

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Candy.*

A'NANT RA'MRA'V (ORIGINAL DEFENDANT), APPELLANT, v. GOPA'L  
BALVANT (ORIGINAL PLAINTIFF), RESPONDENT.\*

1894.

March 13.

*Hindu family—Joint family property—Injunction—Injunction obtained by one member of a joint family against another, when granted.*

In disputes between members of a joint Hindu family with respect to joint property, the exercise of the Court's jurisdiction to grant relief by injunction should be confined to acts of waste, illegitimate use of the family property, or acts amounting to ouster.

SECOND appeal from the decision of T. Hart-Davies, Acting District Judge of Ahmednagar, reversing the decree of Ráo Sáheb Dinánáth A. Dalvi, Second Class Subordinate Judge of Párner.

The plaintiff and defendant were members of a joint Hindu family. The plaintiff sued to recover joint possession with the defendant of the door of a certain house, and for an injunction against the defendant, who (he alleged) obstructed his use of the door. He alleged that he and the defendant were owners of the house in equal shares; and that the door was jointly used by both of them.

The defendant pleaded that the plaintiff was not entitled to an injunction, and that his remedy lay in a suit for partition.

The Subordinate Judge dismissed the claim, holding that the suit was one virtually for partition, and that the plaintiff was not entitled to succeed, as all the family property had not been brought into hotch-pot.

On appeal the Judge held that one member of an undivided Hindu family can get an injunction against another who caused obstruction. He, therefore, reversed the decree and allowed the claim.

The defendant preferred a second appeal.

*Dhondu M. Sanzgiri*, for the appellant (defendant):—An injunction cannot be granted to one co-parcener against another. The aggrieved party can seek redress by bringing a suit for partition—*Báláji Anant v. Ganesh Janárdan*<sup>(1)</sup>; *Watson and Company v. Rámchund Dutt*<sup>(2)</sup>. A complete remedy, namely a suit for

\* Second Appeal, No. 452 of 1892.

(1) I. L. R., 5 Bom., 499.

(2) I. L. R., 18 Calc., 10.

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partition, being open to the plaintiff, he is not entitled to an injunction under section 56 of the Specific Relief Act (I of 1877).

*Dáji Abáji Khare* for the respondent (plaintiff):—There is no authority to show that in a joint family an injunction cannot be granted. Although a suit for partition would be a remedy that cannot prevent one member from obtaining an injunction against another. There is only one door through which both the portions of the house can be approached. The defendant has shut the door by putting a lock over it, and the plaintiff is thus prevented from using his portion of the house—*Sheo Pershád Sing v. Leelah Singh*<sup>(1)</sup>; *Lloyd v. Sogra*<sup>(2)</sup>; *Bápuji v. Mansukhrám*<sup>(3)</sup>.

SARGENT, C.J.:—The exercise of the Court's jurisdiction to grant relief by injunction must, it is plain, in disputes between members of a Hindu family, be attended from their very nature with great difficulty. However, we do not think that there would be any practical objection to the Court interfering by injunction in those particular cases in which, as between tenants-in-common, the Court grants that form of relief. Following the practice of a Court of Equity in England, that would be confined to acts of waste, illegitimate use of the family property, or acts amounting to ouster. See *Bápuji v. Mansukhrám*<sup>(3)</sup>. This would appear to have been the opinion of Phear, J., as regards illegitimate use of the property. See *Sheo Pershád Sing v. Leelah Singh*<sup>(4)</sup>. In the present case, assuming that the plaintiff was in possession and enjoyment of portion of the house before the door was closed, and that the only ingress to that portion was by the door, the closing of it would amount to ouster.

As there is no distinct finding on these issues, we must send down the case to the District Court for findings on the following issues:—

1. Was the plaintiff in enjoyment of the portion of the house as claimed by him in his plaint when the door in question was closed by the defendant?

2. Was the door the only mode of ingress to that portion?

Finding to be transmitted to this Court within two months.

*Issues sent down.*

<sup>(1)</sup> 20 Calc. W. R., 160.

<sup>(2)</sup> 25 Calc. W. R., 313.

<sup>(3)</sup> P. J. 1893, p. 552.