

APPELLATE CIVIL.

Before Mr. Justice Ranade and Mr. Justice Crowe.

VINAYAK NARSINVI (ORIGINAL DEFENDANT NO. 1), APPELLANT, v.
DATTO GOVIND AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1900.

November 30.

*Hindu Law—Joint family—Self-acquisition—Partition—Burden of proof—
Findings of fact—Findings based upon presumptions only—Second appeal
—Practice.*

In a suit for partition brought in 1898 the plaintiffs claimed a share in the income of a certain inám village which had been purchased by the defendant in 1873. The defendant pleaded (a) that it was his self-acquired property; and (b) limitation. The Court of first instance rejected the claim, but in appeal the Judge held that the burden of proving self-acquisition and exclusive enjoyment lay upon the defendant, and that in the absence of such proof the presumption was in favour of the plaintiffs. He therefore reversed the decree and awarded the plaintiffs' claim. On appeal to the High Court,

Held (reversing the decree and remanding the case for re-trial) that the burden of proof lay on the plaintiffs. It was for them to show that the purchase had been made out of ancestral funds and they were also bound to prove that they had been in receipt of their share of the income. That burden could not be shifted on to the defendant, who acquired the property and in whose name and possession it had admittedly been for years.

SECOND APPEAL from the decision of R. Knight, District Judge of Sátára, reversing the decree of Ráo Sáheb Átmáram J. K., Second Class Subordinate Judge of Vita.

Suit for partition. The parties belonged to different branches of the same family, being descended from a common grandfather. In 1898 the plaintiff brought this suit, claiming a share in the income of a certain inám village which had been bought by the first defendant in 1873. The first defendant was registered in the Government record as the proprietor of the income of the village.

It was proved that there had been a partition of the family property in 1879.

The first defendant pleaded that the property was his self-acquired property and also that the claim was barred by limitation. The other defendants admitted the claim.

The Court of first instance dismissed the suit.

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In appeal the District Judge held that it lay on the defendant to prove (a) that the property had been acquired with his own funds, and (b) that he had had exclusive enjoyment of it; and that in the absence of such proof the presumption was in favour of the plaintiffs. He therefore reversed the decree and allowed the plaintiffs' claim.

The first defendant appealed to the High Court.

Daji A. Khare for appellant.

Balaji A. Bhagwat for respondents.

RANADE, J.—It appears to us that the District Judge has relied too exclusively on presumptions, and has not based his findings on a consideration of the evidence produced in this case by both parties. The District Judge seems also to have placed the burden of proof on the wrong party.

Plaintiffs sued to recover a fourth share in a certain inam village, or rather in the income of the said village, which was admittedly purchased by the first defendant's father so far back as 1873 in execution of a mortgage decree in his favour. Plaintiffs and defendants are near relations, representing different branches descended from one grandfather. According to the plaintiffs, the partition took place seven or eight years before suit, and they claimed the share of the village as ancestral property. The defendants, other than defendant 1, admitted the claim.

Defendant 1 claimed to have purchased the property in 1873 with his own funds, and to have been exclusively in possession ever since. The Court of first instance upheld this contention. It held that the partition took place twenty-four or twenty-five years ago, and that the purchase was made subsequent to the partition. In appeal the District Judge found it proved that the partition took place in 1879, and as the purchase was made in 1873, he held that the property must be regarded as ancestral, inasmuch as defendant had not shown that it was acquired out of his own funds. This was not the only presumption made in the case.

The next presumption made was that as defendant 1 was the Kulkarni, he had sole charge of the records, and those records would contain no evidence of plaintiffs' receipt of their share of

the money, and that therefore, until defendant showed affirmatively that he had exclusive enjoyment, plaintiffs were not bound to show that they had received their share of the profits from 1879 to 1898. It was accordingly presumed that plaintiffs were in receipt of their share of the income, as defendant had failed to discharge the burden of proof that lay on him. The evidence filed in the case was not referred to in the judgment on either of the points noted above.

Findings of fact based on a long chain of presumptions of this kind can never be satisfactory. The District Judge should have found expressly that the purchase of the village was made out of ancestral property and not from the private funds of the defendant. It does not always follow that because the members of a family have not separated, no member among them could come into possession of self-acquired property. As both parties admitted partition, and the partition was proved to have taken place in 1879, it is obvious that plaintiffs were bound to prove positively that they were in receipt of their share of the income. This burden cannot be shifted on to the defendant who acquired the property, and in whose name and possession it admittedly has been for these twenty-one years. We would draw the attention of the District Judge to the decision in *Ramchandra v. Narayan*.⁽¹⁾

As we are unable to accept the findings, we reverse the decree of the lower Appellate Court, and remand the case for re-trial after laying down the proper issues on the lines stated above, and placing the burden of proof on the right parties. Costs to abide the result.

Decree reversed and case remanded.

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(1) (1886) 11 Bom. 216.