

PRIVY COUNCIL

Govindrao

Vs.

Rajabai

P.C.A.No.91 of 1929

(Lords Atkin, Russell of Killowen and Sir John Wallis JJ.)

19.12.1930

JUDGMENT

SIR JOHN WALLIS J.

1. The parties to this suit belong to a family of Mahratta Brahmins from Berar, who ever since the year 1839 have been carrying on business as money-lenders or bankers at Pardi, three or four miles from Nagpur, in the Central Provinces.

2. The property in suit, which is valued at two crores of rupees (considerably more than one and a half millions sterling), was acquired in the business carried on by the senior branch of the family at Pardi and in recent years at Nagpur. In 1916 Narayan Rao II (so, described to distinguish him from the common ancestor of the same name), who was then the sole survivor of the-senior branch, died, leaving an infant daughter, but no male issue. Thereupon Govindrao, plaintiff 1, who, with his son, plaintiff 2, now represents the junior branch of the family, claimed to-have become entitled by survivorship to-the whole of the suit property as the joint family property of the undivided family, and in 1917 filed the present suit in the District Court of Nagpur, impleading, as defendant 1 Narayan Rao II's daughter, and, as defendant 2, a boy who is alleged to have been adopted by his widow. This adoption was disputed by the plaintiffs, and was made the subject of an issue which it was found unnecessary to decide. The relationship of the parties and their descent from the-common ancestor are shown in the following genealogical table :

3. The defendants' case is that the business was the separate property of Narayana 1's eldest son, Gopal, from whom they are descended, that Gopal's youngest brother, Sonbaji, plaintiff 1's adoptive father, never had any interest in it, but had carried on a separate money-lending business in his own name at Pardi from 1865 until his death

in 1880, and that after attaining majority plaintiff 1 had carried on this business for more than twenty years until the death of *Narayan Rao II* without putting forward any claim to share in the business or property of the senior branch.

4. Very numerous issues were framed by the District Court with reference to the specific, allegations in the pleadings, but the questions which arise on the evidence, and on which the case has been disposed of in the lower Courts, may be formulated as follows :

I. Was the money-lending business, which was started in the name of the family god in 1839 at Pardi, where the four brothers were living together, and was managed by the eldest son Gopal, a joint family business, or was it Gopal's separate business ?

If the business was originally a joint family business, was there a separation in 1865, some years after the death of the second and third brothers, when Gopal began to carry on business in his own name instead of in the name of the family god, and Sonbaji began to carry on business in his own name at Pardi, and were there two businesses thenceforth, the separate properties of each of the two brothers ?

III. Is the suit as to the whole or part of the suit property barred by limitation ?

5. It appeared from the accounts produced by the defendants that the second brother, Tanbaji, who died in 1853, and the third brother, Ramchandra, who died in 1861, had each carried on a money lending business in separate premises at Pardi and it was held by the Court of the Judicial Commissioner of the Central Provinces, on appeal from the decree of the District Court, that there never was any joint family business, and that the businesses carried on by the four brothers were separate. This finding disposed of the case except as to four villages and to some house property at Nagpur, which will be dealt with later.

6. Mr. Upjohn, for respondent 2, contended that the judgment of the District Judge was to the same effect, and that there were concurrent findings with which the Board would not interfere.

7. The appellate Court however read the judgment of the District Judge as holding that Gopal and his three brothers were originally joint in mess, worship and business, and that, after the death of the other two brothers, Gopal and Sonbaji separated at or about the time when Sonbaji opened a shop in his own name in the year 1865, and that henceforth there was a separation. Though the language of the judgment is not entirely

consistent, the finding at which the trial Judge ultimately arrives in para. 70 of his judgment is that Gopal and Sonbaji were separate in mess, residence, estate, worship and business, some years before the death of Sonbaji in 1880, and that Gopal and Sonbaji's son Govindrao, plaintiff 1, were so separate all along ; and later in his judgment, when dealing with the four villages already mentioned, which had been registered in the joint names of Gopal and Sonbaji, he applied Article 127, Lim. Act, which deals only with joint family property, thereby indicating that he regarded them as having been acquired in a joint family business. Their Lordships are therefore of opinion that Mr. Upjohn's contention as to concurrent findings cannot be sustained.

8. It is obviously impossible eighty years later, and in the absence of any written record, to say whence came the funds with which the business was started. Narayan Rao I is said to have been a poor man, and it is not proved that the business was started with the aid of any nucleus of ancestral property derived from him. Even so, it has been strenuously contended by Mr. Dube for the appellants that the facts that the four brothers were living together and were joint in food, residence and worship, and that the business was managed by the eldest brother Gopal, raise a presumption that it was a joint family business and was not his separate business. He also contended that the businesses carried on at Pardi and by Tanbaji till his death in 1853, and by Ramchandra till his death in 1861, were merely branches of the joint family business, as appears from the fact that they were not inherited after their deaths without male issue by their wives and daughters, but were treated as joint family property and carried on for a great many years by the eldest brother Gopal, who ultimately closed to them and transferred the assets and liabilities to the main business.

9. It is, in their Lordships' opinion, unnecessary to pursue this subject, as to which reference may be made to the judgment of the late Sir Bhashyam Ayyangar in *Sudarsanam v. Narasimhulu Maistri* because, assuming in the appellants' favour that, to begin with, there was a business belonging to the joint family, there is no sufficient reason for differing from the District Judge's finding that after 1865 Gopal and Sonbaji, the surviving brothers, were separate and had separate businesses. This finding is based on a most careful and exhaustive examination of the mass of accounts and documents put in evidence regarding the period between 1865 and Sonbaji's death in 1880. The appellate Court has also most carefully analysed this evidence in its judgment and has arrived at the same conclusion.

10. It would be very difficult for their Lordships to differ from what is practically a concurrent finding of both the lower Courts in this particular matter, and they are the

less disposed to do so because in their opinion that finding is in accordance with the general probabilities of the case and the subsequent conduct of the parties.

11. In 1865 Gopal ceased to carry on business in the name of the family god and began to carry on business in his own name, and Sonbaji opened a new business in his own name. There were already, according to the plaintiffs' case, three branches of the joint family business at Pardi, and it is difficult to explain Sonbaji's action in opening another business there except on the footing that the two brothers were thenceforth to carry on business separately.

12. Further, both the lower Courts have assigned good reasons for holding that plaintiff 1 has suppressed the books of his father Sonbaji's business for those years, and have rightly drawn the inference that, if produced, they would not have supported him.

13. Lastly, what happened after Sonbaji's death, especially after plaintiff 1 attained majority in 1896 or earlier in their Lordships' opinion, affords practically conclusive evidence that the two businesses were separate.

14. After Sonbaji's death in 1880, plaintiff 1's mother was appointed guardian of his property and asserted that he was separate. She died in 1887, two years after the death of Gopal, and Gopal's son Ganpat, as the nearest agnate took over the management of the minor's business ; but before doing so he took care to have lists prepared of the minors property, and it is found by both the lower Courts that the listed properties were duly handed over to the plaintiff on his attaining majority as his separate property and accepted by him as such.

15. It is, however, urged that Gopal and his son were interested in making out a case of separation, and that no weight should be attached to what they did or to what was done by the minors' mother and guardian, as she may have had no knowledge of the real state of things and have acted under their influence.

16. Their Lordships are fully alive to this consideration, but in this case, as already stated, there is strong evidence to show that a separation in business had taken place before Sonbaji's death, and plaintiff 1's own conduct after he attained majority appears to be inexplicable on any other basis. According to his present case, he might at any time have insisted on a partition, which would have made him a very rich man, but he accepted the properties which were then handed over to him, and enjoyed them as his separate property for more than 20 years.

17. At the re-settlement in 1912, when Ganpat applied that one of the four villages which had been acquired before 1865, and stood in the names of Gopal and Sonbaji, should be registered in his own name, as he had been in possession of it for many years, it appears from the order of the Settlement Officer that plaintiff 1, who opposed the application, admitted that he was separate in business from Ganpat, and merely put forward the case that this particular village was joint family property which had not been divided.

18. Ganpat died in the following year, and plaintiff 1 made no claim as the senior coparcener to the management of the joint family business, but allowed Ganpat's son Narayan Rao II to succeed to the management of the properties now in suit. It was only after Narayan Rao's unexpected death, without male issue in 1916, that he for the first time asserted that they were joint family properties which he was entitled to take by survivorship.

19. In their Lordships' opinion, looking at the evidence as a whole the only possible conclusion seems to be that the two branches of the family and their businesses had long been separate, and that Govindrao had no share in the business of the senior branch, and that the claim put forward on this footing was rightly rejected by both the lower Courts.

20. On the defendants' cross-appeal as to four villages for which the plaintiffs had obtained a decree the appellate Court allowed the appeal and held that the suit was barred by limitation.

21. In accordance with their finding that there never was any joint family property, they held that if the plaintiffs' branch ever had any interest in these villages, which they seem to have doubted, the suit was barred by limitation, as the defendants' possession had been adverse to them for more than the statutory period. If the villages were not joint family property, it was not disputed that Article 144 was the article applicable, and the question was whether the defendants' possession had been adverse to the plaintiffs for more than the statutory period. It was contended by Mr. Dube that, if not, they were held by the parties as tenants-in-common, and that the possession of one tenant-in-common was not adverse to the other, citing *Corca v. Appuhamy* In that case however what was decided by the Board was that the possession would not be adverse until ouster.

22. The defendants' predecessors had not only been in sole possession and perception of the profits of these villages for more than the statutory period, but as regards three

of them there were revenue proceedings between Gopal and plaintiff 1's guardian Sitabai in 1884, in which Gopal claimed mutation in his sole name and denied that plaintiff 1 had any Interest in them.

23. As regards the fourth village, there is no express evidence of his title having been denied before the settlement proceedings in 1912, which have been al-ready referred to; but having regard to the separation of the two branches of the family, and to the fact that plaintiff 1 never had possession or participation of profits in all these four villages ever since his father's death in 1880, and that they were not included in the property handed over to him by Ganpat, on his attaining majority, he must have known that his interest in them was not admitted, and their Lordships are of opinion that on these facts the appellate Court was justified in holding that the possession of the defendant was adverse for more than the statutory period.

24. Their Lordships are also of opinion that, even if the villages were originally joint family property, as held by the District Judge, the claim was equally barred under Article 144, and that the District Judge was wrong in applying Article 127. Assuming that Gopal and Sonbaji were at one time joint in estate, the District Judge has found, and their Lordships see no reason to differ from that finding, that they had separated before Sonbaji's death, and the effect of that separation was that any immovable joint property which continued undivided was no longer joint family property so as to come under Article 127, but came under Article 144.

25. For these reasons their Lordships are of opinion that the decree of the appellate Court was right; and that the appeal should be dismissed with costs; and they will humbly advise His Majesty accordingly

Appeal dismissed.

Cases Referred.

[1902] 25 Mad 149=14 M lj 358

[1912] AC 230=81 LJ PC 151=105 LT 836.