Bhagwan Dayal

Vs

Mst. Reoti Devi

Civil Appeal No. 448 of 1958

(P. B. Gajendragadkar, M. Hidayatullah, K. Subha Rao JJ)

04.09.1961

JUDGMENT

SUBBA RAO, J. -

This is an appeal by certificate granted by the High Court at Allahabad against its judgment dated May 7, 1954 setting aside the decree made by the Civil Judge, Agra, in a suit filed by the appellant for a declaration that the properties more particularly mentioned in Schedules B, C and D annexed to the plaint, were his absolute properties.

To appreciate the facts and the contentions of the parties, the following relevant part of the genealogy will be useful.

Pt. Lachhman Prasad | ---------- | |Pt. Kashi Ram Pt. Jwala Prasad | |Mst. Batashi | ---------- | | | | Raghubar Banwari Bhagwan Ram Dayal Lal Dayal Lal = |Mst. Reoti Devi | | |Mst. Dayavati Ajudhia Prasad##

The date of death of Lachhman Prasad does not appear in the record. Jwala Prasad died in 1908; Kashi Ram, in 1924; Ram Lal, in 1914; Banwari Lal, in 1914; and Raghubar Dayal, in 1933. The ancestral house of the family was in village Naugaien, district Farrukhabad. The plaintiff's case is that Lachhman Prasad, his sons and descendants constituted a Joint Hindu family, that there was never a partition in the family, that three of the members of the said family, namely, Kashi Ram, Raghubar Dayal and Bhagwan Dayal, jointly started a business at Agra, that they jointly acquired some properties and houses during the lifetime of Kashi Ram, some after his death, and others after the death of Raghubar Dayal, and that the said properties were the joint family properties of the said members, under the Hindu law. His further case is that after the death of Kashi Ram, the business and the properties acquired during his life time devolved upon the plaintiff and Raghubar Dayal by survivorship, and that after the death of Raghubar Dayal the said properties, along with the properties acquired during the lifetime of Raghubar Dayal passed on by survivorship exclusively to the plaintiff. The properties described in Schedule A are the ancestral properties; those descried in Schedule B are the properties acquired jointly by the said three members during the life-time of Kashi Ram; these described in Schedule C are properties acquired by Raghubar Dayal and the plaintiff after the death of Kashi Ram; and the D Schedule properties are those acquired by the plaintiff after the death of Raghubar Dayal.

Alternatively, it is alleged that even on the assumption that there was a partition in the family of Lachhman Prasad, a reunion should be inferred from the conduct of the said three members during

the lifetime of Kashi Ram and thereafter. It is further alleged that the defendant, the widow of Raghubar Dayal, filed suits in the Revenue Court under the provisions of the U. P. Tenancy Act for half a share in the income of mauza Chaoli, Chak Soyam Nagla Kasheroo and mauza Chak Chaharam Talab Firoz Khan, that the said Revenue Court, framed an issue raising the question of title to the said properties and sent the same for decision to the Civil Court, as it should do under the provisions of the said Act, that the learned District Munsif held in Suit No. 15 of 1939, a suit filed in respect of mauza Chaoli, that the plaintiff therein had title to a half share in the said village, that the Revenue Court, on the basis of the said finding, gave a decree in her favour in respect of half a share of the income of the said village and that the said decree was taken on appeal to the District Court and also, on further appeal, to the High Court, but without success i. e., the decree of the District Munsif was confirmed, and that the suits in respect of other villages are still pending. The plaintiff (appellant herein) says that the said finding of the Revenue Court does not operate as res judicata in the present suit, and that he is entitled to reagitate the matter. On those allegations the present suit was filed in the court of the Civil Judge, Agra, for a declaration of the plaintiff's title to the properties described in Schedules B, C and D annexed to the plaint and for a permanent injunction restraining the defendant from executing the decree in Suit No. 15 of 1939.

The defendant (respondent herein) in her written-statement alleges that the family of Lachhman Prasad was divided, that Kashi Ram started a business in Agra only with the aid of his self-acquisitions and purchased properties out of the income derived therefrom, that after the death of Kashi Ram the two brothers, Raghubar Dayal and Bhagwan Dayal (plaintiff), got his properties under a will executed by him, that they jointly acquired further properties from and out of the income of the business started by Kashi Ram, and that after the death of Raghubar Dayal the defendant succeeded to the interest of Raghubar Dayal and that, therefore, she was entitled to an equal share in B, C and D Schedule properties along with the plaintiff. She further pleads that the decision of the Revenue Court in Suit No. 15 of 1939, holding that the brothers were not members of a joint family and that, therefore, she succeeded to the interests of her husband, Raghubar Dayal, in the joint properties, operated as res judicata in respect of the plaintiff's entire claim.

The suit was tried by the Civil Judge, Agra, and the learned Judge gave the following findings : (1) the judgment and decree of the Revenue Court in Suit No. 15 of 1939 operated as res judicata on the question of title of the defendant only in respect of the half share claimed by her in mauza Chaoli; (2) there was a partition of the larger family, and that Kashi Ram, Raghubar Dayal, and Bhagwan Dayal were the divided members of the said joint family; (3) there was no reunion between the said members; (4) Kashi Ram had validly bequeathed his properties under a will to his two nephews; and (5) there was a reunion between Raghubar Dayal and Bhagwan Dayal and, therefore, on the death of Raghubar Dayal, Bhagwan Dayal acquired his interest in the plaint schedule properties by survivorship. On the said findings the Civil Judge declared the plaintiff's absolute title to the properties described in Schedules B, C and D, except in regard to a half share in mauza Chaoli. The defendant preferred an appeal against that decree to the High Court; and the plaintiff preferred cross-objections in respect of his claim disallowed by the Civil Judge. The appeal was heard by a division bench of that Court consisting of Agarwala and Gurtu, JJ. The two learned Judges gave different findings but came to the same conclusion in holding against the plaintiff.

Briefly stated, the findings of Agarwala, J., are as follows : (1) The evidence on the record is not sufficient to establish partition in the family. (2) Though as a matter of law two or more members of a larger Hindu family not belonging to the same branch can form a smaller joint family and acquire properties with all the attributes of a joint Hindu family property, in the instant case the evidence does not establish that Kashi Ram, Raghubar Dayal and Bhagwan Dayal constituted such a unit and

acquired the properties; the properties were the self-acquired properties of Kashi Ram, but were bequeathed by him in equal shares to Raghubar Dayal and Bhagwan Dayal, and after his death they held those properties and those acquired subsequently only as co-tenants and not as members of a joint Hindu family. (3) The finding of the Revenue Court in Suit No. 15 of 1939 does not operate as res judicata in respect of any properties in the suit. In the result, the learned Judge held that the properties described in Schedules B, C and D were owned by the plaintiff and the defendant in equal shares.

Gurtu, J., gave the following findings : (1) There was a separation between Kashi Ram and Jwala Prasad and also between the sons of Jwala Prasad. (2) Two brothers out of four and an uncle cannot in law form a distinct corporate family with the incidents of a joint family and acquire properties for that unit. (3) Kashi Ram could never reunite with his nephews as a matter of law, because Kashi Ram had separated from Jwala Prasad when Raghubar Dayal and Bhagwan Dayal were not even born; nor did he unite with them as a matter of fact. (4) The judgment of the Revenue Court in regard to the question of title would operate as res judicata in respect of the plaintiff's entire claim to the estate of Raghubar Dayal. And (5) the plaintiff and Raghubar Dayal held the properties only as co-tenants. The learned Judge, though for different reasons, agreed with the conclusion arrived at by Agarwala, J. In the result, the High Court allowed the appeal filed by the defendant and dismissed the cross-objections filed by the plaintiff : the suit of the plaintiff was dismissed with costs throughout. Hence the present appeal.

We shall first take the question whether the judgment of the Revenue Court passed on the findings recorded by the District Munsif in Suit No. 15 of 1939 operates as res judicata in the present suit in respect of the plaintiff's right to succeed to the share of her husband, Raghubar Dayal, in the joint properties. Some of the facts relevant to the question may be recapitulated. The respondent Reoti Devi filed Suit No. 15 of 1939 in the Revenue Court for recovery of her share of profits of village Chaoli against Bhagwan Dayal in respect of 1343, 1344 and 1345 fasli on the ground that she was his co-sharer. The present appellant, who was the defendant in that suit, contested the suit, inter alia on the ground that he and his deceased brother constituted members of a joint Hindu family and that on his brother's death his interest in the entire joint family property devolved on him by right of survivorship. As the defendant raised the question of title, the Revenue Court framed an issue on the question of title raised in the pleadings and referred the same to the Civil Court for decision under section 271 of the Agra Tenancy Act, 1926 (hereinafter called the Act). The learned District Munsif decided the issue against the appellant herein, with the result that the Revenue Court made a decree on the basis of that finding in favour of the respondent herein. Against the said decree, the appellant preferred an appeal (No. 65 of 1941) to the district Court, Agra but that appeal was dismissed. The second appeal filed by him in the High Court of Allahabad was dismissed. The result of that litigation was that a decree was given in favour of the respondent herein for recovery of her share of the profits of village Chaoli. The question is whether the said decree operated as res judicata in the present suit. The learned Judges of the High Court differed on the question of res judicata; Agarwala, J., held that the said decision of the Revenue Court in Suit No. 15 of 1939 did not operate as res judicata while Gurtu, J., held that it did.

Learned Attorney-General contended that the decision in Suit No. 15 of 1939 would not operate as res judicata on the present suit for two reasons, namely, (1) in the previous suit, the question of title was decided by a Civil Court and, therefore, section 11 of the Code of Civil procedure in terms was attracted; and, as that Court was not competent to try the present suit, the decision therein would not operate as res judicata; (2) even if the original suit must be deemed to have been decided by a Revenue Court, that Court had no exclusive jurisdiction to decide the present suit and, therefore, any

decision therein would not operate as res judicata on the present suit for the same reason, viz., that the Court was not competent to try the present suit.

Mr. A. V. Viswanatha Sastri, learned counsel for the respondent, on the other hand, contended that, though the question of title was decided by a Civil Court, the final decision was that of the Revenue Court, that the subject-matter of the present suit was within the exclusive jurisdiction of that Court and that, therefore, the present suit was not maintainable. That apart, he contended that as the subject-matter of the present suit was within the exclusive jurisdiction of the Revenue Court, the decision of that Court on the question of title would be res judicata in the present suit not under section 11 of the Code of Civil Procedure but under the general principles of res judicata; for, it is said that in the case of a decision of a Court of exclusive jurisdiction section 11 is not applicable and therefore, under the general principles of res judicata, the condition that the court which decided the previous suit should be competent to try the subsequent suit need not be complied with.

Before addressing ourselves to the question raised, it would be necessary to notice some of the relevant provisions of the Act.

Section 227. (1) A co-sharer may sue another for a settlement of accounts, and for his share of the profits of a mahal, or of any part thereof.

(2) In any such suit when it is proved or admitted that either party has made collections the amount of which is in issue, he shall be bound to furnish a true account of such collections. If he fails to do so the court may make any presumption against him which in considers reasonable.

Section 230 : Subject to the provisions of section 271 all suits and applications of the nature specified in the Fourth Schedule shall be heard and determined by the revenue courts, and no Courts other than a revenue Court shall except by way of appeal or revision as provided in this Act, take cognizance of any suit or application, or of any suit or application based on a cause of action in respect of which relief could be obtained by means of any such suit or application.

Explanation. - If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked from the civil courts may not be identical with that which the revenue court could have granted.

Section 271. (1) If (a).....

(b) in any suit instituted under Chapter XIV the defendant pleads that the plaintiff has not got the proprietary right entitling him to institute the suit, and such question of proprietary right has not been already determined by a court of competent jurisdiction, the revenue court shall frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only.

(2) The civil court, after re-framing the issue, if necessary, shall decide that issue only and return the record together with its finding on that issue to the revenue court which submitted it.

(3) The revenue court shall then proceed to decide the suit, accepting the finding of the civil court on the issue referred to it.

(4) Every decree of a revenue court passed in a suit in which an issue involving a question of proprietary right has been decided by a civil court under sub-section (2) of this section shall -

(a) if the question of proprietary right is in issue also in appeal, be applicable to the civil court which has jurisdiction to hear appeals from the court to which the issue of proprietary right has been referred;

(b) if the question of proprietary right is not in issue in appeal be applicable to the revenue court.

The Fourth Schedule - Group A - Suits.---------- SectionSerial No. of Description of suit ..... Act----------15 227 By a co-sharer against a co-sharer for a settlement of accounts and ..... his share of the profits of the mahal, or of any part thereof.----------##

Section 264. The provisions of the code of Civil Procedure, 1908,] except :-

(a) provisions inconsistent with anything in this Act, so far as the inconsistency extends,

(b) provisions applicable only to special suits or proceedings outside the scope of this Act, and

(c) the provisions contained in list I of the Second Schedule, shall apply to all suits and other proceedings under this Act, subject to the modifications contained in list II of the Second Schedule.

The gist of the said provisions may be stated thus : One of the co-sharers can file a suit against another co-sharer for settlement of accounts and for his share of the profits of a mahal or any part thereof. If the defendant denies the plaintiff's proprietary right an issue on the question of title is raised and sent to the civil court for decision, The revenue court shall accept the finding of the civil court and decide the suit accordingly. An appeal would lie against that decree to a court which has jurisdiction to hear appeals from the court to which the question was referred. The Revenue Court has exclusive jurisdiction to decide suits of the nature described in Fourth Schedule. One of the suits mentioned in the Fourth Schedule is a suit by a co-sharer against a co-sharer for a settlement of accounts and his share of the profits of the mahal, or of any part thereof. No other court shall take cognizance based upon a cause of action in respect of which relief can be obtained by any such suit.

The first query is whether the present suit is based on a cause of action in respect of which relief can be obtained by means of a suit specified in the Fourth Schedule to the Act. The present suit is for a declaration of the plaintiff's title to the plaint schedule properties and for an injunction restraining the execution of the decree obtained by the defendant in the Revenue Court. The plaintiff claims title to the suit properties on the ground that he was a member of a joint Hindu family along with his deceased brother and, therefore, he succeeded to his share by right of survivorship. The question is whether such a suit is in the nature of suits specified in the Fourth Schedule to the Act. The said Schedule does not provide for any suit by a person claiming to be the proprietor of a property and in possession thereof praying for a declaration of his title and for an injunction against another who is trying to interfere with his title. If so, under section 230 of the Act, the Revenue Court has no exclusive jurisdiction to entertain a suit of the nature that is before us. If it is not a suit of that nature, under that section, the civil court's jurisdiction is not ousted. A full bench of the Madras High Court had occasion to consider a similar question arising under the Madras Estates Land Act

1908 in Venkatarama Rao v. Venkayya (A. I. R. 1954 Mad. 788). There, certain tenants filed a petition under section 40 of the Madras Estates Land Act, 1908, in the revenue court for commutation of rent against the landholders. The landholders raised the plea that the village in which the petitioners lands were situated was not an estate and, therefore, the petition was not maintainable in the revenue court. The Revenue Divisional Officer held that it was not an estate and, on that finding, dismissed the petition. The matter was taken up on appeal to the District Court and thereafter to the High Court without success. Subsequently, the landlords filed a suit in the Civil Court against the tenants for an injunction restraining them from removing the paddy crops standing on the suit lands until the rent was paid to them. The landholders raised the plea that the decision of the revenue court holding that the village was not an estate was binding on the civil court. The full bench of the Madras High Court held that the said finding was not binding on the civil court. Adverting to section 189(3) of the Madras Estates Land Act, which corresponds to section 230 of the present Act, the learned Judges observed thus at p. 790 :

> "Therefore, it is clear that it is only in respect of such disputes or matters as are covered by the suits or applications specified in section 189(1) that the revenue court can be said to have exclusive jurisdiction, that is, jurisdiction to the exclusion of a civil court.
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> If a particular matter is one which does not fall within the exclusive jurisdiction of the revenue court, then a decision of a revenue court on such a matter, which might be incidentally given by the revenue court, cannot be binding on the parties in a civil court. "

We agree with the said observations. On the same analogy, the present suit was not within the exclusive jurisdiction of the revenue court and, therefore the suit in the civil court was maintainable. If so, section 11 of the Code of Civil Procedure is immediately attracted to the present suit. The relevant part of section 11 of the Code reads :

> "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. "

In this case the title to properties now put in issue was tried in the revenue court. But that court is not competent to try the present suit in which the same issue is raised. It follows that in terms of section 11 of the Code, the decision on the said issue in the revenue court could not operate as res judicata for the necessary condition of competency of that court to try the present suit is lacking.

In this view, it is not necessary to consider the differences between the scope of the principle of res judicata covered by section 11 of the Code of Civil Procedure and that of the principle of res judicata de hors the said section. Nor is it necessary to express our view on the question whether the decision on the question of title in the previous suit was that of a revenue court or of a civil court. We, therefore, reject the plea of res judicata.

We shall next take the question of partition in the larger family. Learned Attorney General contends that the finding of Agarwala, J., that there was a partition of the larger family is correct and is supported by evidence in the case. Mr. Viswanatha Sastri, learned counsel for the respondent, contests the correctness of both the legal and factual submissions made by the learned Attorney General. His argument may be briefly summarized thus : The members of the family were villagers, the ancestral property owned by them was insignificant, its income was small, the partition must have taken place long ago, and in these circumstances neither documentary evidence nor the evidence of the elders is available but there is sufficient evidence on the record to sustain the finding of partition given by the learned Civil Judge and Gurtu, J.

The general principle is that every Hindu family is presumed to be joint unless the contrary is proved; but this presumption can be rebutted by direct evidence or by course of conduct. It is also settled that there is no presumption that when one member separates from others that the latter remain united; whether the latter remain united or not must be decided on the facts of each case. To these it may be added that in the case of old transactions when no contemporaneous documents are maintained and when most of the active participants in the transactions have pressed away, though the burden still remains on the person who asserts that there was a partition, it is permissible to fill up gaps more readily by reasonable inferences that in a case where the evidence is not obliterated by passage of time.

From this standpoint let us first look at the admitted facts in the case. It is common case that Lachhman Prasad was living with his sons in village Naugaien. He was not in affluent circumstances. The particulars of the ancestral property are given in Schedule A; it comprised certain lands and houses in village Naugaien. Bhagwan Dayal, the plaintiff-appellant, in his deposition admits that the income of the land was about Rs. 80/- per year, though subsequently it was enhanced to a sum of Rs. 100/- per year. He admits that they (meaning thereby Kashi Ram, Raghubar Dayal and Bhagwan Dayal) used to get a sum of Rs. 5/- or Rs. 10/- a year from the land. It is clear from this that they were getting not the entire income from the land but only a part of it.

There is no evidence to show when Lachhman Prasad died; but it is not disputed that Kashi Ram left the ancestral home long ago and had joined military services at Gwalior and thereafter police service in or about 1895. He gave up the service and came to Agra and started a business with his saving. There is nothing on the record, except the assertion made by Bhagwan Dayal in his deposition, to show that Kashi Ram as manager either received the entire income from the ancestral property or paid any taxes in respect thereof. Raghubar Dayal says that rent of the said holdings was entirely in the accounts maintained by Kashi Ram; but they were not produced. Kashi Ram executed a will on September 13, 1919. Under that will he gave the entire properties to his two nephews, and it cannot be suggested that it was executed to defraud any person. There is a faint suggestion that the said will was executed to bar the claim of his daughter. In that document he does not say that he was a member of a joint Hindu family. The assertion that he was a member of a joint Hindu family would have barred the claims of his daughter more effectively if that was his intention in executing the document. Be it as it may, the will, which, in our view, was an honest attempt on the part of the testator to give his properties to his nephews, does not contain any assertion that he was a member of a joint Hindu family. A number of documents were executed by or in his favour during his lifetime, but in none of the documents there is a recital that he was a member of a joint Hindu family. This consistent conduct also indicates that Kashi Ram never considered himself to be a member of any undivided Hindu family.

Bhagwan Dayal admits in his evidence that Ram Lal, his youngest brother, who was killed in the

War in 1914, did not live with him and that his family and the family of Ram Lal were separate from each other and were not joint. He also concedes that Banwari Lal, his elder brother, who died in the year 1914, was also separate from him. There is nothing on record to show that these two brothers alone separated from the main family before 1914. The concession that they were separate members supports, to a large extent, the theory that there must have been a partition in the larger family.

Reoti Devi, the defendant-respondent, in her evidence says that her marriage took place about 30 years ago. Her evidence discloses that her father-in-law. Jwala Prasad, was alive at the time of her marriage. She says that when she came to her husband's house, Kashi Ram and her father-in-law lived separately in Naugaien, that they were cultivating separately and that thereafter he went away to Gwalior to serve in the army. The evidence of this witness is not very helpful as regards the particulars of the partition; but it discloses that the brothers were living separately and earning their livelihood. This evidence is further reinforced by the fact that in regard to the ancestral property the names of the different members of the family, including Reoti Devi, are entered in the Government accounts against different portions of the said property. Lastly, there was never any dispute between Kashi Ram and the sons of Jwala Prasad, or between the four brothers in respect of the income from the ancestral land. That could be explained only on the hypothesis that the said property was divided and the members of the family were getting their share of the income therefrom. This conduct of the parties for about 50 years was consistent with their partition rather than their joint status. On the whole, on a consideration of the material placed before us, we cannot say that the finding given by the learned Civil Judge and accepted by Gurtu, J., is not supported by evidence. We accept the said finding.

The next question is whether there was a reunion between Kashi Ram, Raghubar Dayal and Bhagwan Dayal. The learned Attorney-General contends that on the assumption that there was a partition of the family, the consistent conduct of the parties for a period of 50 years unambiguously establishes that there was a reunion between Kashi Ram, Raghubar Dayal and Bhagwan Dayal during the lifetime of Kashi Ram, or at any rate there was a reunion after the death of Kashi Ram between Raghubar Dayal and Bhagwan Dayal. Mr. Viswanatha Sastri, on the other hand, argues that when there was a partition in the family, the members of the family who allege a reunion must strictly prove the same, and that the documentary evidence filed in this case spread over a long period of time is destructive of any such claim.

For the correct approach to this question, it would be convenient to quote at the outset the observations of the Judicial Committee in Palani Ammal v. Muthuvenkatacharla Moniagar ((1924) L. R. 52 I. A. 83, 86) :

> "It is also quite clear that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. The leading authority for that last proposition is Balabux Ladhuram v. Rukhmabai ((1903) L. R. 30 I. A. 190) ".

It is also well settled that to constitute a reunion there must be an intention of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the

conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion. The legal position has been neatly summarized in Mayne's Hindu Law, 11th edn., thus at p. 569 :

> "As the presumption is in favour of union until a partition is made out so after a partition the presumption would be against a reunion. To establish it, it is necessary to show, not only that the parties already divided, lived or traded together, but that they did so with the intention of thereby altering their status and of farming a joint estate with all its usual incidents. It requires very cogent evidence to satisfy the burden of establishing that by agreement between them, the divided members of a joint Hindu family have succeeded in so altering their status as to bring themselves within all the rights and obligations that follow from the fresh formation of a joint undivided Hindu family. "

As we give our full assent to these observations, we need not pursue the matter with further citations except to consider two decisions strongly relied upon by the learned Attorney General. Venkataramayya v. Tatayya (A. I. R. 1943 Mad. 538) is a decision of a division bench of the Madras High Court. It was pointed out there that "mere jointness in residence, food or worship or a mere trading together cannot bring about the conversion of the divided status into a joint one with all the usual incidents of jointness in estate and interest unless an intention to become reunited in the sense of the Hindu law is clearly established. The said proposition is unexceptionable, and indeed that is the well settled law. But on the facts of that case, the learned Judges came to the conclusion that there was a reunion. The partition there was effected between a father and his sons by the first wife. One of the sons was a minor. The question was whether there was a reunion between the brothers soon after the alleged partition. The learned Judges held that as between the sons there was never any reason for separation inter se and that the evidence disclosed that on their conduct no explanation other than reunion was possible. They also pointed out that though at the time of partition one of the brothers was a minor, after he attained majority, he accepted the position of reunion. The observations relied upon by the learned Attorney General read thus :

> "In our view, it is not necessary that there should be a formal and express agreement to re-unite. Such an agreement can be established by clear evidence of conduct incapable of explanation on any other footing. "

This principle also is unexceptionable. But the facts of that case are entirely different from those in the present case, and the conclusion arrived at by the learned Judges cannot help us in arriving at a finding in the instant case.

Nor does the decision of the Madhya Pradesh High Court in Ramadin v. Gokulprasad (A. I. R. 1959 M. P. 251) carry the matter further. Therein the learned Judges restated the correct principle, namely, that in order to constitute a reunion there must be an agreement, express or implied, on the part of the members who separate, to reunite in estate and interest, and that in the absence of a registered document, the agreement has to be inferred from subsequent conduct of the parties. On the facts of the case before them, the learned Judges came to the conclusion that there was a reunion. This case only restates a well settled principle; and the court's finding cannot help us in deciding the present case.

Before we consider the evidence, we would like to make some general observations. In the plaint, the case of reunion is mentioned as an alternative case; further the plaint does not give the date of the alleged agreement to reunite or even the necessary and relevant particulars. The plea is stated in the following words :

> "That even if it were assumed against facts strictly without prejudice to any plea herein taken, that there was separation between Pandit Lachhman Prasad's issues after his death, still in view of the conduct of Pandit Kashi Ram and Raghubar Dayal during their lifetime, and the fact that the plaintiff, Pandit Raghubar Dayal and Pandit Kashi Ram (and after the latter's death the first two) worked jointly and lived and messed together and acquired, owned and possessed the entire properties jointly by their joint labour, which amounted to reunion, the plaintiff would still be the sole owner of the entire property in any view of the case. "

The plaintiff's case is that there was no partition of the larger family at all; and on that case no question of reunion arises. Further, he does not say that a reunion has taken place by agreement; but he asks the court to hold that there was a reunion on the ground that the conduct of the parties amounted to a reunion. The plea, to say the least, indicates that the plaintiff himself is not clear of his case.

The next circumstance is that neither Kashi Ram nor Raghubar Dayal and Bhagwan Dayal bring in any joint family property either to start the business or to make joint acquisitions. On the other hand, the entire capital for the business was furnished by Kashi Ram; and, under those circumstances, it is not likely that there would have been any conscious act of reunion between the members of the divided family.

Further, the business was started in 1885, and it is in evidence that Raghubar Dayal joined Kashi Ram in the said business in 1889 and Bhagwan Dayal between 1893 and 1902. Raghubar Dayal in his evidence says that when he came to Agra, he was about 8 or 9 years old. If so, it follows that there could not have been any reunion before he attained majority. In Revenue Appeal No. 65 of 1941, it was not disputed that Raghubar Dayal was also a minor when Kashi Ram started his business. It is not clear from the record when Raghubar Dayal became major. He could not have reunited with Kashi Ram before he attained majority.

The evidence may be considered in the following three parts : (1) the period between 1885, when Kashi Ram started the business, and 1924, when he died; (2) the period between 1924 and 1933 i. e., from the year when Kashi Ram died to the year when Raghubar Dayal died; and (3) the period between 1933 and 1939 when the dispute between the parties came to the forefront.

The first set of documents pertaining to the first period are 10 sale deeds whereunder properties were acquired in the joint names of Kashi Ram, Raghubar Dayal and Bhagwan Dayal. As the relevant recitals in all these documents are similar, it would be sufficient if we look at the earliest document, Ex. 58, dated August 24, 1903 and the last, Ex. 33, dated November 27, 1916. Under Ex. 58 the property mentioned therein was purchased from one Shyam Lal. The relevant recitals described the vandees thus :

> "..... Kashi Kam, son of Lachhman Prasad, Raghubar Dayal and Bhagwan Dayal, sons of Jawala Prasad..... "

It records that consideration was received from the said there persons. Ex. 33 is also a sale deed, and the vendors and vendees are the same as in Ex. 58. Here also the vendees are described in the same manner. Their occupation is given as "money lenders". The eastern boundary of the property sold is described as "Walls of the shops and shop of Pandit Kashi Ram". There is a recital in the body of the document that the vendor had no coparcener. One prominent feature that stands out in the document is that neither Kashi Ram is described as manager of the joint family nor Kashi Ram and his nephews as members of a joint Hindu family. In the second document the vendor in describing himself says that he has no coparcener, but in describing the vendees he does not describe them as coparceners, and in giving one of the boundaries of the property sold he gives it only as the shop of Kashi Ram alone. If really Kashi Ram and his nephews constituted members of a joint Hindu family, one could expect a recital to that effect. The absence of such a recital goes a long way to support the contention that they never considered themselves as members of a joint Hindu family. During the same period there were 13 mortgage deeds executed by third parties in favour of Kashi Ram and his two nephews, Ex. 6 is the first of these mortgages and is dated February 20, 1903, and Ex. 39 is the last of them dated November 2, 1918. In both the documents, the mortgagees are described in the same terms as those found in the sale deeds. Our remarks made in respect of the sale deeds would equally apply to these documents. During this period moneys were advanced by these three persons to others under bonds. The earliest of them is Ex. 7 dated September 20, 1904 and the last of them is Ex. 78 dated January 5, 1923. Kashi Ram and his two nephews are described in these documents in the same way as they are described in the sale deeds and the mortgages. These do not carry the matter further. There are seven decrees during the period - the earliest is Ex. 11 dated June 19, 1903 and the last is Ex. 27 dated May 8, 1917. The first of the suits which ended in the decree was filed by Kashi Ram and the two nephews, and the others by Kashi Ram and Bhagwan Dayal. Ex. 3 was a rent deed executed by one Chandi Prasad in favour of Kashi Ram and his two nephews in respect of a shop owned by them. Ex. 23 dated April 14, 1916 is the receipt for possession of the land taken by Kashi Ram and his two nephews in execution of a decree obtained by them. Ex. 56 dated November 7, 1909 and Ex. 59 dated February 26, 1912 are two sale deeds executed by Kashi Ram and his two nephews conveying certain property in favour of third parties. In Ex. 56 it is stated that the vendors have been in proprietary possession and occupation of the property and that "there is no co-sharer or co-partner of us who may stand in the way of making any sort of transfer". In Ex. 59 a similar recital is made. These two documents proceeded on the basis that the property was jointly acquired by the executants, and not only there is no mention that the executants belonged to a joint Hindu family, but the recitals that there is no co-sharer or co-partner indicate a consciousness on their part that they did not belong to a joint family. The documentary evidence we have so far considered does not establish that there was any reunion between Kashi Ram and his two nephews. Indeed, at its best, it only shows that the three of them owned the said properties jointly. If the properties were joint family properties, it is not possible to visualize why not even in one of these documents spreading over a long period no mention is made that they belonged to a joint Hindu family. It is common knowledge that in executing documents for and on behalf of a joint family or in purchasing properties for and on behalf of a joint family, the documents are ordinarily executed by or in favour of the manager of the joint family; at any rate, the executants or the purchasers of the property, as the case may be, are described as members of a joint Hindu family. Whatever ambiguity there may have been in these documents, it is dispelled by two important documents executed by Kashi Ram. Ex. U dated October 4, 1909 is a deed of agreement executed by Kashi Ram in favour of his nephew Raghubar Dayal, whose son he had taken in adoption. In that document he clearly states that all the properties are self-acquired properties. He also provides in that document that, in case he died before the adopted boy attained majority, Raghubar Dayal should be his guardian. There is also a statement therein that the adopted son shall

be the owner of his self-acquired properties and none of his relations shall have any right whatsoever with respect to his personal or ancestral properties. It is not suggested that in 1909 there were any disputes between Kashi Ram and his nephews. Indeed, the document was executed at a time when Raghubar Dayal's son was taken in adoption. The fact that Raghubar Dayal was appointed his guardian is also very significant. In these circumstances, this document deserves the greatest credence and the recitals must be accepted as true. The recitals show that Kashi Ram at any rate treated all his properties as his self-acquisitions, and Raghubar Dayal and Bhagwan Dayal accepted that position.

The next document Ex. 5 is also a very important document in the case. It is a will executed by Kashi Ram bequeathing his properties. It appears that the adopted son died soon after the adoption and Kashi Ram, who was 80 years old, executed a will bequeathing his properties to his two nephews. He asserts in the document that all his properties are his self-acquisitions. He describes thereunder the circumstances under which he brought up his nephews and says that both of them are co-partners in his money-landing business. He gives all his properties in equal shares to them. This document is destructive of the plaintiff's case. It is not, and cannot be, suggested that this document was executed to defraud third parties. It is faintly suggested that the document was executed to stifle any claim that the daughter of Kashi Ram might prefer to his properties on his death. Such a contemplated claim could have been more effectively prevented by asserting that the properties were joint family properties; but in the document the testator asserts that they are his self-acquisitions, and directs that his two nephews shall take the properties jointly under the said will. It is not necessary to consider whether this will would operate upon the shares of the two nephews in the properties jointly acquired by all the three of them. But the recitals are decisive of the question that Kashi Ram was not a member of a joint Hindu family and that the parties never considered themselves as members of a joint Hindu family.

Now we shall proceed to consider the documents that came into existence between 1924 and 1933. During this period the two brothers, who inherited the business from Kashi Ram, carried on the same jointly and purchased properties under 14 sales deeds. The earliest of them is Ex. 85 dated January 15, 1926 and the last of them is Ex. 72 dated February 19, 1933. In Ex. 85 the following recital is found :

> "I have received the said amount from Pandit Raghubar Dayal and Pandit Bhagwan Dayal, 'zamindars', sons of Pandit Jwala Prasad, resident of Sadar Bazar, Agra, and have transferred the house aforesaid. "

This document does not describe Raghubar Dayal as manager of the joint family or that the brothers are members of a joint Hindu family. So too, in Ex. 72 a similar recital is found. The recitals in the other sale deeds also follow the same line. Strong reliance is placed upon the proceedings of certain suits, which are marked as Exs. 43, 44 and 14. Ex. 43 is a copy of the plaint in suit No. 311 of 1927 filed by Raghubar Dayal and Bhagwan Dayal against one Khushali. In paragraph 4 of the said plaint it is stated :

> "Kashi Ram, one of the plaintiffs, is dead, the plaintiffs are his nephews and surviving coparceners of his joint family. They are competent to recover the said debt. "

Ex. 13, the decree passed in the aforesaid suit, shows that the suit was decreed ex parte. Ex. 44 is a copy of another plaint in Suit No. 306 of 1929 filed by the two brothers against another debtor. In

the plaint it is stated that Kashi Ram is dead and that the plaintiffs are his surviving heirs. Ex. 14 is the decree made therein. The recitals in Ex. 44 are ambiguous; but the recital in Ex. 43 clearly says that the brothers are the surviving coparceners of the joint family. The suits were filed for small amounts. It is obvious that those allegations were made to avoid the necessity of producing succession certificates. As a matter of fact the two brothers got the properties under a will, and in the circumstances the attitude of the brothers in the suits can easily be understood and reasonably be attributed to their anxiety to save some money by avoiding the necessity to get succession certificates.

The next series of documents relate to the period between 1933, and 1939 that is, from the year of the death of Raghubar Dayal to the year when disputes arose between the plaintiff and the defendant. During this period there were 5 sale deeds in favour of Bhagwan Dayal. The first of them is Ex. 89 dated May 23, 1933 and the last is Ex. 88 dated June 20, 1936. There is no recital in Ex. 89 to indicate the status of Bhagwan Dayal. The document shows that one of the co-vendees is Ajudhia Prasad, son of Ram Lal, one of the brothers of Bhagwan Dayal. It is not suggested, and indeed it is not the case of the appellant, that he was a member of a joint Hindu family along with Ajudhia Prasad. It may have been that Bhagwan Dayal had taken Ajudhia Prasad as partner in the business, and that is consistent with the case of the defendant. Ex. 88 also does not give any indication that Bhagwan Dayal was a member of the joint family along with his uncle, and thereafter with his brother. Ex. 83 is a sale deed whereunder Bhagwan Dayal exchanged a property purchased by him along with his brother for another property owned by a third party. There is no assertion in this document that the property was the joint family property of the brothers; nor is there any evidence to indicate that the widow of Raghubar Dayal had knowledge of the same. Bhagwan Dayal also executed certain sale deeds, the first of them dated April 9, 1934 and the last of them dated April 3, 1942 i. e., after the filing of the suit. Ex. 80 is a sale deed, in which for the first time we find the recital that the executant and Raghubar Dayal lived together jointly and the entire business was carried on jointly in the name of both of them and that after Raghubar Dayal's death the executant had been the manager, Karta and Mukhia of his joint family upto that time. There is nothing to show that the defendant had knowledge of this document. That apart, the recital that Bhagwan Dayal was the manager of his joint family in 1934 may not be inaccurate, for he was living jointly with sons. In any view, this recital, appearing for the first time after about 50 years and made behind the back of the defendant, would only be a self-serving statement.

Puttu Lal is the brother of Reoti Devi. He says in his evidence that Kashi Ram started the business, and that Kashi Ram, Raghubar Dayal and Bhagwan Dayal used to live in Agra in one and the same house and were joint in mess. His knowledge of the family affairs goes back only to the year 1910 and even his alleged admission does not indicate any joint status. Ex. 35 is the sale certificate issued to Raghubar Dayal in respect of a property purchased by him. Therein he is described as the proprietor of the firm styled as "Pandit Kashi Ram Bhagwan Dayal". It is suggested by the respondent that the said description is a mistake. But assuming it to be correct, it only shows that they were doing business jointly as a firm. Ex. 36 is a delivery receipt of the property covered by the sale certificate, Ex. 35. This only shows that Bhagwan Dayal took delivery of the property purchased on behalf of the firm. Ex. 84 is a sale deed executed by one Raja Ram in favour of Raghubar Dayal and Bhagwan Dayal. This property, though purchased by both the brothers, was subsequently given in exchange by Bhagwan Dayal alone to Raja Ram for another. These statements only show that the two brothers had a joint mess and that a property purchased by both of them was disposed of by Bhagwan Dayal subsequent to the death of Raghubar Dayal. There is nothing to show that the widow had knowledge of it.

Strong reliance is placed upon certain statements alleged to have been made by the respondent and her brother admitting the joint family status of the brothers. Ex. 45 in the statement made by the respondent in Suit No. 197 of 1933 on the file of the Court of the Munsif, Agra. That was a suit filed by Bhagwan Dayal against one Har Lal for recovery of some money. She stated therein that her husband used to live jointly with the plaintiff, that the business was also joint, and that the money-lending business was ancestral in their family. In the cross-examination she went back on her statement made in the examination-in-chief, for she stated therein that she had interest in the money left by her husband that she had power of disposal over the said money and that she and Bhagwan Dayal were the owners of it. These inconsistent statements in a short deposition indicate that she was not clear about the legal terminology used by her when in the examination-in-chief she said that her husband and Bhagwan Dayal were living jointly and that the business was ancestral in their house, for immediately when pointed questions were put as regards the title to the properties, she stated that she and Bhagwan Dayal were both owners. In the present suit she deposed that she made those statements at the request of Hay Lal. That apart, it is not disputed that after the death of Raghubar Dayal till the year 1939 she was living with Bhagwan Dayal and that Bhagwan Dayal was managing the entire properties and giving her small amounts towards her maintenance. Any statement made by her when she was under the control of Bhagwan Dayal cannot be of any evidentiary value particularly when her statements are also inconsistent with one another. On December 22, 1937 she made another statement in Suit No. 1013 of 1937. That was a suit filed by Bhagwan Dayal against one Ram Lal and others. In that suit Bhagwan Dayal represented himself to be the manager of the joint family. In the statement filed by the respondent, she stated that Bhagwan Dayal filed the suit as the managing agent of the family with her consent. To that statement the thumb-impression of the respondent was affixed. Ex. 52 is a plaint dated August 27, 1937 in Suit No. 506 of 1939 filed by Bhagwan Dayal against third parties to enforce a mortgage deed. In paragraph 2 of that plaint it was stated that both the mortgagees were full brothers and members of a joint Hindu family of the Mitakshara school, that the mortgage debt was advanced by them as such, and that Raghubar Dayal died in February 1937 leaving the plaintiff as the surviving coparcener. In that suit the respondent gave vakalat to an Advocate to look after her interest. Ex. 2 is a copy of the judgment in that suit. One of the issues was whether a succession certificate was necessary in order to enable the plaintiff to file the suit. In that case, the mortgagor, being a stranger, did not put in evidence to show that Bhagwan Dayal was not a member of a joint family along with Raghubar Dayal. Applying the presumption of law, the learned Munsif held that the brothers were joint and that the suit was maintainable without a succession certificate. It is obvious that the allegations in the plaint in that suit were made to avoid the production of a succession certificate. The respondent could not have had knowledge of these allegations in the plaint nor of the implication of the statements. She must have signed the vakalat at the instance of Bhagwan Dayal and given it to the Advocate engaged by him. Ex. 51 is a copy of the plaint is another suit filed by Bhagwan Dayal on August 17, 1933. Therein it is alleged that Bhagwan Dayal and Raghubar Dayal were brothers of a joint Hindu family and that the plaintiff as the surviving coparcener of the said joint family brought that suit. It was conducted by him in that capacity and a decree was obtained. This allegation in the suit was presumably made to avoid the necessity of getting a succession certificate. These recitals and assertions in the suits that Bhagwan Dayal was a member of a joint family along with his brother, Raghubar Dayal, could not have any evidentiary value against the respondent, for one thing there is nothing to show that she had knowledge of the suits and for the other that the recitals were made for a particular purpose to avoid the expenditure for obtaining a succession certificate.

Reliance is placed upon the evidence given by her in Suit No. 15 of 1939 which is marked as Ex. W in the present case. Under the stress of cross-examination certain facts were elicited from her. She

stated that the uncle and the two nephews were living together, that, when Kashi Ram was alive, he and the two nephews used to write accounts, and that they used to live as family members; but at the same time she also said that she did not know what was meant by "family" and that everyone was the head of his own family. No serious argument can be placed upon her vague evidence in support of the case of joint family.

But the conduct of the plaintiff after the death of his brother, Raghubar Dayal, is of more evidentiary value on the question of joint family than that of the ignorant widow; for unlike the respondent, he must have certainly known his legal rights. Schedule A shows that some of the alleged ancestral properties were recorded in the name of the respondent, Reoti Devi. The plaintiff also admits in the plaint that there was a mutation of the respondent's name in the revenue records in place of her deceased husband, but asserts that it does not clothe her with any legal title. The curious explanation he gives is that it was at the very best a gratuitous submission on the part of the plaintiff just out of affection and regard for the feelings of the defendant. The evidence discloses that after the death of her husband, the respondent was given only petty amounts, and it does not indicate any affection or regard towards the widow. Ex. R, the Khewat of village Chaoli, shows that in respect of that village Reoti Devi's name was mutated for that of her husband. Ex. S, the Khewat of village Chak Soem, and Ex. T, the Khewat of village Chaharum, contain recitals showing the name of Reoti Devi in the place of her husband. Exs. C, N and M are some of the orders whereunder Reoti Devi's name was mutated in place of her husband. The explanation offered by the plaintiff in the plaint is unconvincing. Her husband's name must have been entered in the revenue records without any objection by the plaintiff, as he was conscious that she and her husband were not members of a joint family and she was entitled to succeed to her husband's share.

From the aforesaid evidence the following facts emerge : In 1885 Kashi Ram started a business at Agra from and out of his self-acquisitions. He brought his nephews at different points of time and allowed them to take part in the business. It may also be that he had taken them as partners in the business and also purchased the properties in their joint names; but there is not a single document during his lifetime wherein Kashi Ram either admitted that he was a member of a joint family along with his nephews or the nephews asserted any joint status along with him. Indeed, on the two occasions when it became necessary to set up his claims, that is, when he executed the adoption deed and the will, Kashi Ram clearly stated that all his properties were his self-acquisitions. The documents that came into existence after the death of Kashi Ram also do not contain any allegations that the brothers were members of a joint Hindu family during Kashi Ram's lifetime or that they were members of a joint family after his death. The self-serving statements made by Bhagwan Dayal after the death of his brother, Raghubar Dayal, in 1933 were made to enable him to file suits without obtaining succession certificates. The alleged statements made by the widow of Raghubar Dayal have no evidentiary value, for she was admittedly under the control of the plaintiff and even the alleged admissions were ambiguous. On the other hand, the respondent, soon after the death of her husband, got her name mutated in respect of her husband's share in the properties; and this conduct is an unambiguous piece of evidence which indicates the consciousness on the part of the plaintiff that the defendant's husband was not a member of the joint family along with his brother or uncle. The fact that the brothers and the uncle lived together and did business together is consistent with their relationship of uncle and nephew, and the fact that they purchased or sold properties jointly is also consistent with their being mere partners or co-sharers. The recitals in some of the documents describing the nephews as co-partners also show that they were treated only as co-sharers. Whether ambiguity there may be, the adoption deed, the will and the mutation of the name of the widow in place of her husband in the revenue records dispell it. From this conduct, spreading over about 50 years, it is not possible to hold that the uncle and the nephews consciously entered

into an agreement to reunite and become members of a joint Hindu family.

This finding is enough to dispose of the appeal. But, as the evidence on the question of partition of the family is not as satisfactory as it should be, we propose to consider the alternative contention put forward by the appellant.

The learned Attorney-General, appearing for the appellant, contends that in a joint Hindu family if some members belonging to different branches or even to a single branch acquire property, they hold the property as members of a joint Hindu family and that that property vis-a-vis the said members will be joint family property.

On the other hand, Mr. A. V. Viswanatha Sastri contends that it is not possible under the Hindu law for some members only belonging to different branches or even to a single branch of a family to constitute a subordinate joint Hindu family and, therefore, any property acquired jointly by them would be governed only by the terms of the agreement between them whereunder the said property is purchased.

This question raises an interesting point of law and requires scrutiny of some of the decisions cited at the Bar. The legal impossibility under Hindu law of members of different branches of a joint Hindu family to constitute a subordinate joint Hindu family was pointed out by Bashyam Ayyangar in Sudarsanam Maistri v. Narasimhulu Maistri ((1902) I. L. R. 25 Mad. 149). There, one V and his three elder sons lived apart from his two younger sons and were in possession of some ancestral property. The two youngest sons acquired property from the funds of a business which had been carried on by them jointly. One of the questions raised was whether they acquired the property as members of the joint Hindu family. Bhashyam Ayyangar, J., in rejecting the contention discussed the principle governing the constitution of joint families and the properties acquired by the said families and made the following pregnant observations at p. 154 :

> "The Mitakshara doctrine of joint family is founded upon the existence of an undivided family, as a corporate body..... and the possession of property by such corporate body. The first requisite therefore is the family unit; and the possession by it of property is the second requisite..... the conception of a Hindu family is a common male ancestor with his lineal descendants in the male line, and so long as that family is in its normal condition, viz., the undivided state - it forms a corporate body, such corporate body, with its heritage, is purely a creature of law and cannot be created by act of parties, save in so far that, by adoption, a stranger may be affiliated as a member of that corporate family. "

Adverting to the nature of the property owned by such a family, the learned Judge proceeded to state :

> "As regards the property of such family, the 'unobstructed heritage' devolving on such family, with its accretions, is owned by the family as a corporate body, and one or more branches of that family, each forming a corporate body within a larger corporate body, may possess separate 'unobstructed heritage' which, with its accretions, may be exclusively owned by such branch as a corporate body. "

Then dealing with the problem whether two or more members of different branches, or of one and the same branch, of a family can acquire a property with the incidents of a joint family property,

such as right by birth etc., the learned Judge observed thus at p. 155 :

> But so long as a family remains an undivided unit, two or more members thereof whether they be members of different branches or of one and the same branch of the family - can have no legal existence as a separate independent unit; but if they comprise all the members of a branch, or of a sub-branch, they can form a distinct and separate corporate unit within the larger corporate unit and hold property as such. "

The above passages clearly lay down the principle behind the rule. Hindu law recognizes only the entire joint family or one or more branches of that family as a corporate unit or units and that the property acquired by that unit in the manner recognized by law would be considered as joint family property. But in the case of two or more members of a joint Hindu family belonging to different branches or even to the same branch, they do not acquire the property as a corporate unit or for the corporate unit and, therefore, they are only governed by the terms of the contract, express or implied, whereunder they have acquired the property.

The same principle has been applied by a Full Bench of the Madras High Court in Chakra Kannan v. Kunhi Pokker ((1016) I. L. R. 39 Mad. 317) to a Marumakkattayam tarwad. Dealing with tavazhi, which corresponds to a branch of a joint Hindu family under the Hindu law Srinivasa Ayyangar, J., observed thus at p. 336 :

> "These groups cannot of course be created by agreement of parties. The tavazhis or the subordinate groups constituting the tarwad are, I think, capable of holding properties as corporate units with the incidents of tarwad property, at the same time retaining their joint interest in the properties of the main tarwad, just as branches and sub-branches in a Mitakshara joint Hindu family are capable of holding properties with the incidents of joint Hindu family property. I am also of opinion that some only of the members of a tavazhi cannot form a corporate unit capable of holding property as such. "

This decision also recognizes the legal conception that only a joint family and its branches or sub-branches can be corporate units capable of acquiring property, and that only two or more members belonging to different branches or even to one and the same branch cannot constitute such a unit and therefore, cannot acquire property with the incidents of joint Hindu family property.

A division bench of the Madras High Court elaborated the same theme in The Official Assignee v. Neelambal Ammal ((1933) 65 M. L. J. 798) and came to the conclusion that it is not possible for two members of an undivided Hindu family to deal with the property acquired by them in such a way as to impress upon it the incidents of a joint family property for themselves and their descendants. Reilly, J., observed at p. 803 thus :

> "As I understand the matter, a Hindu joint family firm is a special form of partnership, the members of which must be either the whole of a joint family or the whole of a branch of a joint family. "

The learned Judge practically adopted the reasoning of Bhashyam Ayyangar, J., in Sudarsanam Maistri v. Narasimhulu Maistri ((1902) I. L. R. 25 Mad. 149) so too, the Allahabad High Court in Himmat Bahadur v. Bhawani Kunwar ((1908) I. L. R. 30 All. 352) accepted the view expressed by

Bhashyam Ayyangar, J.

The Judicial Committee in Jogeswar Narain Deo v. Ram Chund Dutt ((1896) L. R. 23 I. A. 37) clearly ruled that "the principle of joint tenancy is unknown to Hindu law except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law which under that law passes by survivorship". The same principle was restated by the Judicial Committee in Bahu Rani v. Rajendra Bakhsh Singh ((1933) L. R. 60 I. A. 95). If two or more members of different branches or of the same branch of a joint Hindu family cannot acquire a joint property impressed with the incidents of joint family property and if the Hindu law does not otherwise sanction acquisition of property by them as joint tenants as understood in the English law, their rights and liabilities can only be governed by the terms of the agreement under which they purchased the property.

Now let us look at some of the decisions cited on behalf of the appellant in support of the contention that there can be a joint acquisition by such members giving rise to the right of survivorship though not right of birth. Strong reliance is placed upon the decision of the Judicial Committee in Nathu Lal v. Babu Ram ((1935) L. R. 63 I. A. 155). There, on the death of one of two brothers, who were members of a Hindu family the surviving brother claimed that he had been joint with his brother and that the whole of the property passed by survivorship to him so that the widow of his deceased brother took nothing by inheritance. The dispute was referred to arbitrators, who found that the two brothers had been joint, and divided the joint property between the parties in certain unequal proportions. The widow subsequently executed a deed of gift of part of the property awarded to her in favour of one of her daughters. On the death of the daughter, four sons of another daughter of the widow, claiming to be reversioners of their grandfather obtained possession of the property passed by the deed of gift. The nephew-in-law of the deceased daughter and a purchaser from him sued to recover possession of the property on the ground that the widow had held an absolute estate and had by the deed of gift conveyed an absolute estate in the property in her daughter. The Judicial Committee held that on the death of the daughter the property passed by survivorship to the surviving brother and not by inheritance to the widow; but that upon the true construction of the award, the widow was given an absolute interest. On that finding the suit was decreed. But a scrutiny of the facts shows that one Buddhi had three sons, Ram Sahai, Ji Sukh Ram and Sita Ram, and that Buddhi and one of his sons, Sita Ram left the family and the remaining two brothers Ram Sahai and Ji Sukh Ram, continued to be members of the joint family, The Judicial Committee rightly held that the properties purchased for the family by the two brothers constituting the joint family were joint family properties. It is not a case of some members of different branches or some members of the same branch purchasing properties jointly, but a case of all the members of a joint Hindu family purchasing properties for the family.

Nor does the decision in Sham Narain v. The Court of Wards, on behalf of Jung Bahadoor ((1873) 20 W. R. 197) afford any real assistance to the appellant. There, two Hindu brothers, who held ancestral estate in common with a third brother, acquired other property jointly, the learned Judges held, on the evidence, that the property was held by the two brothers an members of a joint Hindu family. The learned Judges held that the principle of blending of a separate property with the joint family property and the principle of acquisition of property by united members of a divided family would equally apply to an acquisition of property by two of three brothers of a joint Hindu family, Bhashyam Ayyangar, J., in Sudarsanam Maistri v. Narasimhulu Maistri ((1902) I. L. R. 25 Mad. 149) criticised that judgment and observed that he should have no hesitation in dissenting from the said decision. The learned Judges missed the real point, namely, that some members of different branches of a joint Hindu family cannot from a corporate unit. In our view, that decision is wrong and must be overruled.

Nor does the decision of the Judicial Committee in Rampershad Tewarry v. Sheochurn Doss ((1866) 10 M. I. A. 490) support the contention of the appellant. In that case on of the five brothers constituting an undivided Hindu family acquired personal property. With that money and with the aid of his brothers he established and carried on banking business at five different places. The Judicial Committee held that the property so acquired was joint family property in which the brothers were entitled to share. A perusal of the judgment shows that all the brothers were members of an undivided Hindu family and there was a nucleus of ancestral property and that all of them together acquired the property jointly, though the banking business was started with the help of the self-acquisitions of one of the brothers. This again is a case of all the members of a joint Hindu family acquiring property for the family.

In Mayne's Hindu law, 11th edn., the legal position has been neatly stated thus at p. 347 :

> "So long as a family remains an undivided family, two or more members of it, whether they be members of different branches or of one and the same branch of the family, can have no legal existence as a separate independent unit; but all the members of a branch, or of a sub-branch, can form a distinct and separate corporate unit within the larger corporate family and hold property as such. Such property will be joint family property of the members of the branch inter se, but will be separate property of that branch in relation to the larger family.
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> The principle of joint tenancy is unknown to Hindu law except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law. "

The legal position may be stated thus : Coparcenary is a creature of Hindu law and cannot be created by agreement of parties except in the case of reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate corporate body. The said family unit, whether the larger one or the subordinate one, can acquire, hold and dispose of family property subject to the limitations laid down by law. Ordinarily, the manager, or by consent, express or implied, of the members of the family, any other members or members can carry on business or acquire property, subject to the limitations laid down by the said law, for or on behalf of the family, Such business or property would be the business or property of the family. The identity of the members of the family is not completely last in the family. One or more members of that family can start a business or acquire property without the aid of the joint family property, but such business or acquisition would be his or their acquisition. The business so started or property so acquired can be thrown into the common stock or blended with the joint family property in which case the said property becomes the estate of the joint family. But he or they need not do so, in which cans the said property would be his or their self-acquisition, and succession to such property would be governed not by the law of joint family but only by the law of inheritance. In such a case, if a property was jointly acquired by them, it would not be governed by the law of joint family; for Hindu law does not recognize some of the members of a joint family belonging to different branches, or even to a single branch, as a corporate unit. Therefore, the rights inter se between the members who have acquired the said property would be subject to the terms of the agreement whereunder it was acquired. The concept of joint tenancy known to English law with the right of survivorship is unknown to Hindu law except in regard to case specially recognized by it. In the present case, the uncle and the two nephews did not belong to the same branch. The acquisitions made by them jointly could not be impressed with the incidents of joint family property. They can only be co-sharers or co-tenants, with the result that their properties passed by inheritance and not by survivorship.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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