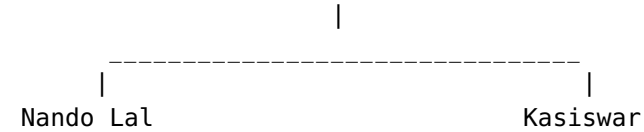
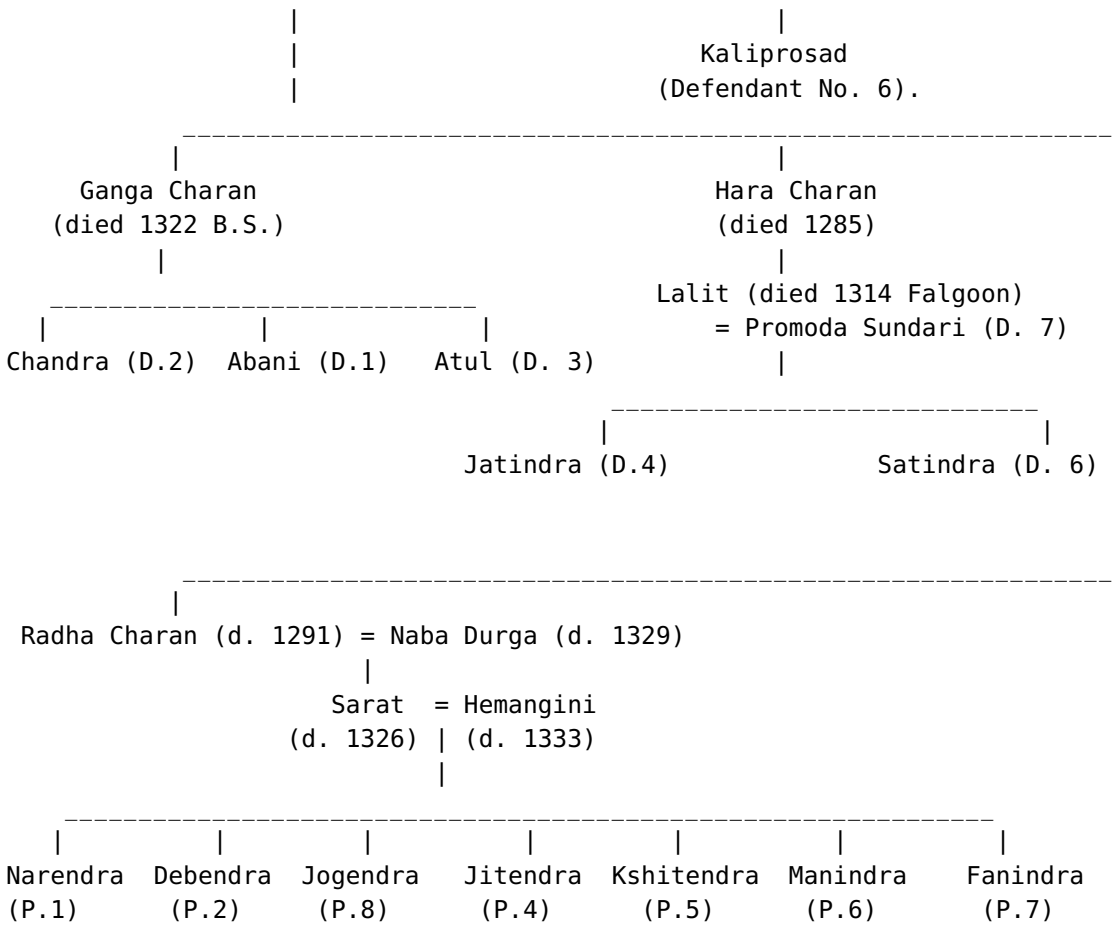
Calcutta High Court
Narendra Nath Roy And Ors. vs Abani Kumar Roy And Ors. on 1 June, 1937
Equivalent citations: AIR 1938 Cal 78
Author: R Mitter
JUDGMENT R.C. Mitter, J.

1. The suit out of which this appeal arises is a suit for partition of joint property and for taking accounts from defendants 1 and 2 The properties sought to be partitioned have been described by the plaintiffs in three schedules attached to the plaint. Schs. Ka and Khar describe the immovable properties and Son. Ka gives details of what is termed the joint money lending business. The properties Schedule Ka are claimed to be the joint ancestral properties and those of Son. Kha the properties acquired out of the income of the former. Some of the defendants claimed some of the items of Sob. Kha as their self-acquired properties, but these claims have been negatived by the learned Subordinate Judge and no further question has been raised before us in respect of the said claims. The learned Subordinate Judge by his judgment dated 22nd December 1933 passed a preliminary decree for partition of the properties of Schs. Ka and Kha except items 3, 8 to 10, 19, 20, 37, 40, 50 to 54 and 67 of Schedule Ka. He excluded the said items from the decree on the ground that all the persons interested in the same had not been made parties to the suit. He however gave no direction with regard to the joint money lending business. Regarding the question of accounts he held that defendant 1 was the karta of a joint Hindu family consisting of the plaintiffs, defendants 1 to 5 and 7, from the year 1317 B.S. and so was bound only to account for the assets as existing at the date of the suit. He therefore directed him to submit an account of the family properties together with a statement of the assets and funds of the estate available at his hands within a month.

and in default, he directed the appointment of a Commissioner to ascertain them. The plaintiffs have preferred this appeal questioning the legality of the last mentioned part of the decree. In their appeal they raise two principal and one subordinate question. The principal questions are : (1) the accounting by defendant 1 ought to be on a different principle, and (2) that it ought to have been held that defendant 1 was the manager of the joint properties and concerns from the month of Sraban 1313 B.S. The subordinate question is that the Court below ought to have held that at the time when defendant 1 assumed management he was entrusted with a reserve fund of Rs. 7,000 partly invested in loans and partly consisting of cash-money. Defendants 1 to 3 have filed a memorandum of cross-objections and although the said memorandum covers other matters, the points pressed before us in its support are that defendant 1 was never the karta of a Hindu joint family or manager of the joint properties and even if he was, the suit for accounts is barred by limitation. The points raised on the cross-objections will have to be considered first, but it is necessary to give a genealogical table and the admitted history of the family. The genealogical table is as follows:

RAJ KISHORE ROY.





2. Ganga Charan was the agent of the Nawab of Dacca at Barisal and Radha Charan a Munsiff. Hara Charan, Sarat and Lalit did not take any outside employment and remained at home. Abani is a school master at Banaripara which is near the village home of the family. Chandra Kumar was in Government service and has retired in 1919, so also Atul. Some of the plaintiffs also are in service. Defendant 6 separated in mess and property in the year 1874, he having taken 4 as share of the properties acquired in the time of Nando Lal, that is 4 as share of the properties of schedule Ka. This is evidenced by a registered ekrarnama executed on 30th November 1874. After the death of Hara Charan, his son Lalit separated in mess about 30 years ago and Sarat, the son of Radha Charan, separated in mess in the year 1291 or so. Their properties however remained joint as also the worship of the family idol. These are admitted facts. We will now consider the grounds pressed in support of the cross-objection and the second ground raised in the appeal, e. g., (a) whether defendant 1 was manager (b) if so, when did he become manager and when did he cease to be so; (d) is the claim for accounts barred by time. These points we take up together. The case of the plaintiffs is that Ganga Charan remained the manager of the properties for some time, and then Hara Charan till his death, then again Ganga Charan for a short time and thereafter Lalit was the manager up till 1312. The

plaintiffs' specific case is that after 1312, defendant 1 became the manager and is continuing as manager.

3. The gist of the defence on this part of the case is that he, defendant 1, was never the manager at any time. It was the ejmali officers who managed the affairs and the owners only looked after their work. It is the said officers and not defendant 1 who are liable to render accounts. Defendant 1, living at home, had at times to write the account papers but he had no more responsibility in the matter of management than any other person, e. g. Promoda Sundari, the mother of defendants 4 and 5, Naba Durga, the grand mother and Hemangini, the mother of the plaintiffs. This appears from paras. 8, 11, 12, 15 30 and 36 of the written" statement of defendant 1 and from para. 11 of the written statement of defendant 2.. The first point therefore is whether defendant 1 war the manager of the joint properties or the defence is true. (His Lordship after considering the evidence held that Abani was the manager of the joint properties at least after the death of Lalit and proceeded).This conclusion of ours is supported by a series of letters written by Abani and others which have been exhibited in this case. We will deal with the documents and other evidence under two periods, that is (1) from just before the death of Lalit till 6th December 1924 and (2) from after 6th December 1924 till the institution of the suit. We follow this method as one of Mr. Sen's contention is that even if Abani was the manager he ceased to be so on 6th December 1924 and the claim for accounts against him is barred by time. (His Lordship after discus-sing the documentary evidence proceeded.) We accordingly hold that defendant 1 was the manager from 1315 and his management has continued till the date of the suit. In this view of the matter, no question of limitation arises.

4. We will now take up the first ground urged by Mr. Gupta in support of the appeal, namely the method of accounting. Even on the basis, as found by the Subordinate Judge, that defendant 1 was and is the karta of a joint Hindu family, we do not think the directions of the Sub-ordinate Judge to be correct. He has directed defendant 1 to submit an account of the family properties together with a statement of the assets and funds available at his hands within a month, and in default he has directed the appointment of a Commissioner to ascertain them. The position of a karta of a joint Hindu family is not that of a trustee or agent. He is only bound to account for what he had in fact received and not for what he might or ought to have received if he had been more prudent or efficient or if the joint family funds in his charge had been more profitably employed: Perrazu v. Subbarayadu AIR 1922 PC 71 at pp. 287.88. His power to spend money is only limited by family purposes. He is not under the obligation to save or economise. If he spends more on family purposes than what the other members approve, the only remedy of the latter is to have a partition. The family purposes are ordinarily maintenance, education, marriage, sradh, religious ceremonies of the co-sharers and their families. He can spend for these purposes more on one branch of the family than on another and his discretion is the final word. But he cannot misappropriate the family property or its income to misapply them to purposes which are not family purposes. So long as he confines himself to these purposes, he is not accountable for the past. It has accordingly been held that he is only liable to account for the assets as they are or as they exist. He is not an agent of the others. But this does not mean that his statement or his account of the family assets are final and the members of the family are bound to accept his ipse dixit. They have right to have his statement and his account verified in the usual way. This has been laid down in clear terms by Dwarkanath Mitter J. in the Pull Bench decision in Abhay Chandra Roy v. Pyari Mohan Guho (1870) 13 WR 75 which

was a case of a Dayabhaga family, and this view of the law has all along been accepted both in the case of Dayabhaga and Mitakshara families. In Pormeshwar Dubey v. Gobind Dubey AIR 1916 Cal 500 (a case of a Mitak-shara family) Fletcher J. reviewed the earlier authorities and laid down the law, correctly in our opinion, in the following terms:

The result of the authorities I think is that in an ordinary suit for partition in the absence of fraud of other improper conduct the only account the karta is liable for is as to the existing state of the property divisible. The parties have no right to look back and claim relief against past inequality of enjoyment of the members or other matters. But of course this does not mean that the parties are bound to accept the statement of the karta as to what the property consists of. That would not be an account at all. The karta is the accountable party and the enquiry directed by the Court must be conducted in the manner usually adopted to discover what in fact the property (not what the karta says it) now consists of : 43 Cal 4593 at pp. 465-466.

5. We accordingly hold that the Subordinate Judge ought to have appointed a Commissioner to verify and check the statement and account which defendant 1 has been ordered to file, if the said defend-ant 1 complies with his direction, or to ascertain the same if he failed to comply with the same. The next question for us to consider is what must be allowed as legitimate expenditure. We have already held that the karta of a joint Hindu family is not bound to manage to the best advantage and can spend in his sole discretion for family purposes. The question in this case is whether these principles will have to be modified in the case before us. This depends upon the question as to whether defendant 1 occupied the position of a karta of a joint Hindu family. In the written statement, defendant 1 took the definite position that there was no Hindu joint family, that there was no joint family property and that he was not the karta (paras. 7, 36 and 43 of the written statement). The plaintiffs' case is stated in paras. 18, 19, 20 and 21 of the plaint. Their case is that during the time of Lalit's management there was an agreement amongst all the co-sharers that from the income each branch of the family would receive annually Rs. 350, later on increased to Rs. 370, and then to Rs. 400 and the balance of the income after meeting the revenue, head rent, collection charges and expenses of the worship of the family deities and a fixed amount for the sradh of the members would be put in reserve to which each branch would have a third share. The specific case therefore is that the manager for the time being who derived his authority from the members of the family and whose powers were defined by them in the matter of expenditure had not all the powers of a karta of a Hindu joint family. He could not spend anything for the maintenance of the members of the family, nor on their education or marriage, and his power to incur expenses of the sradhs was limited to Rs. 200 only. He could only pay an allowance to each branch and the excess drawings of any branch over the said fixed allowance was to be debited to that branch. (After further discussing the evidence, his Lordship continued.) There is also no case of misappropriation or fraud established. We therefore hold that defendant 1 is accountable in the manner indicated below.

6. The result of our decision is that the decree of the lower Court, against which the appeal by the plaintiffs and the cross-objections by defendants 1 to 3 are directed, are modified in the manner indicated in our judgment. Defendant 1 must file a statement and account of the joint properties and funds and submit an account of the income of the joint properties of Schedule Ka and Kha which are to be partitioned, on account of the money lending business, together with an account of the

expenditure within one month of the arrival of the record and a commissioner to be appointed to examine, verify and check the same. If he fails to do so, a commissioner must be appointed to ascertain them. Defendant 1 will not be held liable for any acts of mismanagement, but he will get credit only for the moneys spent by him in paying revenue, cesses, head rents, for meeting collection charges and litigation expenses concerning the joint estate, debseba expenses, expenses for making repairs to the joint dwelling and kutchery houses, fixed annual allowances (Rs. 350, Rs. 370 or Rs. 400 as the case may be) and fixed sradh expenses. The period of accountability would be from 1315 to the date of institution of suit. A self contained decree is to be drawn in this Court affirming the decree for partition as passed by the trial Court and embodying our decision as to the liability of defendant 1 to render accounts, in the manner mentioned above. The parties must bear their own costs up to the present stage of the litigation, including costs of this appeal. Further costs are left to the discretion of the trial Court.

Guha, J.

7. I agree.