

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Budha
Mal v. Bhagwan Das and Another, from the
Chief Court of the Punjaub; delivered July
23rd, 1890.*

Present :

LORD WATSON.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

THE parties to the suit which is the subject of the present Appeal are the descendants of one Karam Chand, who died in the year 1835, and who was in the service of Ranjit Singh, and apparently held a position of some importance in his service. Karam Chand had two wives. The first was the mother of Tara Chand and Mangal Sein, and the second was the mother of Rattan Chand and Harnam Das. Mangal Sein died leaving a son Budha Mal, who is the Plaintiff, and Rattan Chand died in 1872, leaving a first son, Bhagwan Das, also a son who is stated to have disappeared in consequence of getting into some difficulty, and of whom nothing now is known, and a third son, Barkat Ram, who is the second Defendant in the suit, but who died on the 29th of June 1884. Tara Chand, the eldest son of Karam Chand, left Lahore, the residence of the family, and went to Benares, either in 1838 or 1839, taking with him a quantity of moveable property, according to the evidence of the Plaintiff, of the value of Rs. 60,000 or Rs. 70,000. He died at

Benares without children in 1858, his widow succeeding to the property which he had. It appears that during the life of Karam Chand the sons had themselves acquired and held separate property, and it is said that Rattan Chand had property to a greater extent than the other brothers.

The suit was brought by Budha Mal, the son of Mangal Sein, on the 8th of June 1880, and in it he alleged that the property, or a considerable portion of it, was still joint family property, and he asked to have a partition.

The question raised in the suit is stated by the Judicial Assistant Commissioner, before whom the case first came, to be that Bhagwan Das, who was the principal Defendant, said, "that though he has no knowledge that the property of Karam Chand after his death was formally partitioned, yet all the brothers have always been separate in food, residence, and estate," and that "each party enjoys the income of his own property, and has no concern with the property in the possession of the other," and further, "that Rattan Chand never held nor purported to hold the property in suit as manager for the benefit of Mangal Sein and Tara Chand." The defence was made in that form, no doubt in consequence of the Plaintiff having alleged in his plaint that at first Tara Chand was the manager on behalf of the whole family, and after he went to Benares, Rattan Chand, who was a literate man, became the manager on behalf of the whole family. Substantially the Plaintiff alleged that the property of which he sought a partition was, at the time when the suit was brought, joint family property. The principal Defendant, Bhagwan Das, who is the only Respondent who has appeared in the present Appeal, alleged that although there had not been

a formal partition of the property, yet that somewhere about the time when Tara Chand went to Benares, or shortly afterwards, there was in fact a separation of the family in estate as well as in food, and from that time there had been a separate possession of the property by the different members of the family in consequence of it.

The case was tried in the first instance by the Judicial Assistant Commissioner of Lahore; and in his judgment, at page 199 of the Record, he says: "Now the fact that Plaintiff holds a large
 " number of houses as separate estate, and that
 " Defendants do the same, would seem to point
 " to some *de facto*, if not formal, partition of
 " the joint family of the sons of Karam Chand;
 " and this view receives emphasis from this
 " other fact, that Plaintiff's father, Mangal Sein,
 " and Tara Chand have held together all along,
 " and are the sons of Karam Chand by one
 " wife; while Defendants 1 and 2's father and
 " Defendant 3 have held together, and are
 " Karam Chand's sons by another wife." He
 says further: "For the manager of a joint
 " estate in which he is a co-sharer to acquire
 " separate property would be unusual, but where
 " we have it admitted that the respective alleged
 " co-sharers are all in possession of distinct
 " properties, it would seem to import that their
 " joint condition had ceased to exist." And a
 few lines further on: Where the two sons
 " by one wife hold a long list of separate
 " property, and the two sons of another wife do
 " the same, it seems a fair inference that at some
 " time anterior to that state of things there was
 " a separation of interest." Now he does appear
 in a subsequent part of his judgment to have
 thought it necessary that there should be, not
 what he had found in the above passages, a
 separation *de facto*, but a specific partition. But

it is evident that the conclusion which he came to from the evidence was that there had been a partition—some transaction between the parties, which in fact amounted to a partition of the property, and that from that time they had become separate in estate, and had enjoyed the property separately. He however made a decree partly in favour of the Plaintiff and partly in favour of the Defendant, in consequence of the view which he took as to the necessity of some specific partition.

From that decree there was an Appeal to the Additional Commissioner, and his language upon the question of the partition is this: “The case
 “ does not throw any light as to the precise time
 “ at which the *de facto* distribution was made or
 “ happened. It was most probably about the time
 “ of Tara Chand’s departure to Benares in Sambat,
 “ 1896. I find accounts of rents for some of the
 “ houses as paid to Tara Chand after Karam
 “ Chand’s death, which lead to the supposition
 “ that some of them remained with Tara Chand
 “ for a time. All I can say with reasonable
 “ certainty is, that this distribution was existing
 “ in Sambat, 1897 (when the rents appear first in
 “ Rattan Chand’s accounts), and has ever since
 “ that remained in operation.” In a subsequent
 part of his judgment, after considering the
 evidence, he says: “To sum up, the conclusions
 “ I have come to are, that this family was pre-
 “ disposed to separation, or naturally circum-
 “ stanced so as to lead to it, if this phrase be
 “ preferred. The family consisted of two sons
 “ of one wife, who held together, and two sons
 “ of another wife; they held separate offices
 “ with separate salaries, and had certainly ac-
 “ quired separate houses. I find then that it is
 “ in every way probable, and it is certainly
 “ proved that as far back as Karam Chand’s
 “ death, or even before it, they were separate in

“ food and residence, Harman Das, an infant,
“ being in charge of Rattan Chand.” Then he
says : “ I find that Karam Chand’s property was
“ tacitly apportioned without objection at a
“ time which is uncertain.” And further on :
“ I find that from that day to this all these
“ houses that came to the different members,
“ as detailed in this judgment, have since been
“ separately and independently held, and that
“ there has been no trace of any managership,
“ anything remotely resembling a common fund,
“ a common or joint account, or a sharing, or
“ participation of profits.” He afterwards says :
“ However unequal the sharing may be argued
“ to be, I hold that it has taken effect and been
“ adhered to for over 40 years at least, and that
“ it cannot now be interfered with ; it constitutes
“ in fact a virtual or *de facto* partition, and
“ this partition is further rendered unalterable,
“ inasmuch as the intention of the parties was
“ manifested by their subsequent conduct, by
“ their sole and independent enjoyment of these
“ properties.” There is thus a most distinct
finding on the part of the Additional Commis-
sioner that there was a separation in fact,
although no formal document could be produced,
and probably there never was any formal
document executed between the parties. If
there had been, it might have been very difficult
to prove it. This judgment was given after a
careful examination of the evidence in the case,
and certainly appears to their Lordships to be a
fair inference from it.

There was then an Appeal from the judgment
of the Additional Commissioner to the Chief
Court of the Punjab, and it is to be observed
that although this was an Appeal from an
Appellate Court it was not limited, as such
Appeals under the Code of Civil Procedure, are to
questions of law, and the Chief Court had authority

to deal with the evidence and decide questions of fact. After noticing the evidence, and the facts that were relied upon as showing that the property continued to be held as undivided family property, the first learned judge of the Chief Court says: "Under these circumstances I am of opinion that in 1854 at latest, and probably several years earlier, Rattan Chand had begun to hold adversely to the Plaintiff's father, even if there had been no such acquiescence on the part of the latter as to operate as a *de facto* partition. Whether there had been such acquiescence the lapse of time and Mangal Sein's manifest dissatisfaction with the existing state of things 10 years before his death, make it difficult satisfactorily to determine."

It has been argued by Mr. Mayne, who appeared for the Appellant, that this shows that this learned judge was not satisfied that there had been an actual, or a *de facto*, separation. That he was so satisfied appears from the previous passages in his judgment, in which he says, after speaking of the presumption of a family being joint, "but the presumption may be weakened, or even rebutted, by proof of facts which give rise to an inference that the property is held in separate ownership, even though there is no evidence of a formal partition." This part of his judgment shows that he was of opinion that there had been a separation, or partition, in fact; but that even if that had not been the case there was the question of the operation of the adverse possession. The judgment of the other learned judge is more distinct upon the question. He says: "The finding of the Additional Commissioner that there was (at least so far back as 1854) an absolute *de facto* separation between Rattan Chand and Mangal Sein, and that Rattan Chand was not the manager of the

“ joint family property, seems perfectly right, and, “ as far as I can understand, Mr. Parker ”—that is the Judicial Assistant Commissioner—“ came “ to the same conclusion in the 6th and 7th pages “ of the printed judgment.”

Thus, upon the question which was the real issue between the parties, whether there had been a partition of the family property, there are the findings of three Courts, all of which appear to have looked very carefully into the evidence. The judgments are very full, and nothing has been urged before their Lordships by the learned counsel for the Appellant which in any way shows that the conclusion which they came to was not a fair inference from the evidence in the case. It does appear that more than 40 years ago—although there might not have been any formal document drawn up between these persons—there was a partition of the family property.

The Additional Commissioner dismissed the Plaintiff's suit entirely, but on the Appeal to the Chief Court it appeared that there was a small portion of the property of which there had been no partition; and on that ground the Chief Court modified the decree of the Additional Commissioner by excepting that portion from the decree dismissing the suit. That decision has not been appealed from by the Respondent.

The result therefore is that their Lordships will humbly advise Her Majesty to affirm the decree of the Chief Court, and to dismiss this Appeal, and the Appellant will pay the costs.

