

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Joy Narain Giri v. Grish Chunder Myti and others, No. 27 of 1876, and Joy Narain Giri v. Grish Chunder Myti, No. 39 of 1876, from the High Court of Judicature at Fort William in Bengal; delivered 19th November 1878.*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE facts necessary to the understanding of this case are as follows :

Joy Narain Giri and Shibpershad Giri were grandsons of Nund Kishore Giri; they were joint in estate, and between them had the whole interest in the estate inherited from their grandfather. Shibpershad Giri, in consequence of his cousin Joy Narain refusing to allow him any participation in this joint estate, left the house in which they had jointly resided, went to reside with the husband of his sister, and had to maintain himself for some time by monies which he borrowed. Under these circumstances he brought an action against Joy Narain, in which he alleged that Joy Narain had expelled him from the joint family, and that he sued to recover possession of his eight annas share of all the joint properties, both real and personal, with mesne profits and interest from the date of dispossession. In that suit he obtained a decree the material part of which is in these terms, "The Court orders that the half of the various properties which, as stated above, are

“ in the possession of Joy Narain be decreed  
 “ to the Plaintiff; that the date of separation  
 “ from commensality is to be reckoned from the  
 “ month of Bysack of the year 1272, and that  
 “ from that date to the date of obtaining pos-  
 “ session he is to get the mesne profits of the  
 “ immoveable properties according to what will  
 “ be ascertained in execution of decree; that  
 “ with regard to the household chattels, &c., the  
 “ Plaintiff is to obtain half of what the Defen-  
 “ dant has admitted; that the Plaintiff is to  
 “ obtain half of the proceeds of the pledged  
 “ properties which are sold for the realization of  
 “ the government rent, as well as half of the  
 “ amounts of the decrees realized from the  
 “ month of Bysack 1272; that the Plaintiff is  
 “ to obtain half of the proceeds of 12 solees and  
 “ 4 bissees of paddy at the rate of Rs. 26 per  
 “ bissee, and that he is to obtain half of all the  
 “ properties mentioned in the said decree.”

From that decree of the Subordinate Court there was an appeal to the High Court of Calcutta, which confirmed the decree. After the confirmation of that decree by the High Court, and pending an appeal by Joy Narain to Her Majesty in Council, Shibpershad Giri died; and thereupon Joy Narain applied for his widow to be substituted for him in the suit as Respondent in the appeal. The Courts in India, however, gave effect to a will—which had been made by Shibpershad Giri some short time probably before his death—in which he gave all his property to Grish Chunder Myti, the son of his sister, and made Myti the Respondent. The appeal came on in 1873 before Her Majesty in Council, whereupon Her Majesty, by the advice of this Board, affirmed the decree of the High Court of Calcutta. Upon this, Joy Narain commenced the present suit, in which in effect he alleges that he and Shibpershad Giri having been

joint in estate, and there having been no separation between them, the decree enured for his benefit, and that he, as the heir of Shibpershad Giri, was entitled to the whole of the joint property; there was also an alternative prayer that if that were not so he might be appointed as manager; and he sought, among other things, to set aside the will of Shibpershad Giri. Pending this present suit, Grish Chunder Myti, who, as substituted Respondent, had obtained the judgment of this Board affirming the decree in the previous suit, applied for execution of that decree in 1874; whereupon Joy Narain objected upon the ground which he raises in this suit, namely, that the former suit really enured for his benefit, and that Grish Chunder Myti took no right under it; he also alleged, among other objections, the pendency of the suit which he had already brought. The Courts in India allowed Grish Chunder Myti to execute the decree; and the second appeal, which we have now before us, is from the order of the High Court allowing the execution of that decree.

It appears manifest from this statement of the case that the questions in both appeals are substantially the same. The real question in the cause is, whether there was a separation of estate between Joy Narain and Shibpershad Giri.

Their Lordships regard the conduct of Shibpershad Giri, when he left the house in which both he and Joy Narain Jiri lived, and withdrew himself from commensality with his cousin, as indicating a fixed determination henceforward to live separately from his cousin, and they treat the fact of his borrowing money for his separate maintenance—as well as his making a will—as indicating, at all events, that he himself considered that a separation

had taken place. His plaint indicates that he accepts what he terms the expulsion of his cousin from the joint family, and claims the share to which he would be entitled after that expulsion, and after a separation. But further, it appears to their Lordships that the decree which has been read is in effect to give to Shibpershad Giri a separate share of the property of the grandfather. It gives him in terms possession of the 8 annas which he claimed of the real estate; it gives him mesne profits from the day of the alleged separation,—that is, from the time when he left the house in which he had been living with his cousin,—and it gives him also a half of the personal property. That being so, their Lordships are of opinion that although the suit is not actually in terms for a partition, yet that the decree does effect a partition, at all events, of rights which is effectual to destroy the joint estate under the doctrine laid down in the case which has been quoted of *Appovier v. Rama Subba Aiyar*, 11th Moore 75.

Their Lordships think it necessary to say that they do not regard their decision in this case as conflicting with a case which has been called to their attention of *Debee Pershad v. Phool Koeree*, 12 W. R. 510. The suit in that case is described by Mr. Justice Kemp as a suit by Debee Pershad for a declaration of his right to a share in the estate of his grandfather Deen Dyal. Such a suit would not be inconsistent with an intention on the part of Debee Pershad to obtain a declaration of his being entitled to a joint interest in a joint estate; but here, for reasons already given, their Lordships regard the plaint as of a totally different character, indicating a distinct intention, to which effect is given by the judgment, of obtaining a separation of estate, and as regards both the real and personal property.

For these reasons their Lordships are of opinion that the decree of the High Court is right, and they will humbly advise Her Majesty that that judgment be affirmed, and that both Appeals be dismissed.

