NOTE.—Please substitute for copy of Judgment previously issued.

Privy Council Appeal No. 27 *of* 1921.

Patna Appeal No. 13 *of* 1919.

Rani Jagadamba Kumari - - - - - - *Appellant*

v.

Thakur Wazir Narain Singh - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1922.

Present at the Hearing:

LORD BUCKMASTER.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.
LORD SALVESEN.

[*Delivered by* LORD BUCKMASTER.]

The appellant in this case is the widow of Raja Saroda Narain. The respondent is the nearest male agnate of the deceased, being the son of one Nilkantha Narain, the original plaintiff in the suit, who was the son of Bharath Singh. The proceedings were instituted for the purpose of establishing the title of the plaintiff to an estate known as the Serampore Raj or Gadi and certain moveable and immoveable property, cash and securities which had been purchased out of the income of that estate. The questions with regard to the estate and the monies and property representing the investments from this income are distinct, and need to be separately considered. They have both been decided adversely to the appellant, with the exception of the claim to certain Government securities which will be more specially referred to hereafter. Serampore Raj or Gadi is impartible, and the family is governed by the Mitakshara law. If there had been

no division of the family the property would have passed to the plaintiff, but it is asserted that Bharath Singh separated from his father in his lifetime, and that consequently neither he nor the plaintiff was joint in estate with Raja Saroda Narain.

Now, the facts upon which this alleged separation is based have been concurrently found by the two Courts, and are no longer the subject of dispute. The argument properly open to the appellant is not upon the facts themselves, but that these facts, when accepted, do establish separation. The facts are these: The village of Chowrah was granted, at a date not precisely ascertained but many years ago, by the then Raja to the plaintiff's father Bharath Singh by way of maintenance on a mokurari grant at a nominal rent. The plaintiff's father, who died in 1879, does not appear to have gone to reside at Chowrah, but the plaintiff went there about 1885, when the then Raja was a minor and his estate was under the management of the Court of Wards. The effect of this change of residence necessarily effected a separation in food and mess. The High Court hold distinctly that there was no separation in religion, and the learned Subordinate Judge holds that there was no separation beyond the separate living in the maintenance village and the consequent separate messing.

The cases of *Girja Bai* v. *Sadashiv Dhundiraj* (43 I.A. 151) and *Kawal Nain* v. *Prabhu Lal* (44 I.A. 159) are clear decisions that it is competent to a member of a joint family to separate himself from the family by a clear and unequivocal intimation of his intention to sever, and this is also true with regard to an impartible estate; but as in that case the person separating forfeits his chance of inheriting the whole of the estate by survivorship, it requires strong evidence to establish such separation.

The case in 44 I.A. illustrates this. It was there found that the separation relied on was a complete separation in worship, in food, and in estate; and, further, there was good reason for the complete separation, and that consequently the requisite evidence was forthcoming. In this case these conditions are lacking, and their Lordships are unable to think that there has been any mis-application of the principles of law which regulate this question, and the findings of fact are sufficient to defeat the appellant's claim.

The second question gives rise to greater difficulty. It appears that Raja Saroda Narain, when he inherited the estate, was a minor. The estate was then placed under the custody of the Court of Wards. On his obtaining majority the Raja entered into possession and appears to have managed the estate with care and skill. Towards the end of his life misfortune overtook him and he became insane. His estate was once more placed under the custody of the Court of Wards, and so remained until his death in 1907.

Originally the estate was in debt, and as there is no evidence of any acquisition of property from other sources, it follows that

all the estate possessed by the Raja other than the impartible Raj was derived from the income of the Raj itself. In the end this income produced very considerable property. There were certain villages, certain mortgages—usufructuary and otherwise—sums due on bonds and decrees, Government promissory notes to the extent of two lacs, and other moveable and immoveable properties. With the exception of the Government promissory notes the whole of these have been awarded to the plaintiff upon the ground that they represented an accretion to the estate and descended with it. Their Lordships think that this conclusion is wrong, and that its error is due to the idea that the produce of the impartible estate naturally belongs to and forms an accretion to the original property. In fact, when the true position is considered there is no accretion at all. The income when received is the absolute property of the owner of the impartible estate. It differs in no way from property that he might have gained by his own effort, or that had come to him in circumstances entirely disassociated from the ownership of the Raj. Nor could the monies have been used by him for the purpose of acquiring or endowing an impartible estate. It is, therefore a strong assumption to make that the income of the property of this nature is so affected by the source from which it came that it still retains its original character.

It is possible that this confusion is due to the consideration of the position with regard to an ordinary joint family estate. In such a case the income, equally with the corpus, forms part of the family property, and if the owner of the estate mixes his own monies with the monies of the family—as, for example, by putting the whole into one account at the bank, or by treating them in his accounts as indistinguishable—his own earnings share with the property with which they are mingled the character of joint family property; but no such considerations necessarily apply to the income from impartible property. The whole of the evidence on the matter in the present case, as stated by the High Court, is as follows :—

> "Some new properties were acquired out of the savings of Serampore Gadi. When there were savings in my hand I used to send the money to the Raja and take receipts from him. The money was utilised by the Raja by giving loans and purchasing other properties. On some occasions the Raja used to lend the money himself, and these sums are not entered in our books. When the loan was given through us, then we used to keep accounts of such money. I can't give the sums that passed through our hands or their probable amount. The moneys that passed through our hands were invested in loan and also in purchasing zemindaris. The incomes of zemindaris purchased were also entered in our books. It was treated as part of the income of the estate. Loans with interest repaid were also entered in our books. That money was also treated as part of the estate. All this was done at the instance of the Raja. Loans advanced by the Raja personally and not through our hands, and those that were not entered in the estate account at the time of the advance, the money when repaid used sometimes to come to our hands and sometimes paid to the Raja direct. Those that came to our hands were entered in our book. What

was so entered into the estate account was considered as estate money with the Raja's consent. I can't say if the Raja purchased any landed estate out of the money advanced by him personally."

For the reasons already given such a statement is insufficient to affect the property with the character of impartibility. Whether it be possible in any circumstances to treat moveable property as an accretion to a landed estate of this character is a matter not arising for decision.

It is true that in *Sarabjit Partap Bahadur Sahi* v. *Indarjit Partap Bahadur Sahi* (I.L.R., 27 All., at p. 253) it was decided that moveable property could be so regarded, but as the point does not arise here their Lordships need only say that they must not be regarded as accepting the soundness of that decision. The facts here are not very different from those in *Srimati Rani Parbati Kumari Dibi* v. *Jagadis Chunder Dhabal* (29 I.A., p. 82), where it was held that the evidence was inadequate to show that certain mouzahs bought out of the savings of the Zemindar were attached to the Zemindary. In both *Janki Pershad Singh* v. *Dwarka Pershad Singh* (40 I.A. 170) and *Murtaza Husain Khan* v. *Mahomed Yasin Ali Khan* (43 I.A., at p. 281) the addition of family property to the original Raj is considered. Both these cases dealt with property other than moveable property. In the present case their Lordships can see no evidence in the facts stated of any sufficient intention to treat the acquired properties —whether the mouzahs, mortgages or other personal estate— as part of the original Raj. The consequence is that to that extent the appellant succeeds, and the decree of the High Court must be varied by declaring that the decree for possession made in favour of the respondent be further varied by providing that it shall not include items 2, 3, 5, 6, 7, and 9 in Schedule A to the plaint. The respondent will pay the costs of the appeal.

They will humbly advise His Majesty accordingly.

In the Privy Council.

RANI JAGADAMBA KUMARI

v.

THAKUR WAZIR NARAIN SINGH.

DELIVERED BY LORD BUCKMASTER.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane. W.C.

1923