

Jai Kishan Dass and Others

Vs

Smt. Nirmala Devi and Others

Civil Appeal No. 717 of 1981

(V. D. Tulzapurkar, Sabyasachi Mukharji JJ)

04.01.1984

JUDGMENT

1. After hearing counsel for the appellants at some length as also counsel for the respondents for some time, we are satisfied that there is no substance in the appeal.
2. In our opinion, the High Court was right in taking the view that the present suit (out of which the appeal has arisen) filed by the appellants for a declaration that they were members of the larger joint Hindu family of Pannalal Girdharlal and as such were entitled to a share in the joint family business and the properties of such larger joint Hindu family was barred by res judicata by reason of the decisions in the earlier litigations between the parties and / or their predecessors. It appears that in the years 1940-41 there was a general disruption in the larger joint Hindu family whereafter the erstwhile joint family business was carried on by five brothers as partners under the firm name and style of M/s. Pannalal Girdharlal. Since the appellant Jai Kishan Dass (son of Bal Kishan Dass, being one of the five brothers) started interfering and inter-meddling with the firm's business, the partnership firm M/s. Pannalal Girdharlal filed suit No. 338 of 1957 against the appellant for an injunction restraining him from causing such interference and the appellant had raised a contention that business belonged to the larger joint Hindu family of five brothers (including his own father) and that the larger joint Hindu family subsisted and as such he had a right to participate in the family business and on such rival contentions specific issues arose in that suit as to whether there was a disruption in the family of five brothers in the year 1940-41 and whether thereafter the joint family business was converted into a partnership business of the said five brothers and a clear-cut finding was recorded by all the three courts (including the High Court which decided Second Appeal, being R.S.A. No. 89D/64) that there was such disruption of the larger joint Hindu family as a result whereof the five brothers had separated from each other, who remained as heads of each one's individual joint family and that thereafter the family business was carried on by them as partners. Such a finding was necessitated by reason of specific contentions raised by the present appellant 1 before those courts and, therefore, that finding must operate as res judicata so far as the instant suit is concerned in which a declaration was sought by the appellants that there existed still the larger joint Hindu Family and to the extent to which the appellants sought partition of a share in such larger joint Hindu family. Apart from this litigation there was another earlier litigation between the parties to which not the present appellant 1 but his father Bal Kishan Dass was a party which resulted in an award decree being made as a result whereof partition by metes and bounds came to be effected. But apart from this aspect of partition having been effected by metes and bounds at a later stage, the initial finding recorded in suit No. 338 of 1957 that there had been a disruption in the larger joint Hindu family amongst the five brothers in the year 1940-41 is sufficient to bar the instant suit of the nature filed by the appellants in the case.

3. In view of above we confirm the conclusion arrived at by the High Court on the issue of res judicata and as such the present appeal deserves to be dismissed. It is, however, made clear that it would be open to appellant 1 to proceed with the suit against his own father and to take such steps as may be advised in that suit and obtain appropriate reliefs therein.

4. The appeal is, therefore, dismissed. All interim orders are vacated and there will be no order as to costs of this appeal.

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