

Privy Council Appeal No. 65 of 1934

Oudh Appeal No. 4 of 1932.

Bishambhar Nath Kapoor and others - - - - *Appellants*

v.

Lala Amar Nath 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 15TH FEBRUARY, 1937.

Present at the Hearing :

LORD THANKERTON.

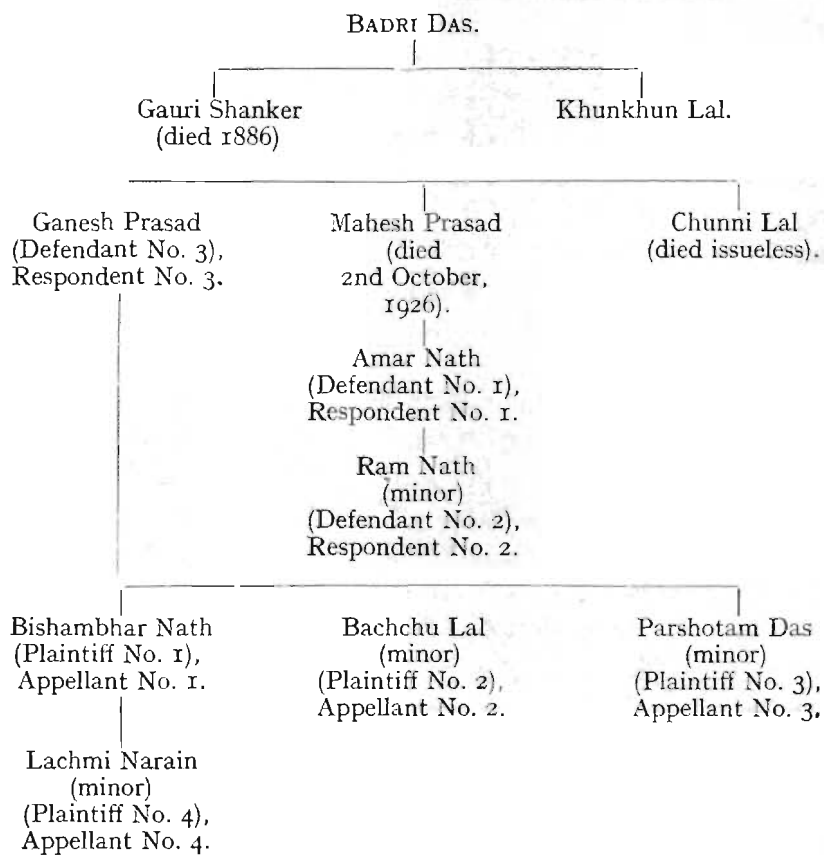
SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by LORD THANKERTON.*]

The appellants are the plaintiffs in a partition suit, which was instituted on the 11th February, 1928. The suit was dismissed by a decree of the Additional Subordinate Judge of Lucknow dated the 31st March, 1930, which, on appeal, was affirmed by a decree of the Chief Court of Oudh dated the 25th January, 1932.

The parties in the appeal are Mitakshara Hindus, and their relationship is shown in the following pedigree:—



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A

The only issue now left in the suit is whether a deed of family settlement executed by Ganesh Prasad and Mahesh Prasad on the 22nd September, 1926, constitutes a valid family settlement, binding on those members of the joint family who were not parties to it. This deed was made shortly before the death of Mahesh Prasad on the 2nd October, 1926. The plaintiff-appellants are the three sons of Ganesh, of whom Bishambar Nath was major at the time of the deed. The respondent Amar Nath, son of Mahesh and his minor son, the respondent Ram Nath, along with the three appellants, were the members of the joint family who were not parties to the deed.

Counsel for the appellants stated that he must accept certain concurrent findings of fact of the Courts below, vizt., that the family of Ganesh Prasad and Mahesh Prasad was a joint Hindu family and was joint in residence, worship and business, and that a partition of the family property was effected by the deed, subject to the question as to whether it was a binding family settlement; and also that the appellant Bishambar Nath, though not an executant, took an active part in the negotiations for the deed and had concurred in it.

The history of the brothers Ganesh Prasad and Mahesh Prasad is stated by the Chief Judge as follows:—

“It is no longer in dispute that their father Gauri Shanker left no property on his death and the two brothers had to make their own way in the world. In 1897 Mahesh started a jewellery business with the modest sum of Re.1. At that time Ganesh the elder was a copyist in the Civil Court drawing Rs.12 per mensem. Mahesh, who appears to have been trained in the business of a jeweller by an uncle, showed great aptitude for the trade and began to make money very rapidly. Encouraged by his brother's success, in the year 1898 Ganesh gave up his post as copyist and also took to the business of jewellery. The brothers carried on business under various names, and at the time with which we are concerned, namely the year 1926, there was in the possession of the two brothers, or one or other of them, house and miscellaneous property valued at about one lakh of rupees, a flourishing jewellery business controlled by Mahesh, a jewellery business on a more modest scale controlled by Ganesh which also dealt extensively in the purchase of gold and silver. Ganesh was also Treasurer of the Lucknow branch and several other branches of the Central Bank of India Ltd. on a salary of Rs.500 per mensem, in respect of which post Government Promissory Notes of the face value of Rs.40,000 and fixed deposits aggregating Rs.35,000 had been deposited with the Bank as security.”

Mahesh became seriously ill early in 1926, and the agreement here in question was executed not long before his death. The first four paragraphs of the deed are material and are as follows:—

“Para. 1.—The executant No. 1 is owner of whatever business he, the executant No. 1, carries on. The executant No. 2 and his

heirs have no concern with it. Similarly the executant No. 2 is owner of whatever business he, the executant No. 2, carries on and which at present on account of his illness is under the management of Amar Nath, son of the executant No. 2. The second party and his representatives and heirs have no concern with it.

" Para. 2.—Whatever debts up to this time or in future, be recoverable to and payable by any party in respect of his business or in connection with it he is liable for and entitled to the same.

" Para 3.—The executant No. 1 and his heirs are proprietors of the properties mentioned and specified in the attached List A. The executant No. 2 and his heirs are proprietors of the property mentioned and specified in the attached list B.

" Para. 4.—As to the rest of the property it is owned by him in whatsoever's name it stands. As to the moveable property besides those that have been mentioned in the lists attached to this deed, they will be owned by the party in whose name or possession they are and the second party has no concern with them."

Except in the case of the properties divided in paragraph 3 under lists A and B, no value is stated in the deed. The properties falling to Ganesh under list A are valued at Rs.61,500; those falling to Mahesh under list B are valued at Rs.34,125.

The Subordinate Judge held that there was no inequity in the agreement of 1926 and that it was a valid family settlement binding on the appellants, but he did not enquire into the value of the properties allotted thereunder to each branch of the family; no issue was framed on this question and this question of fact was not determined. On an appeal to the Chief Court, that Court remanded issues to the Court below for determination of the value of the respective assets allotted to Ganesh and Mahesh under paragraphs 1 and 4 of the agreement. After enquiry, the Subordinate Judge reported findings to the Chief Court, whose conclusions as to the values may be conveniently tabulated as follows:—

I. *Ganesh Prasad.*

	Rs.
Para. 1. So far as valued ...	1,21,493
Para 3. Under list A ...	60,500
Para. 4. As valued ...	135
	Rs.1,82,128

II. *Mahesh Prasad.*

	Rs.
Para. 1	2,47,707-11
Para. 3. Under List B ...	34,125
Para. 4. As valued ...	5,896-12
	Rs.2,87,729

Included among the assets of Ganesh under paragraph 1 is the value of his Treasurership of the Central Bank capitalised at nine years' salary, which the appellants maintain is wrongly included. But the value of the jewellery, gold and silver business carried on by Ganesh himself is not included, as the Subordinate Judge was unable to value it, in the absence of Ganesh's books.

It is important to note that the Subordinate Judge based his valuations of the businesses under paragraph 1 on an approximate valuation, as on the date of the agreement, of the stock in hand in the respective businesses, excluding, as above noted, the business carried on by Ganesh in his own name.

In the first place, the Chief Court rejected the appellants' challenge of the figures arrived at by the Subordinate Judge, and this challenge was not renewed in this appeal. But, even accepting these figures, the appellants maintained that the great disproportion between the assets that went to Mahesh under the agreement, and those that went to Ganesh, after deduction of the capitalised value of his Treasurership, was such that the partition was manifestly unfair on the face of it.

Their Lordships agree with the Chief Court that the lack of any valuation of the business carried on by Ganesh in his own name leaves incomplete the data necessary to the arrival at any conclusion as to the alleged unfairness of the agreement of 1926, and that the responsibility for this rests upon Ganesh, who has made common cause with the appellants and has admitted that the most relevant account book remained in his possession. Their Lordships find it unnecessary to repeat the conclusions upon the evidence on this matter expressed by the Chief Court, with which they agree. But, apart from this, their Lordships would take an even stronger view than that expressed by the Chief Court as to the impossibility of properly assessing the fairness of the partition in this case by a mere valuation of the stock held in the various businesses at the time of the agreement. In the case of businesses such as were carried on by Ganesh and Mahesh, the amount and value of the stock held on any particular date can afford no true test of the value of the business; it has little relation to the turnover or the profit earned, or of the value of the goodwill. Ganesh and Mahesh were both successful experts in their business, and it is not to be readily assumed, except upon convincing evidence, that they would enter into any agreement that was unfair to themselves and their families or his family. No such evidence has been produced by the appellants, and the suit was rightly dismissed by the Chief Court.

Their Lordships will therefore humbly advise His Majesty that the decree of the Chief Court dated the 25th January, 1932, should be affirmed and that the appeal should be dismissed with costs.

In the Privy Council.

BISHAMBHAR NATH KAPOOR
AND OTHERS

v.

LALA AMAR NATH AND OTHERS

DELIVERED BY LORD THANKERTON.

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