APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

RAMNATH CHHOTURAM AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* GOTURAM RADHAKISAN AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

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Hindu Law—Joint family—Partition—Division by metes and bounds—Mesne profits, manager's liability to account for—Expenses properly incurred after suit for partition but before the date of actual division to be taken out of joint family property.

A suit for partition under Hindu law was filed in 1909. At the actual division of the property, the lower Court allowed the plaintiffs their share of the mesne profits of certain family lands cultivated by the defendant manager personally for the years 1905 to 1909. The defendant having raised objection to this part of the decree,

Held, upholding the defendant's objection, that he was not liable to account for the mesne profits of the joint family lands.

A manager of a joint Hindu family is not obliged to keep accounts while the family remains joint, and when a partition is asked for, partition takes place of the property as it exists in the hands of the manager.

Under Hindu law, as far as the joint family is concerned, it is considered as one entity until the moment comes for division, and then each party gets his actual share. In the meantime if there are any expenses which should properly be incurred by the joint family purse, those expenses are taken out of the family property, and they cannot be debited to a particular coparcener.

FIRST appeal against the decision of S. S. Phadnis, Joint First Class Subordinate Judge at Dhulia, in suit No. 42 of 1909.

Suit for partition.

The plaintiff and the defendants were members of a joint Hindu family. Defendant No. 2 was the manager of the family.

* First Appeal No. 315 of 1916.

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In 1909 the plaintiff filed a suit for partition of the joint family properties consisting of lands, houses, and assests of a family shop. A preliminary decree was passed declaring that the plaintiff was entitled to one half of plaint properties, while the defendants were entitled to the other half, and it was referred to a commissioner to take accounts of the family property.

Against the commissioner's report, the defendants filed certain objections, and again the matter was referred to a second commissioner to consider the accounts in the light of the defendants' objection. The second commissioner having submitted his report, the matter came up before the Court for passing a final decree.

Plaintiffs contended that they were entitled to claim mesne profits of their share of the family lands at Nipani, which were cultivated by the defendants personally from the year 1905; while on the other hand the defendants claimed credit for an amount of Rs. 2,400 which was debited in the name of Ramnath (plaintiff No. 1) in connection with his marriage expenses incurred after the filing of the suit.

The Subordinate Judge disallowed the defendants' claim and decreed that the plaintiffs were entitled to half share in the properties claimed in the plaint and as to mesne profits directed as follows: "The defendants shall pay to the plaintiff Rs. 4,626-10-0 as mesne profits of the Nipani lands for the years 1905 to 1909. They shall also pay Rs. 2,878-8-0 and Rs. 704 and Rs. 257."

Against this decree plaintiffs appealed contending that the learned Subordinate Judge omitted to deal with certain items in the account and the defendants filed cross-objections.

Jayakar with *P. B. Shingne*, for the appellants :—The commissioner had found out certain large items, which the lower Court did not consider. The appellant No. 1 was a minor and was represented by guardians, who were changed in quick succession.

G. S. Rao, for respondents Nos. 1 to 5 :—The report of the second Commissioner is full and all things have been considered by him. Moreover, it was an error to allow mesne profits from 1905 to 1909. The Hindu law does not allow the payment of mesne profits prior to suit except when there is exclusion or ouster. It was an error to deduct marriage expenses out of family purse.

Shingne in reply :—The conduct of the other side is such that the order as to mesne profits is correct. The defendants appropriated all profits, kept false accounts, and practically excluded the appellants. Marriage expenses of appellant No. 1 have been written in the joint family accounts, and they ought to be allowed according to law.

MACLEOD, C. J. :—This was a partition suit filed in 1909. It is not disputed that the plaintiffs on the one hand are entitled to one-half of the plaint properties, while the defendants are entitled to the other half. A preliminary decree was passed, and it was referred to a Commissioner to take the accounts of the family property. On his report the defendants filed certain objections, and again it was referred to a second commissioner to consider the accounts in the light of defendants' objections, and he took the accounts and made up a final balance sheet. The result was as shown in the final decree of the learned Subordinate Judge at page 3—"The defendants shall pay to the plaintiffs Rs. 4,626-10-0 as mesne profits of the Nipani lands for the years 1905 to 1909. They shall also pay Rs. 2,878-8-0, Rs. 704 and Rs: 257."

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The plaintiffs appealed, and though it does not appear in their objections which they filed what their real objections were to the decree, yet now their counsel has objected on the ground that the learned Subordinate Judge has not dealt with certain items which were found by the first Commissioner, and objected to by the defendants. In the first place, if it is a fact that the learned Judge omitted to deal with certain items in the account when he was dealing with the Commissioner's report, that ought to have been pointed out to him by the pleader. Now five years after the final decree was passed, and without any particulars having been alleged regarding these objections, we are asked to send back the case to the learned Judge so that he may deal with these items which we are told he has omitted to consider. We are not satisfied by any means that the learned Subordinate Judge omitted to deal with these points, or that they were not dealt with by the second Commissioner. The second Commissioner's report is extremely full, containing every detail of the family property, and at this distance of time it is very difficult for us to say with any degree of certainty that the accounts have not been fully gone into, that all the objections have not been dealt with, and that the learned Judge in dealing with the Commissioner's reports has not fully gone into every item and decided the case after such consideration. We are not, therefore, disposed to accede to the appellants' suggestions, and so far the appeal must be dismissed with costs.

Now we have to deal with the respondents' cross-objections. They object to the plaintiffs being held entitled to claim mesne profits for the years 1905 to 1909. I do not understand on what principle these mesne profits were allowed by the learned Subordinate Judge. As I have always understood the Hindu law on the

point, the manager of a joint family is not obliged to keep accounts while the family remains joint, and when a partition is asked for, partition takes place of the property as it exists in the hands of the manager. It may be that the opponents may urge that the manager had in his possession family property, and that he must account for its disappearance, and that was the case in a suit recently before me on the Original Side. But that was a different matter to asking the manager to account for the rents of the joint family lands, and I think Mr. Rao's contention is correct, and that the learned Judge was wrong in ordering that the plaintiffs should recover their shares of the mesne profits from the defendants.

Then Mr. Rao objected to the marriage expenses of the 1st plaintiff being deducted out of the joint family purse. No doubt from the date of suit there is a severance of interest, and for purposes of inheritance and succession the family members are no longer considered joint. But it does not follow that thereafter, until the joint family property is actually divided, it does not remain joint. Otherwise this difficulty would arise that immediately after the suit was filed, the person in charge of the family property would have to open a separate ledger account for each coparcerner, and would have to debit to his account all expenses made on his behalf. It would be necessary to do that if Mr. Rao's contention were correct. I have never heard of any such procedure being followed during the course of partition proceedings. As far as the joint family is concerned, it is considered as one entity until the moment comes for division, and then each party gets his actual share. In the meantime if there are any expenses which should properly be incurred by the joint family purse, those expenses are taken out of the family property, and they cannot be debited to any

particular coparcener. Therefore in my opinion the learned Judge was correct as regards those expenses.

Then it has been proved that Rs. 9,429-5-6 were recovered by the Deputy Nazir as guardian of the appellants under a promissory note of the 16th October 1908. The defendants sued to recover their share by a separate suit which was resisted by the appellants successfully, but it was on account of that suit that this particular sum was left out of consideration when taking the account of the joint family property. It is perfectly clear that this is an asset of the joint family property, and that the defendants were entitled to half that amount.

The result of this judgment will be that the item of Rs. 4,626-10-0, which was directed by the order of the lower Court to be paid by the defendants to the plaintiffs, goes out, and defendants, have to pay Rs. 3,839-8-0. Against that they will be entitled to recover half of Rs. 9,429-5-6, so that in the end there will be a balance due to them from the appellants. If anything has been paid by the defendants under the decree of the lower Court the appellants must restore that amount. We make no order as to the costs of the cross-objections.

HEATON J. :—I concur.

Decree varied.

J. G. R.