Privy Council Appeal No. 44 of 1939

Bhuru Mal - - - - - - - - - - *Appellant*

v

Jagannath and others - - - - - - - - *Respondents*

FROM

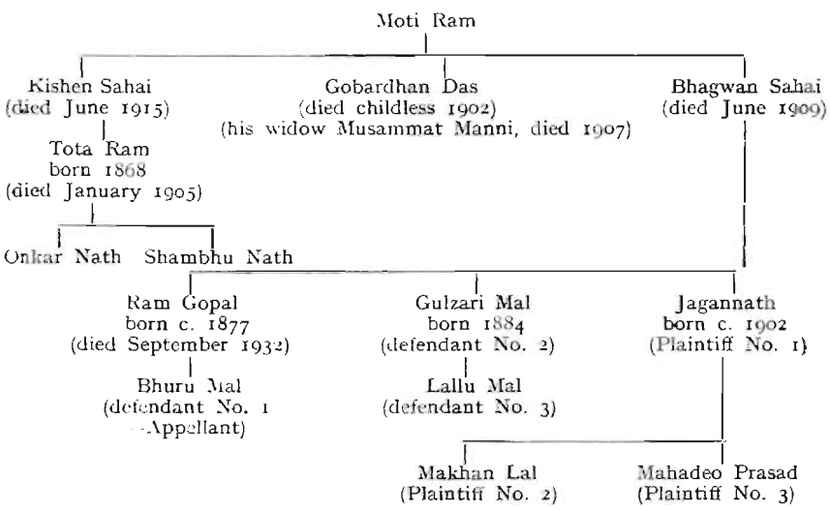
THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 18TH DECEMBER, 1941

Present at the Hearing:

LORD ATKIN
LORD THANKERTON
LORD ROMER
SIR GEORGE RANKIN

[*Delivered by* SIR GEORGE RANKIN]



This appeal is brought by the first defendant to a partition suit. The appellant Bhuru Mal is the only son of Ram Gopal, who died in September, 1932, and the first plaintiff is his uncle Jagannath, whose two sons are also plaintiffs. The appellant's co-defendants are his uncle Gulzari Mal and Lallu Mal, the latter's son.

The plaint claimed partition of the property comprised in seven schedules or lists lettered A to G. By one of the two decrees now under appeal which were passed by the Chief Court of Oudh on the 29th September, 1937, partition of the whole of this property has been directed. The Chief Court varied the decree which had been made on the 22nd December, 1934, by the trial Court, the Subordinate Judge of Partabgarh, both as to the plaintiffs' share and as to the assets to be divided. They held the share of the plaintiffs to be a one-third share and not an eighteenth share as the trial Court had declared in respect of all save one (item 11 of List A) of the items which it had included in the decree. The trial Court had excluded from the partition the two houses in Macandrewganj occupied by Gulzari Mal and Jagannath respectively, being items 2 and 3 of List A. It had also excluded the whole contents of Lists E, F and G—E being a list of the assets of a business carried on since 1909 in the name of Gulzari Mal, while

F and G are lists of assets and liabilities respectively of a business carried on since 1931 in the name Bhagwan Sahai Jagannath Prasad. These items were all included by the Chief Court's decree.

The property which both Courts in India held liable to partition consisted of eight items of house property in List A, of which two are at Rajwara and the rest in Partabgarh; four of zemindary property (List B); the assets of a business carried on since 1908 in the name Gobardhan Das Ram Gopal (List C); and of another business subsidiary to it carried on since 1926 in the name of Ram Gopal Bhuru Mal (List D).

The appellant Bhuru Mal has throughout resisted any decree for partition, maintaining that the suit should fail altogether; and at the trial Gulzari Mal supported this contention. The plaintiffs and Bhuru Mal brought separate appeals to the Chief Court, the plaintiffs' appeal succeeding and that of Bhuru Mal being dismissed. These appeals were stoutly contested by their learned advocates, but before the Board no one appeared on behalf of the plaintiffs. Mr. Rewcastle, for the appellant Bhuru Mal, took every care to present his appeal in such a manner as might assist their Lordships to appreciate the plaintiffs' case and the evidence which tells in their favour, and their Lordships express their indebtedness to him for this careful discharge of his duty. The absence of any argument for the plaintiffs, though compensated in great measure by the thoroughness of the judgment delivered in the Chief Court, is the more to be regretted that the evidence upon certain issues is by no means easy to interpret.

To appreciate the matters in issue it is necessary to refer to the history of this Marwari family, of which the pedigree table gives some particulars. Their place of origin or " native village " was Rajwara in the State of Alwar. Gobardhan went from Rajwara to Macandrewganj at some date which the Chief Court fix as between 1874 and 1879. Having set up a business or shop—mainly it would seem in piece-goods—he sent in 1879 for his nephew Tota Ram, who was then eleven years old, and a few years afterwards for Ram Gopal, who is said to have been about nine. These boys—the only son of one brother and the eldest son of the other—lived with Gobardhan and were engaged with him in the conduct of the business until his death in 1903. By this time Tota Ram would be about thirty-five and Ram Gopal about twenty-six, though these figures cannot be taken as accurate. The business flourished under the name and style of Gobardhan Das Tota Ram. When Gobardhan died, these two nephews continued living with his widow, but Tota Ram died in 1905 by which time his eldest son Onkar Nath had been for a year or two working in the shop. In 1907 the widow died and in 1908 Gulzari Mal came to Macandrewganj and was given money and cloth by his elder brother Ram Gopal to set up a shop in his own name. This is the shop mentioned in List E. Later on, in 1917, he bought himself—as he says out of his own monies—the house which is item 2 in List A.

In August, 1908, Onkar Nath and Ram Gopal divided the business assets of the firm of Gobardhan Das Tota Ram and made two separate businesses out of it—one carried on thenceforward by Onkar Nath under the old name of Gobardhan Das Tota Ram, the other by Ram Gopal under the name Gobardhan Das Ram Gopal. The division was made, nominally at least, as between Onkar Nath and Ram Gopal as individuals but this, of course, is not conclusive: as Onkar Nath could not very well have any other or better right than his brother Shambhu Nath the division may have been intended as a division between the branches of Kishen Sahai and Bhagwan Sahai, both of whom it may be noted were then living. If once the persons entitled to the business of Gobardhan Das Tota Ram can be ascertained the character of this partition will become apparent, but of itself the partition throws but an uncertain light upon the question as to the persons entitled. In 1909 Bhagwan Sahai died. In 1912 there was a partition award in a suit between Onkar Nath and Ram Gopal as to some assets of the old business of Gobardhan Das Tota Ram which had not been divided in 1908. It was held that Rs.3,000 had been given to Kishen Sahai " for

expenses " and that Gobardhan's one-third share in the *haveli* at Rajwara was divisible between " the parties " in equal shares. Kishen Sahai died in 1915.

The plaintiff Jagannath had come to Macandrewganj from Rajwara in 1911, after his father's death. He was then about nine years old and he lived with his elder brother Ram Gopal under whom the business of Gobardhan Das Ram Gopal had flourished, since in 1908 the old business had been divided into two. Jagannath's beginnings as a business man make a complicated and disputed story. He had from 1926 a share in a *sarafa*, or gold and silver, shop with Ram Gopal and one Hira Lall, and from 1928 a share with the same persons in a grain shop. From 1920 he had a cloth shop jointly with Hira Lall. In 1930 he bought himself the house (item 3 in List A) with Rs.2,000 supplied to him by Ram Gopal. In March, 1931, by a transaction of which there is written evidence, both Hira Lall and Jagannath gave up all interest in the grain business to Ram Gopal, who undertook to pay its debts. Hira Lall took a half share in the *sarafa* shop with Ram Gopal owning the other half share. Jagannath took the cloth shop as his own, naming it Bhagwan Sahai Jagannath, which is the shop whose assets and liabilities are set forth in Lists F and G. At the time of this transaction, Jagannath gave a written acknowledgment of liability dated 22nd March, 1901, for Rs.3,557-15-6 to Gobardhan Das Ram Gopal in respect of the Rs.2,000 given him to buy the house and for the debts of the cloth shop. Two days later he gave another acknowledgment or promissory note for Rs.1,800 mostly for money paid to Hira Lall as profits of the gold and silver shop, but some three hundred rupees seem to have been taken for buying stock for his new firm Bhagwan Sahai Jagannath. In September, 1932, Ram Gopal died and the first defendant, Bhuru Mal, succeeded to the management of the firm Gobardhan Das Ram Gopal. He seems to have been on bad terms with Jagannath, and whereas Gulzari Mal's debt to Ram Gopal or the firm of Gobardhan Das Ram Gopal was forgiven, Jagannath was sued on the promissory notes already mentioned. On 9th May, 1933, a decree was obtained against Jagannath notwithstanding his attempt to set up in defence that Gobardhan Das Ram Gopal was a joint family business and that the advances referred to in the promissory notes were made to him as a member of the joint family. This defence was not entertained in view of section 92 of the Indian Evidence Act, as it was held to contradict or vary the promissory note. The decision is said to have been the cause of the present suit which was filed in August, 1933.

Now the plaintiffs say, and the Chief Court have accepted their contention, that all these businesses—*sarafa* shop, grain shop, cloth shop—whether in the name of Ram Gopal, Gulzari Mal or Jagannath—were set up by funds obtained from Gobardhan Das Ram Gopal, that the latter was the joint family property of Bhagwan Sahai's branch, and that all the businesses to which it gave rise were likewise joint, as well as all the house property and other assets which were acquired out of its profits, even if certain items were occupied or enjoyed by individual members. If the original business carried on as Gobardhan Das Tota Ram was not the joint family property of Gobardhan and his brothers but the sole property of Gobardhan, then on his widow's death in 1907 his brothers took it by inheritance in equal shares and neither brother disposed of his half share. On either view therefore it is said the partition of 1908 having been accepted by all concerned the firm of Gobardhan Das Ram Gopal belongs as joint property to Bhagwan Sahai's branch. In this way the plaintiffs sought and have obtained a decree for one third share of all the assets scheduled to their plaint.

The appellant Bhuru Mal sets up the case that Gobardhan's original business was his sole property and so remained at his death, but that Onkar Nath and Ram Gopal, though without any right therein, divided it between themselves as two individual trespassers. This means that Onkar Nath was appropriating without objection the property of his own

grandfather and Ram Gopal of his own father, to say nothing of the expectations of their younger brothers. This hypothesis is plainly one to which recourse can only be had after every more reasonable and probable interpretation of the facts has been shown to be impossible. Both Courts in India have negatived it and in their Lordships' opinion it may safely be rejected. The appellant at the trial maintained that an oral will had been made by Gobardhan in favour of Onkar Nath and Ram Gopal, but this case was abandoned in the Chief Court.

The view of the learned trial Judge was that there is no proof that Gobardhan's original business was established with the aid of any property belonging to the family at Rajwara and that there is no proof that he ever so dealt with this business or its income as to make it joint family property. But that before his death in 1903 he had taken in as equal partners with himself both Tota Ram, whose name was part of the name and style of the business, and also Ram Gopal. If so, when Gobardhan died his one third share went to his widow for a woman's limited interest and on her death it went to his two brothers in equal shares—that is to say, a one-sixth interest went to each brother. On this footing it would not seem to be unnatural that after the widow's death a partition should be made between Onkar Nath and Ram Gopal dividing the old firm into two, each of them to carry on a business which was mainly his own but in which his father, or other members of his own branch, had a one-third interest. The learned trial Judge considered that neither the houses which were bought by Gulzari Mal and Jagannath nor their businesses (mentioned in Lists E, F and G) were shown to be joint property by showing that Ram Gopal advanced money to his younger brothers to help them to set up for themselves. Hence he excluded these from the partition—all the more carefully that in the business of Jagannath—Bhagwan Sahai Jagannath—the debts loom as large as the assets. But the learned Judge would appear to have made some miscalculation of the plaintiffs' share, when framing his decree upon this basis, for he declared their share in the assets of Gobardhan Das Ram Gopal to be one-eighteenth whereas it should be one-ninth; the plaintiffs being entitled to a third of the one-third interest which became Bhagwan Sahai's in the new business of Gobardhan Das Ram Gopal as set up in 1908.

The first question to be considered is whether the Chief Court were right in reversing the trial Judge's finding that it was not proved that the business carried on at Macandrewganj by Gobardhan under the style Gobardhan Das Tota Ram belonged to the joint family—that is to say to Moti Ram's descendants. On this their Lordships would premise that though a business, if it belong to a Hindu joint family, is an item of joint family property, special considerations apply to the question whether or not a business belongs to the family or to the individual member who carries it on. If it be a joint family business, then all the members of the family are liable for its debts upon the terms and to the extent laid down by the Hindu law. Whether or not it can be said that if a joint family is possessed of some joint property, there is a presumption that any property in the hands of an individual member is not his separate individual property but joint property, no such presumption can be applied to a business. Lord Buckmaster delivering the judgment of the Board in *K. L. S. V. E. Annamalai Chetty* v. *K. L. S. V. E. Subramanian Chetty*, A.I.R. [1929], P.C. 1, 2, put the law thus:—

> " A member of a joint undivided family can make separate acquisition of property for his own benefit and, unless it can be shown that the business grew from joint family property, or that the earnings were blended with joint family estate, they remain free and separate ".

In the present case very little is known as to how and when the business of Gobardhan was begun, and it becomes all important to distinguish between matters that can readily be imagined and matters which the evidence establishes. The family dwelling-house at Rajwara is described

as a *haveli*, and Gobardhan left it for Macandrewganj at some time between 1874 and 1879. There is no evidence that the *haveli* was ever mortgaged or that in 1874 there was a family business at Rajwara, though Gobardhan's brothers are shown to have had a business in groceries and moneylending by 1898 if not before. The Chief Court would appear to think that these bald facts render it probable that there were family resources out of which grew the businesses both at Macandrewganj and Rajwara, but their Lordships agree with the trial Judge in thinking that by themselves they leave the means whereby Gobardhan started business completely in the dark. Had his efforts proved unsuccessful and debts accumulated in Macandrewganj his brothers could hardly have been called upon to pay his debts upon proof that at Rajwara the family dwelling-house was more than a cottage and that they were making their living by carrying on a grocer's shop. It is not irrelevant to reflect how many times businesses of substantial size have arisen not merely from small beginnings but by the activity of an energetic man wholly without capital, content to begin selling goods for others and in due course obtaining credit for small transactions on his own account. Their Lordships are unable to see that the Chief Court have made good their criticism of the learned trial Judge that he has misdirected himself in law as regards nucleus of joint property. On the contrary they think that he correctly treated the question whether Gobardhan's business was begun or carried on with the assistance of joint family property as a question of fact upon which the burden of proof lay upon the plaintiffs who claim a share in the business. They think the Chief Court misapprehended and misapplied the case of *Rampershad Tewarry* v. *Sheochurn Doss* [1866] 10 M.I.A. 490, in coming to the conclusion that they were not debarred from " casting the burden of proving that the business was separate in its inception upon the defendant who asserts it ". In that case each of five brothers was actively engaged in the management of a branch of the same bank. They constituted a joint Hindu family, and by a partition deed it was clear that they all had an equal interest and that all the branches were one business, accounting together as one business. There was no evidence of an agreement of partnership and, as jointness was undeniable, it was held that the business belonged to the five as joint family property. In these circumstances the conclusion could not be resisted merely on the ground of the obscurity which surrounded the beginnings of the business and the means by which the brother Deeranath had first laid its foundations. In the present case, as in that case, jointness may be proved by evidence that the business was carried on as a family business, by proof that the profits were treated as joint family property being brought to one account or divided among the members. It *might* be, for example, that Tota Ram and Ram Gopal were engaged in the business of Gobardhan Das Tota Ram as representing their respective branches. It *might* be that profit and loss from all the businesses carried on by any member or members was brought into one account or that they had all been dealt with by a partnership deed which made clear that all the members had an interest. But these are all matters which stand in need of proof and, until they are established as facts, the present case does not begin to be comparable to the case relied on by the Chief Court. The similarity of the two cases on the facts is illusory. Mr. Mayne in a well-known passage has referred to the difficulty which arises from attempting to lay down an abstract proposition of law which will govern every case however different its facts, and has observed that the amount of evidence necessary to shift upon the other side the burden of displacing it might be very small but would necessarily vary according to the facts of each case (Hindu Law and Usage, 6th Ed., s. 291, pp. 356-8). The learned Judges of the Chief Court were right to bear in mind the necessity for taking the various considerations together and having regard to their cumulative effect. But unless in the present case the initial onus is placed squarely upon the plaintiffs the evidence is not properly weighed.

Upon the question of fact whether it is proved that Gobardhan Das Tota Ram was the business of the joint family their Lordships have reached the same conclusion as the learned trial Judge. They think that

the Chief Court show no sufficient reason for disagreeing with his finding that there was a partition of the Rajwara business in 1898; and that this fact affords some evidence that the business at Macandrewganj was not joint property, since Gobardhan got no share in the Rajwara business and the Macandrewganj business was not partitioned on that occasion. But their Lordships look in vain for evidence which establishes that the latter business was ever family property. There is no direct proof that it was so conducted by Gobardhan in his lifetime or that its profits and those of the Rajwara business were ever disposed of or accounted for as joint family property. There is the fact—explicable in more ways than one—that Tota Ram and Ram Gopal were taken into the business; but on Gobardhan's death there was no partition in his widow's lifetime, and when the partition was made it was not made as if the business belonged to the joint family. There is evidence, from the oldest accounts now extant, of a number of small deposits credited to " Kishen Bhagwan "—amounting in the years 1881 to 1883 to Rs.262 and remittances made amounting to Rs.381 during the same period. Similar figures from 1885 to 1890 are: deposits Rs.168, remittances Rs.380. In 1903 there are other entries as to money " sent home ", usually Rs.100 at a time. The trial Judge thought that some of these figures referred to deposits of money made with Gobardhan by his brothers and that others represented monies sent home to their family by Tota Ram and Ram Gopal. The Chief Court lay stress upon these entries as showing what they call an interchange of capital between the business in Macandrewganj and Rajwara. It is not quite clear what are the circumstances in which or the purpose for which two businesses " interchange capital "—the operation not being one with which their Lordships can claim to be familiar. But it can hardly be right in any case to hand over a share of the business which now exists on the strength of small transactions of ancient date of which the nature cannot now be definitely ascertained. If the meaning and purpose of these transactions is to be guessed at in the absence of all evidence except the entries themselves, the trial Judge's interpretation seems the more probable as well as the more cautious.

Coming to comparatively recent years and to the business of Gobardhan Das Ram Gopal, there is the fact and character of the partition of 1908 and of the additional proceedings taken in 1911-2. But these again are ambiguous to say the least since the problem has to be resolved whether Onkar and Ram Gopal were acting and, if so, how far, as representing their respective branches of the family. To throw light upon the question whether the business of Gobardhan Das Ram Gopal belonged to all the members of Bhagwan's branch we have little in the proved conduct of the parties which can be treated as significant. As regards Jagannath's early years it seems important to take care that adverse inferences should not be made against Ram Gopal merely on proof that he treated his younger brothers with ordinary kindness, supporting them when they were not earning, helping them to begin making a living for themselves, seeing to their marriage and so forth.

The Chief Court have observed that the documentary evidence after 1919 points to separation and that Jagannath was behaving and being treated as a separated member in many respects. They quote his own evidence that his rent, living expenses and the educational expenses of his son were all met from the cloth shop Hira Lall Jagannath, never coming into the accounts of Gobardhan Das Ram Gopal; and that money due to that firm was shown as such and paid with interest. It is impossible to suggest that the businesses which are now claimed to be joint are proved ever to have accounted together so as to show or even to suggest that they were the common property of the same owners.

The Chief Court in an important passage of their judgment observe:

> " There can be no doubt that the senior and managing member of a joint Hindu family being in control of the family funds sometimes usurps to himself a position to which he is really not entitled and imposes upon the junior members conditions to which they

> could not be compelled to submit by law. . . . It is also certain that joint families frequently open a business in the names of one or more members only and sometimes associate an outsider as a partner as well. This gives a misleading appearance of partnership between the members of the joint family where no partnership in the proper sense of the word exists. It also introduces a fictitious and therefore misleading element into the keeping of accounts as between the different firms."

These observations appear to their Lordships to be both true and important and they account for much of the difficulty of such a case as the present. They show the need for caution before attributing any conclusive force to mere debits and credits as negativing the possibility of different businesses having a common ownership. When positive *prima facie* proof of jointness has been given such considerations may render very harmless entries which otherwise might appear to disprove jointness. But they do not provide a formula whereby jointness can be proved and their Lordships would hope that no presumption can readily be made that the conduct of a managing member is contrary to his duty towards a junior member or that the acquiescence of the junior would readily be obtained. Moreover there is a limit to the force of such consideration as the Chief Court have in mind. When in suit No. 60 of 1932 Jagannath was sued on the promissory notes of March, 1931, he set up no plea of duress or undue influence though he claimed that there was no real loan or liability since he was a member of the family which owned the firm of Gobardhan Das Ram Gopal. Decree was passed against him for the sums which he had taken to buy the house in which he lives, to stock his cloth shop and to pay off Hira Lall in respect of the *sarafa* business. Yet the Chief Court in the present case have held at his instance that this house is joint property, as well as the cloth shop with its liabilities. Their Lordships cannot think this right. A joint family can hardly be supposed to say to a junior member by the mouth of its managing member " We will lend you this money to buy a house but on the terms that you repay the money and we get the house as well." Or " We will give you money to buy stock for our cloth shop but you will repay the money and account for the cloth in the usual way." It is readily intelligible however that a junior member wanting, for example, to buy a house should be told that he can have the money as a loan though the family does not want to invest in another house and cannot afford to let him have the money as an ordinary family expense (that is, to be received without any liability to account and by way of enjoyment of his share in the joint property) or as a distribution of profits from a business in which he is a joint proprietor. In like manner a junior member minded to commence a business might well be told that the family do not want to engage in the particular venture proposed or to be responsible for the debts incurred in connection therewith, but that a certain sum could be provided on loan to enable the venture to be carried on by the junior on his own account. These instances may serve to show how wrong it would be to jump to the conclusion that what appears to be a loan is not in truth a loan because there is a joint business or some other joint property.

In such cases the junior member upon a partition will be entitled to his share in the assets of the joint business which made the loan including the debt due from or money recovered from himself. There is no more paradox in this than already lies in the fact of the family or firm having made him a loan. The Chief Court treat Gulzari Mal's house and business, contrary to his evidence, in the same way as they treat Jagannath's, saying that " the capital was given him under the guise of loans bearing interest "; but though repayment was not enforced by suit in his case there seems to be no sufficient reason for holding that the transaction was not what it professed to be. Neither in the case of Gulzari Mal nor of Jagannath is it established to their Lordships' satisfaction that his interest in the business he carried on was not his own but belonged to the joint family.

The question whether Tota Ram and Ram Gopal had acquired an interest in the business of Gobardhan Das Tota Ram by the time Gobardhan died in 1903 is the next matter for consideration. Here, too, their Lordships think that there is more to be said for the view of the trial Judge than for the contention that it belonged wholly to Gobardhan. The name of Tota Ram was part of the firm's name and he had worked in it for about twenty-four years—from 1879 to 1903. His minority in the first year or two has little to do with the matter, and in 1903 Ram Gopal and he were clearly on an equal footing. There is no partition during the widow's lifetime, but when she died in 1907 the partition is carried out between Onkar Nath, who was working in the firm, and Ram Gopal. Their Lordships think it clear enough that this partition was acquiesced in by all concerned and that it would be absurd to suppose that Onkar's brother Shambu or Ram Gopal's father and brothers knew nothing about the matter or could now object to what was done in 1908. The question is whether that partition is to be read as a partition of property which belonged wholly in law to Gobardhan's two brothers as self-acquired property or of property in which these two had between them only a one-third share. The division between Onkar and Ram Gopal into two firms, and the beginning of the firm of Gobardhan Das Ram Gopal is very much more probable on the view taken by the trial Judge, and their Lordships see no reason to dissent from his conclusion, though the evidence now available is both scant and indirect.

Their Lordships are of opinion that neither the houses (List A, items 2 and 3) nor the businesses (Lists E, F and G) of Gulzari Mal and Jagannath are shown to be joint property and that they were rightly excluded from the trial Court's decree. In List A, item 10, which is included in that decree, is really one-half of Gobardhan's original one-third share in the *haveli* at Rajwara. This one-third share was divided into two one-sixth shares by the partition suit No. 12 of 1912 which was decreed on 28th February, 1912, on the terms of Exhibits A54 and A55. Of one of these sixths the plaintiffs are entitled to a third. This no doubt amounts to one-eighteenth share in the whole, but the *haveli* is not being divided into eighteenths by the present suit, to which only Bhagwan Sahai's descendants are parties. By the same partition it was found that Gobardhan had owned two shops in Rajwara, and one of these was given to Ram Gopal. That is item No. 11 in List A, and it falls to be divided into thirds as the trial Court's decree directed. Their Lordships have no difficulty in holding that the partition of 1908 between Onkar and Ram Gopal was binding on Gobardhan's brothers and that their branches cannot now reopen it. In the items in List A numbered 1 and 4 to 9, and in all the items in Lists B, C and D the share of the plaintiffs should be declared to be one-ninth and not one-eighteenth. Bhuru Mal's defence of limitation has been rejected by both Courts in India, and as their Lordships do not consider that ouster or exclusion for twelve or even six years before this suit has been established they concur in rejecting that defence. In their opinion Article 106 of the Schedule to the Limitation Act, 1908, has no application to this case, which is governed by Article 127.

Their Lordships will humbly advise His Majesty that this appeal should be allowed; that the decree of the Chief Court dated 29th September, 1937, in First Civil appeal No. 46 of 1935 be set aside and the decree in Final Civil appeal No. 17 of 1935 affirmed; that the decree of the Subordinate Judge dated 22nd December, 1934, be restored with the following modifications, namely (1) that the plaintiffs be declared to be entitled in respect of item 10 of List A to the plaint, being the *haveli* at Rajwara, to a one-third share in the one-sixth share given to Ram Gopal by Exhibits A54 and A55; (2) that the plaintiffs be declared to have a one-ninth interest in the items numbered 1 and 4 to 9 inclusive of List A and in all the items comprised in Lists B, C and D. The order as to costs made by the trial Court will not be disturbed nor the Chief Court's order as to the costs of Bhuru Mal's appeal, being First Civil appeal No. 17 of 1935, to that Court. But the plaintiffs must pay Bhuru Mal's costs in that Court of their appeal No. 46 of 1935 and his costs of the present appeal to His Majesty.

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In the Privy Council

BHURU MAL

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