their Lordships.

Their Lordships will assume that the Sanscrit word used in the Mitakshara which Mr. Colebrooke translated as "science" means "learning." The latter apparently is the meaning of the word which has been generally accepted by the Courts in India. It gives the Sanscrit word a wider meaning than it would otherwise have. It would be difficult, if not impossible, to ascertain what could have been the science or sciences which the author of the Mitakshara, Vijnanesvara, who wrote his commentary in the latter part of the eleventh century, had in contemplation if he used a word which meant "science" strictly

so called and is not susceptible of the wider and more comprehensive meaning "learning."

In construing the texts of the Mitakshara which their Lordships have quoted, it is necessary to bear in mind that education beyond that of a very elementary kind must have been limited to very few of the people for whose guidance the Mitakshara was written, and that for that limited few there could have been then no education attainable in the arts, sciences, and professions of that time comparable with the education now obtainable and necessary for a successful career in the arts, sciences, and professions of the present day. It may be assumed that the author of the Mitakshara, who was construing and explaining the more ancient texts of the Hindu law for the benefit and guidance of the Hindu community, could not have intended to penalise an education which was not in his contemplation and of which necessarily he knew nothing. Nor can it be assumed that his intention was to penalise and discourage self-acquired skill, or the exercise of high mental abilities or great individual effort in winning success in an art, or science, or a profession. He must have been writing of education—learning—such as he knew it to be, and when he laid down that the gains obtained from an education received at the expense of a joint family should be partible, he could not have intended that such gains should include the gains which were the result, not of the education received at the expense of the joint family, but of the peculiar skill, mental abilities and individual effort in applying and improving such education exercised by the person who had been educated at the expense of the joint family. Their Lordships cannot find in the texts of the Mitakshara any authority for the contention in this case that the gains made as a clerk, as a broker, or as a money-lender, personally and without the aid of the joint funds by a member of a joint family who received an ordinary education suitable to his position as a member of the family to which he belonged, should in law be regarded as partible and not as his self-acquired property. The question of whether a man who happening to be a member of a joint family carried on his business, whatever it was, personally for his own personal benefit without detriment to the joint family fund, or carried on such business as a member of the joint family for the benefit of the joint family, is a question of fact to be determined on the evidence. No inferences can be drawn from the fact that until Shewaram became a pleader's clerk he was maintained by the joint family funds. As a member of the joint family he was entitled to be maintained at the expense of the joint family, and to receive an ordinary education suitable to a person of his position, as was any other member of the family.

Their Lordships are of opinion that this appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

METHARAM RAMRAKHIOMAL AND OTHERS

v.

REWACHAND RAMRAKHIOMAL AND OTHERS.

DELIVERED BY

SIR JOHN EDGE.

PRINTED AT THE FOREIGN OFFICE BY C. E. HARRISON.

1917.