

Musammat Jatti - - - - - *Appellant*

Banwari Lal and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF THE PUNJAB.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL. DELIVERED THE 15TH MAY, 1922.

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*Present at the Hearing :*

LORD BUCKMASTER.

LORD DUNEDIN.

LORD CARSON.

SIR JOHN EDGE.

LORD SALVESEN.

[*Delivered by* LORD DUNEDIN.]

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In 1876 four brothers, Ishar Das, Harbhagwan, Rup Chand and Daya Ram, lived as a joint Hindu family and carried on a family business. In that year a deed was executed by which the assets of the family were described and divided, and Ishar Das was finally paid out. Thereafter the business was carried on, but the profits were carried to separate accounts of the three remaining brothers in equal shares.

In 1905 Rup Chand died, leaving a widow who is the appellant. In 1914, the widow raised this suit against the remaining brother and the sons of the other who had pre-deceased, claiming accounts and payment of one-third of the partnership assets.

The defence put up was two-fold. It was alleged that though in 1876 Ishar Das separated from this joint family, the other brothers remained joint: that in consequence on the death of Rup Chand, the husband of the plaintiff, she had only the right of maintenance as a Hindu widow, which maintenance she had

duly received. Consequently, it was said that assuming that there was a complete separation, the suit was time barred under Article 106 of the 1st Schedule of the Limitation Act. The statement of the plaintiff as to what happened at her husband's death was not expressed with precision, but might be read as an averment that on her husband's death she was admitted to be a partner, her share being the same as that of her deceased husband. The issues as originally framed were only three in number, one of which, being as to the plaint being adequately stamped, may be disregarded. The remaining two were (1) On the separation of Ishar Das did not the remaining male members of the family become separate? (2) Did they convert the joint family business into a partnership? The case went to trial and no evidence was produced by the plaintiff, except the account books of the firm, which showed that after Ishar Das separated the profits of the business were carried to separate shares in the names of the three brothers, and this continued after Rup Chand's death. The learned Senior Subordinate Judge found first, that the deed executed at the separation of Ishar Das showed separation of the whole brothers; that re-union had not been proved and that the joint family came to an end. But finding in the pleading a clear plea to the effect that the suit was time barred, he added an issue to that effect and decided it in favour of the defendants.

The plaintiff appealed, and on appeal the learned Judges of the Chief Court of the Punjab held that in 1876, though Ishar Das had separated, separation had not taken place among the other brothers, and consequently the plaintiff had only the rights of a Hindu widow for maintenance and could not maintain the suit. They, therefore, found it unnecessary to consider the question as to limitation. The plaintiff has appealed to the King in Council.

Their Lordships do not find themselves able to agree with the views of the learned Judges of the Chief Court.

The law is well settled by the cases of *Balabux Ladhuram v. Rukhmabai and another* and *Balkishen Das and others v. Ram Narain Sahu and others*, 30, I.A. 130 and 139. Lord Davey remarks in the former case:—

“It appears to their Lordships that there is no presumption, when one co-parcener separates from the others, that the latter remain united. . . . Their Lordships think that an agreement amongst the remaining members of a joint family to remain united or to reunite must be proved like any other fact.”

Their Lordships think that the result is well stated by the learned trial Judge, who says:—

“There is absolutely no material on the file from which it can be inferred that the three brothers continued united or reunited as co-parcenary members of a joint Hindu family, while defendants' own books show the contrary . . . . I have therefore not the least hesitation in finding that on the separation of Ishar Das the family of the parties ceased to be a joint Hindu family in the strictest sense of the term; or, in other words, its members ceased to be co-parceners. Thus I find the first issue against the defendants.”

There remains, however, the question of limitation. The position here seems clear. Separation having been effected in 1876, and the business being carried on by the three brothers, the business became an ordinary partnership subject to the Partnership Act. On the death of Rup Chand, the plaintiff's husband, the partnership was dissolved and a right to an accounting arose. But Rup Chand died in 1905, and this suit was not raised until 1914. It is, therefore, time barred as a suit for such an accounting. If, however, on Rup Chand's death the widow was admitted as a partner to a new partnership, then the date of dissolution would only be the raising of the suit and no limitation could apply. It is possible to read the averments of the plaintiff as alleging such a partnership. But the existence of such a partnership was denied. The case went to trial, and not a scrap of evidence directly proving such an agreement was produced. All that the widow got was a mere allowance of Rs. 51 a month. The fact that Rup Chand's share still continued to be dealt with in the books is no evidence of a partnership with his widow.

Their Lordships think that a perfectly correct view was taken by the learned Subordinate Judge. As, however, the result is the same as if the grounds of judgment of the Court of Appeal had been adopted, the form of judgment which will be appropriate will be simply to dismiss the appeal with costs, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

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MUSAMMAT JATTI

v.

BANWARI LAL AND OTHERS.

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DELIVERED BY LORD DUNEDIN.

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