

Bhagwant P. Sulakhe

Vs

Digamber Gopal Sulakhe and Others

Civil Appeals Nos. 2622 and 2622-A of 1969

(CJI P. N. Bhagwati, A. N. Sen, D. P. Madon JJ)

30.09.1985

JUDGMENT

AMARENDRA NATH SEN, J. -

1. This is an unfortunate litigation between near relations and this litigation between the parties is now going on for over four decades.

2. These two appeals have been filed with the certificate granted by the High Court against the judgment of the High Court by the plaintiff in the suit instituted by him for partition of joint family properties, for accounts and other reliefs mentioned in the plaint.

3. By a common judgment delivered by the High Court in two separate appeals filed by the defendants in the suit against the judgment of the trial court, the High Court has substantially reversed the judgment of trial court.

4. The facts of the case have been fully set out in the judgment of the trial court and also in the judgment of the High Court. We shall briefly indicate the facts material for the purpose of disposal of these two appeals. As the High Court disposed of both the appeals by one common judgment and the two appeals which have been preferred against the same judgment have been heard together, this judgment will dispose of both the appeals.

5. One Pandharinath Martand Sulakhe died leaving behind him his son Vishwanath, Gopal, Govind and Bhagwant and considerable properties. The properties left by him included agricultural lands, a number of houses in Barsi and three shops. Of the three shops one was a sharafi shop at Barsi, another cloth shop at Barsi and the other a commission agency and sharafi shop at Bombay. Business in all these three shops was carried on in the name of P.N. Sulakhe. Of the four sons Vishwanath died in 1910 leaving behind him his son Dattatraya who happens to be the second defendant in the suit. Govind, one of the brothers who constituted a joint family after the death of their father Pandharinath Sulakhe, separated from the joint family in 1914 taking his share of the family properties. Though Govind separated in 1914, the other brothers and the sons of Vishwanath continued to remain joint and lived as members of the joint family. Bhagwant who filed a suit for partition as the plaintiff was the youngest of the four brothers. he graduated in law in the year 1914 and commenced practice as a lawyer at about that time.

6. In 1922, a public limited company named Lokmanya Mills Ltd. (hereinafter referred to as the Company) was intended to be floated and with that end in view, defendant 2 Dattatraya and the plaintiff Bhagwant entered into a partnership under the name and style of M/s Sulakhe & Co. with

four outsiders. A managing agency agreement between the Company and the partnership firm of Sulakhe & Co. was executed. The mill actually went into production in 1938. On the basis of the managing agency agreement between the Company and the firm of Sulakhe & Co. defendant 2 Dattatraya acted as the managing agent upto 1935 and thereafter the plaintiff Bhagwant became the managing agent. Sometime after the plaintiff Bhagwant had been appointed the managing agent, defendant 2 Dattatraya was appointed as the Director of the Company. It appears that in the year 1935, a new Adat shop had been started at Barsi. All the shops were run in the name of P.N. Sulakhe. It is not in dispute that all the shops were joint family business. It is also not in dispute that the remuneration paid to defendant 2 and also the plaintiff Bhagwant as managing agent and also the amount of commission falling into the shares of defendant 2 Dattatraya and the plaintiff Bhagwant out of the commission earned by the managing agency firm were treated as joint family properties and were shown in the joint family books so long as disputes between the parties had not arisen. During the period when there were no disputes between the parties, the Director's fees paid to defendant 2 Dattatraya and the plaintiff Bhagwant were treated as income of the joint family and even the professional income of the plaintiff Bhagwant earned by him as a lawyer was also thrown into the joint family hotch-pot and was treated as joint family income. In the income tax returns filed on behalf of the joint family, all these amounts were shown as income of the joint family. It appears that everything did not go well with the members of the joint family and disputes arose between the parties soon after the commencement of the Second World War. The plaintiff Bhagwant by his letter dated July 15, 1941 addressed to defendant 2 Dattatraya informed him that the remuneration received by him as the managing agent of the Company on the basis of the managing agency agreement, fees received by him as the Director of the Company and his income from his profession as lawyer were his personal income and should be treated as such. By this letter, he made it clear that he was not prepared to throw any of these incomes into the joint family hotch-pot and he asked defendant 2 Dattatraya that all these amounts should be shown as his separate income for the purposes of income tax and should be credited to his personal Khata in sharafi shop account. Disputes and differences between the parties became more acute and the plaintiff on December 8, 1941 intimated to defendant 2 Dattatraya his intention to cause severance of the joint family status. Thereafter attempts were made to divide the properties amicably between the parties without success. The plaintiff Bhagwant claimed that the remunerations paid to him by the Company as managing agent, the fees paid to him as Director of the Company and his income from his profession as a lawyer were his personal income and as such his personal property. The defendants did not accept the claim of the plaintiff Bhagwant that the remuneration paid to him as managing agent by the Company and the fees paid to him as the Director of the Company, could be his personal income and the defendants claimed that all such amounts received by him belonged to the joint family and formed part of the joint family properties. Ultimately Bhagwant filed a suit being Suit 166 of 1943 in the original side of the High Court in Bombay. In this suit Gopal was the first defendant and Dattatraya was the second defendant and the suit was filed in the original side of the Bombay High Court on the basis that the Adat shop and sharafi shop were situated within the original jurisdiction of the Bombay High Court. In this suit, Bhagwant the plaintiff did not make any reference to the managing agency of the Company in the plaint and he claimed partition of the joint family shares and movable and immovable properties mentioned in the plaint as belonging to the joint family, seeking to reserve his right under Order 2, Rule 2 of the Code of Civil Procedure to file a suit for partition of the joint family properties situated at Barsi. The plaintiff Bhagwant in this suit claimed various other reliefs. He prayed for a direction that the immovable properties and the business at Bombay should be ordered to be partitioned under the directions of the Court, that the joint family firms should be wound up, that the sum of Rs 6843-3-6 claimed by him as his personal income as a lawyer from his profession from 1940 should be awarded to him with interest at 12%

interest on the same and he also claimed as consequential relief that the defendants should be ordered to account for the profits earned by them from the joint family business from the date of severance and also of the income derived by them from immovable properties belonging to the joint family. In this suit Govind as defendant 1 and Dattatraya as defendant 2 were impleaded and no other members of their branches were made parties to the suit. On the death of defendant 1 Gopal during the pendency of the suit his five sons were brought on record as his heirs and legal representatives. The defendants resisted the suit of the plaintiff on various grounds, mainly however on the ground that the plaintiff had asked for partition only of some of the joint family properties without including in the suit various other joint family properties, particularly the shares and interest of the joint family in the Company. The defendants contended that the plaintiff was bound to include in the suit all the joint family properties which also comprised all the interests of the joint family in the Company and various other immovable properties in the possession of the plaintiff. It may be noted that defendant 1 Gopal and defendant 2 Dattatraya filed two suits in the Court of Civil Judge against the Company and the plaintiff for payment of the sum of money credited to the joint family in the books of the Company in accordance with the respective shares of the parties. In the suits various proceedings were taken and various orders including the appointment of the Court Receiver for all the properties of the joint family were passed from time to time. It does not become necessary for us to refer to these proceedings at any length as in the present appeals these questions are no longer germane. It appears that as a result of the various proceedings in the suit most of the joint family properties came to be divided amongst the parties in accordance with their respective shares and the disputes between the parties now centre on the following questions :

- (1) Whether the shares in the Company standing in the names of the various members of the family are joint family properties ?
- (2) Whether the commission received by the two members of the family namely, defendant 2 Dattatraya and plaintiff Bhagwant from the managing agency firm in respect of their shares in the firm out of the total commission paid by the Company to the managing agency firm belongs to the joint family ?
- (3) Whether the remuneration received by the plaintiff Bhagwant from the Company as managing agent on the basis of the managing agency agreement with the Company is the personal property of the plaintiff or whether the same belongs to the joint family ?
- (4) Whether the remunerations paid to the plaintiff as the Managing Director of the Company is his personal income or is the property of the joint family ?
- (5) Whether there was any amount in cash in the Mahalaxmi room belonging to the family and if so, how much ?
- (6) Whether there were any ornaments and jewellery belonging to the joint family ? If so, in whose possession and custody are such ornaments lying and what is the value of such ornaments ?

It is to be noted that during the pendency of the proceedings in the Court relating to partition of the joint family properties the managing agency agreement had come to an end and it has also become inoperative by virtue of the provisions of law. The plaintiff Bhagwant was the managing agent on the basis of the managing agency

agreement and thereafter he had been appointed as the Managing Director of the Company. The learned Trial Judge on the question of the remuneration paid to the plaintiff as managing agent on the basis of the managing agency agreement and the fees paid to him as the Director of the Company has held in favour of the plaintiff that these are the personal incomes of the plaintiff and do not belong to the joint family. The learned Trial Judge also held in favour of the plaintiff on the question of cash money belonging to the joint family found in the Mahalaxmi room and also on the question of accountability of the defendants in respect of the joint family business. The High Court in appeal has held that the income received by the plaintiff as managing agent and as Managing Director of the Company could not be considered to be the personal property of the plaintiff and they belonged to the joint family and the High Court has reversed the decision of the Trial Judge on this question. On various other questions also, the High Court has held in favour of the defendants reversing the decision of the trial court. The correctness of the High Court judgment is questioned by the plaintiff in the appeals.

7. The principal controversy between the parties relates to the question whether the remuneration paid to the plaintiff Bhagwant by the Company as the managing agent and also as the Managing Director is his personal property or whether the same forms a part of the joint family property. The contention of the plaintiff-appellant Bhagwant is that the remuneration received by him for acting as managing agent and also as Managing Director of the Company is his personal income and cannot be considered to belong to the joint family, whereas it is the case of defendant 2 Dattatraya and the heirs of defendant 1 Gopal that all such remuneration received by the plaintiff must belong to the joint family and must be held to constitute part of the joint family properties. They further contend that the shares in the Company subsequently purchased by the members of the plaintiff's family must also be held to belong to the joint family. As the happens to be the most important question which has been urged at length before us, we propose to deal with this question in the first place. In our view it will be appropriate to consider this question under two separate heads, namely, (1) the remuneration received by the plaintiff Bhagwant as managing agent and (2) remuneration received by him as Managing Director. We first propose to take up the question whether the remuneration received by the plaintiff from the Company as managing agent, is his personal income or the same constitutes a part of the joint family property.

8. For a proper appreciation of this question it is necessary to consider some broad facts which are not in serious dispute.

9. A partnership agreement was entered into on January 3, 1923 between defendant 2 Dattatraya, plaintiff Bhagwant, one Ramchandra Moreshwar Sane, one Moolchand Jotiram Baldote, one Nemchand Shivram Baldote and one Ganoba Andoba Gavane to start a mill by the name "The Lokmanya Mills Barsi Limited" as promoters and agents of the said mills on terms and conditions set out in the deed of partnership dated January 3, 1923. This deed of partnership which is not in dispute and which has been exhibited in the suit provides :

An agreement dated 3rd of the month of January 1923. We, Dattatraya, Vishwanath Sulakhe, caste Brahmin, age 37, profession trade, resident of Barsi and Bhagwant Pandharinath Sulakhe, caste Brahmin, age 33, profession pleader, resident of Barsi, and Ramchandra Moreshwar Sane, caste Brahmin, age 64, profession pleader, resident of Barsi and Moolchand Jotiram Baldote, caste Marwari, resident of Barsi, age 48, profession trade, and Nemchand Shivram Baldote, caste Marwari, age 39, profession trade, resident of Barsi, and Ganoba Andoba Gavane, caste Maratha,

age 58, profession agriculturist, resident of Pangaon, Taluka Barsi, Distt. Sholapur, all of us make an agreement as follows :

We all of us have agreed and decided between us on November 29, 1922 to start a mill by name "The Lokmanya Mills Barsi Limited". The following are the terms of agreement, that we have agreed to, between us all as the promoters and agents of the mills :

1. The agency firm should be named as "Sulakhe & Co." and the agreement of this firm is to be in force and existence for the period of 35 years from the date of registration of the said Company.
2. Messrs Dattatraya Vishwanath Sulakhe and Bhagwant Pandharinath Sulakhe should jointly contribute towards the purchase of shares of the value of Rs 40,625 (forty thousand six hundred and twenty-five). Mr Moolchand Jotiram should purchase in his name shares of a value of Rs 25,000 (twenty five thousand), Nemchand Shivram should purchase in his name share of the value of Rs 9375 (nine thousand three hundred and seventy-five) and Ganoba Andoba Gavane should purchase in his name shares of the value of Rs 25,000 (twenty-five thousand) and Ramchandra Moreshwar Sane should purchase in his name shares of the value of Rs 3000 (Rupees three thousand). The above-named persons, or in case of their death, or if they become incapable on account of some illness or if they have been unable to purchase the said shares or have been unable to pay further instalments after purchase of the said shares on account of some difficulty, their heirs should as stated above purchase the shares or pay the amount of further instalments.
3. After the shares are purchased as stated in the forgoing clause, the agents are to get 10% commission on the net profit earned by the Lokmanya Mills Barsi Limited. Out of this 10% Commission 1 1/2% amount is to be paid to a committee appointed in that behalf for the purpose of spending that amount over public charitable purposes and the remaining 8 1/2% commission is agreed to be distributed as follows :

- #1. Messrs D.V. Sulakhe and B.P. Sulakhe to get .. 3 1/4%2.
- Moolchand Jotiram .. 2%3.
- Ganoba Andoba Gavane .. 2%4.
- Nemchand Shivram .. 3/4%5.
- Ramchandra Moreshwar Sane .. 1/2%##

The total amount of 8 1/2% is to be thus distributed.

4. The amount of profits is to be distributed as stated in the forgoing clause, after it has been received by the managing agents from the Company. If any partner or his heirs had not purchased the shares originally or not paid amount of further instalments after allotment on account of some inability stated in the last foregoing Clause 2, he will lose his share in the agency firm and his share is to be distributed among the remaining partners in proportion to the capital contributed by each of them. The partners must keep intact their shares for the period of five years from the date of allotment. The partners have no right to dispose of or mortgage their shares within that period of five years. If any of the partners fails to do so, he stands to lose his interest in the partnership.

5. The agents' firm is entitled to receive 2 1/2% commission on the amounts of expenditure which the Company may incur towards the construction of buildings, purchase of machinery and other necessaries, purchase of lands and other materials. Out of the amounts so received, an amount of 1 1/2% is to be paid towards public charitable purposes and the remaining amount is to be distributed among the partners in proportion to their shares described above. This amount is to be received in the first instance by the managing agents, and after setting apart the amount of charity, he has to distribute the balance amongst the partners in proportion of their respective shares.

6. All the responsibility of all work of whatever kind to be performed by the managing agents' firm such as, raising of capital of the said mill, running of the mill, keeping of accounts, purchase of land, purchase of machinery, appointing and removing of servants, solicitors auditors, banker, agents, brokers, and underwriters to keep accounts and prepare the reports of the Company and do all such other work as the managing agents are required to do shall be on the managing agent Mr D.V. Sulakhe or his family. His family means the joint family of three persons viz. : D.V. Sulakhe, B.P. Sulakhe and Gopal Pandharinath Sulakhe. The other partners have nothing to do with the above work and they have no right to interfere with the power of the managing agents. The Company will hold only the managing agent responsible for his faults and the other partners are not to be responsible to the Company.

7. The preliminary expenses of the mill will be about Rs 8000 (eight thousand). This amount is to be paid to the managing agent Mr D.V. Sulakhe, by all the partners except Mr Sane, in proportion to their respective shares. The managing agent is to return this amount of expenditure to the partners from the proceeds of the shares of the Company that may be collected after its registration.

8. Some one person from among the family of Sulakhe described above shall always be an ex-officio Director. Some other person from amongst the agency firm, or some other person from outside elected by majority, and who is not in the agency firm shall be a special Director, but he shall not be in office permanently. The term of his office will be as of the other Directors and he shall be eligible for re-election. Some person from the firm or someone from outside according to the opinion of the firm shall always be among the Directors.

9. No partner of the agent's firm, shall except with the leave of the Directors, enter in any other agency firm of a mill of the like tenure and situate within the limits of Barsi Taluka. If anyone of them does so enter he will stand to lose his share in this partnership firm of this mill.

10. A partner of the agent's firm shall be entitled as any other outsider to do business with the Company and enter into private transactions on reasonable terms and to take commission from the Company.

11. From the date the shares of the value of Rs 7,00,000 (seven lacs) are sold the managing agent Mr Sulakhe shall get a remuneration (salary) of Rs 600 per month. The other partners or the charity fund shall have no interest whatsoever therein. From the time when products shall be begun to be manufactured in the mill, the managing agents are to receive a remuneration of Rs 1000 (salary)

every month. Out of that amount Rs 600 are to be taken by the managing agent every month and the remaining amount of Rs 400 (four hundred) is to be divided among all the partners of the agency firm including Sulakhe, in proportion to their respective shares (till the profits of the Company come to 10% by the way of dividend) so that the partners may get an interest over their amounts at the rate of 5% per annum, but from and after the date when the dividend of the Company shall be distributed at the rate of 10% on the amount of shares, the other partners shall have no right over the said sum of Rs 400 (four hundred) to be received every month, and this amount is to be taken by the managing agent Mr Sulakhe as the increase in his remuneration (salary). After that period other partners will have no claim whatever against the said amount of Rs 400.

12. The rights of the partners in the agency firm are to pass to their respective lineal descendents or to their respective assignees after the expiration of the period of 5 years allotment. The right of a partner shall go to other persons by partition among his family or by heirship and if such persons to whom the rights of a partner in the agency firm are to pass, are more than one, they shall unanimously elect someone from among themselves for the purpose. If there is disagreement between them the Board of Directors shall choose some such person from among them and the person so chosen shall take interest in the agency firm. The Company or the managing agents shall not take cognizance of the other sub-partners.

The terms of agreement between us all are as above, and for that this agreement (in writing), is prepared and is signed by us all and a copy of this agreement i.e. a counterpart of it is delivered to each of us all. This agreement made and signed on the 3rd of the month of January in the year of 1923, and it is in the handwriting of Sabottam Annaji Madhekar, a resident of Barsi.

Sd Dattatraya Vishwanath Sulakhe

Sd Bhagwant Pandharinath Sulakhe

Sd Ramchandra Moreshwar Sane

Sd Moolchand Jotiram Marwari

Sd Nemchand Shivram Marwari

Sd Ganoba Andoba Gavane.

10. The said partnership firm of M/s Sulakhe & Co. consisting of the aforesaid six partners entered into a managing agency agreement on February 5, 1923 with the Company. Relevant provisions of the managing agency agreement dated February 5, 1923 may be set out :

1. The agents will faithfully and with best of their ability perform the offices of the Secretaries, Treasurers and agents of the Company for purpose of carrying on to the best advantage the business of the Company so long as the Company and the agents shall continue to carry on their respective business (unless prevented from so doing in manner hereinafter mentioned) at the remuneration upon the terms and subject to the conditions hereinafter particularly mentioned and described.

2. In consideration of the agreement hereinafter contained on the part of the agents and in further consideration of the agents having advanced the Company - the Company hereby promise and agree with the agents that the agents shall be the Secretaries, Treasurers and

agents of the Company for the period of 35 years from the date of these presents unless prevented from so doing in manner hereinafter mentioned provided always and it is hereby agreed and declared that after the lapse of the said period of 35 years the agents shall not be removed from the office as the Secretaries, Treasurers and agents but shall carry on their respective business unless found guilty of fraud in the management of their duties as Secretaries, Treasurers and agents of the Company.

2-A. The managing agents shall not transfer or assign or cause to be transferred or assigned the present managing agency agreement of the Company, their right, title and interest therein to any person or persons or firm or company during the continuance of the security created by the Indenture of Mortgage dated the 29th day of December 1950 without first obtaining the approval in writing of the Corporation to any such transfer or assignment and the Company shall not cause or permit or suffer to be transferred or assigned the present managing agency agreement of the Company or the right, title and interest of the managing agents therein to any other person or persons or firm or company during the continuance of the said security without first obtaining the approval in writing of the Corporation to such transfer or assignment nor shall the Company appoint any other person or persons or firm or company to be the managing agents of the Company during the continuance of the said security without first obtaining the approval in writing of the Corporation to such appointment. (Amended as per Special Resolution No. 2 in extraordinary general meeting held on March 18, 1951.)

3. A commission at the rate of 10% per annum on the annual net profits of the said Company after making all allowance and deductions from revenue for interest on loans and deposits and working expenses chargeable against profits without making any deductions for or in respect of interest on debentures, income tax, super tax or any other tax based on profits or of any amount carried to insurance, reserve, depreciation or sinking fund or to any other special fund or in respect of any expenditure on capital amount or on the wages or remuneration which shall be payable to bankers, auditors, solicitors, Mukadams, clerks, brokers, underwriters or any other officers or employees who may be employed by the said firm for or on behalf of the Company or for carrying on and conducting the business of the Company and for any rent, cost of postage, telegram, printing stationery or other expenses or travelling expenses incurred and to be paid by the said Company.

The Company shall not pay and the managing agents shall not receive any commission during the pendency of the loan from Industrial Finance Corporation of India as provided above in Clause 3 without previous consent in writing of the Corporation unless the interest and instalment of principal sum due in any year as provided by the Indenture of Mortgage dated December 29, 1950 have been duly paid by the Company to the Corporation. (Amended as per Special Resolution No. 2 in extraordinary general meeting held on March 18, 1951).

4. The agents are entitled to 2 1/2 per cent commission on all sum or sums expended towards the purchase of the land, construction of the mill premises, including outhouses etc., the cost price of machinery, appliances and initial stock in trade necessary in establishing and starting the mill.

But during the pendency at the said loan, provisions contained in Clause 4 above relating to payment of commission to the managing agents on the capital expenditure shall remain suspended. (Amended as per Special Resolution No. 2, in extraordinary general meeting held on March 18, 1951)

5. Out of the commission of 10 per cent and out of the amount of 2 1/2 per cent commission as stated above agents will have to set apart for public charitable purposes 1 1/2 per cent of their gains. The purpose shall be uplift of the masses in the Bombay Presidency, without any distinction of caste, creed or religion in matter social, educational, economic or national as the committee of three persons, two of whom shall be unconnected with the firm of the agency and one from the agency firm. The first such members shall be N.C. Kelkar, Esqr., B.A., L.L.B, Editor of Kesari, Poona, M.R. Jayalkar, Esqr., Bar-at-Law, Bombay and R.M. Sane, Esqr., pleader, Barsi.

6. On the death or retirement of any of the said members their place or places shall be filled in by the remaining members of the committee, or if he or they fail or neglect to make the appointment as aforesaid within a reasonable time, such appointment is to be made by the Board of Directors strictly conforming to the condition stated above that the majority of the committee should be independent and unconnected with the firm of the Agency.

7. The commission due to the agency shall be payable yearly immediately when the accounts are made up.

8. After deducting the amount from the commission for public purposes as stated above the remaining amount will be received by Mr D.V. Sulakhe and his successors and divided among the members of the firm as agreed upon between them.

9. The Directors are authorised to increase the amount of remuneration or the percentage of commission on profits or to allow any bonus if they think that the profits of the concern are encouraging enough to grant an increase.

9-A. The said clause shall remain modified to the extent that so long as any moneys due to the Corporation under the Indenture of Mortgage dated 29th day of December 1950 remain unpaid, no payments whatsoever under this clause shall be made to the managing agent without first obtaining the approval in writing of the Corporation to such payment. (Amended as per Special Resolution No. 2 in extraordinary general meeting held on March 18, 1951)

10. The remuneration of the agents' firm shall be Rs 600 per month from the date of allotment and Rs 1000 per month from the date when products are begun to be manufactured and the said remuneration is always to be received from the Company by Mr D.V. Sulakhe or his successors.

11. If the said firm or any member of the firm shall at any time hereinafter act as Mukadams or brokers of the Company or as selling agents of the Company's yarn or cloth or for purchase of other articles such as coal, wool machinery, oil-seeds or other products or other things required for the business of the Company they shall be paid such commission or additional remuneration as shall be agreed to between them and the Directors.

The said clause shall remain modified to the extent that "so long as any moneys due to the Corporation under the Indenture of Mortgage dated 29th day of December 1950 remain unpaid, no payment whatsoever under the clause shall be made to the managing agent without first obtaining the approval in writing of the Corporation to such payment". (Amended as per Special Resolution No. 2 in extraordinary general meeting held on March 18, 1951)

12. Until the Company is registered all expenses of whatever nature of and incidental to the promotion thereof shall be defrayed in the first instance by the firm of agency as agreed between them. The sum or sums so expended will be duly refunded to the aforesaid firm when the first call

in respect of the subscribed shares of the Company is paid in and realized.

13. All work of whatsoever kind which is usually attended to or done by the managing agents in connection with the business of the Company by virtue of the Articles of Association of the Company such as raising the necessary capital, erection of the mill premises, employment of staff, establishment of agencies, buying of raw materials, disposing of the finished products of the mill, keeping regular accounts, preparing the statutory reports etc. etc. will be attended to and all powers of the managing agents shall be vested in and exercised by Mr D.V. Sulakhe alone or in case of his retirement or death by Mr B.P. Sulakhe if he survives him, or by a person of the Sulakhe family nominated unanimously by all the surviving major male members of the family of Messrs D.V. Sulakhe, B.P. Sulakhe and Gopal P. Sulakhe and in case of disagreement between these members in nominating a member from the Sulakhe family, the Board of Directors will choose someone from the said Sulakhe family for acting as a managing agent on behalf of the firm. There will be no interference or obstruction from any other member of the agency firm who will have neither any voice nor control of any kind over the matters of management of the business of the Company such as those enumerated above. All the responsibility with regard to such work lies solely and entirely on the said D.V. Sulakhe and his successor or successors as aforesaid.

14. The other partners of the agency firm who have no right to take any part in the management of the agency business or no right to interfere with such management will not be liable in any way whatsoever to the Company for any acts of commission or omission, misfeasance, malfeasance, fraud, misappropriation or any other act or acts of the said D.V. Sulakhe and his successors. The Company will look to and hold responsible the said D.V. Sulakhe and his successors aforesaid in respect of the management of the agency business in all branches and in all its aspects.

15. Either D.V. Sulakhe or B.P. Sulakhe may act as ex-officio Director and after them some person from the Sulakhe family shall be entitled to act as ex-officio Director and he will not be liable to retirement or he will not be removed from such office.

15-A. The firm of agency has always a right of appointing any one of them or outsider as a Special Director and he will be liable to retire as other Directors, but he is eligible for re-election by the firm of agency.

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20. The shares of the profits of the agency business to which each partner is entitled according to their mutual agreement will pass to their direct lineal descendants by way of an ancestral and hereditary right unless alienated or disposed of by such partner during his lifetime. If the said share devolves on more than one of such lineal descendants by way of inheritance or otherwise they (the said descendants) should elect one of them to be the member of the firm on their behalf. If they cannot agree among themselves for the purpose of such election the Board of Directors has the right to elect one of them to be their representative in the agency firm for receiving commission; neither the Board of Directors nor the agents are bound to recognise the rights of the other heirs and legal representatives as aforesaid.

11. Two of the relevant articles, namely, Article 113-A and Article 146 of the Articles of Association may be noted. Article 113-A reads :

M/s D.V. or B.P. or Gopal P. Sulakhe or any other member of the Sulakhe family

who may be chosen for that purpose in terms of the agency agreement shall be an Ex-officio Director of the Company. Agents' firm have, however, subject to the terms of the agency agreement to appoint any other person whether a member of the firm or not, as a Special Director. The person appointed as Special Director as aforesaid shall after the lapse of one year, retire but be eligible for re-election.

Article 146 of the Articles of Association provides as follows :

The firm of M/s Sulakhe & Co. and the partners or members for the time being constituting the said firm and their successors in business notwithstanding any change in the constitution or in the name or style of the said firm by the death, retirement or insolvency of any member of the said firm shall be and they are hereby appointed the managing agency of the Company for the period and upon the terms, provisions and conditions set out in the agreement referred to in article hereof. Such agreement may be modified in such manner as may be mutually agreed between the firm and the Directors and the Board is hereby authorised to execute the said agreement on behalf of the Company.

12. It has to be borne in mind that at the time when the Company was incorporated and its articles were adopted and also at the time when the Company entered into the managing agency agreement with Sulakhe & Co. and when the deed of partnership of the firm of Sulakhe & Co. was executed, the plaintiff Bhagwant and defendant 2 Dattatraya were admittedly the members of the joint family and no dispute of any kind had arisen amongst the members of the joint family. It is not in dispute that 325 shares which were initially purchased in the Company - 200 in the name of defendant 2 Dattatraya and 125 in the name of the plaintiff Bhagwant - were paid for by the joint family out of the joint family funds. It is also an admitted position that the entire amount of remuneration which was received by defendant 2 Dattatraya and plaintiff Bhagwant not only on account of their shares of commission under the managing agency agreement on the basis of the partnership deed but also on account of the Directors' fees paid to them and also on account of the salary paid to defendant 2 Dattatraya who acted as the managing agent on behalf of the firm was treated as joint family property. Defendant 2 Dattatraya had continued to be the managing agent of the Company till 1935. It is also not in dispute that when the plaintiff Bhagwant took over as the managing agent from defendant 2 Dattatraya in 1935, the position continued to be the same and the remuneration received by him formed part of the joint family income till the dispute raised by plaintiff Bhagwant by his letter dated July 15, 1941 to defendant 2 Dattatraya. The agreement of partnership clearly indicates that the plaintiff Bhagwant and defendant 2 Dattatraya became members of the firm M/s Sulakhe & Co. which was appointed the managing agent of the Company on the basis of the managing agency agreement, representing the joint family and for the benefit of the joint family. Since the establishment of the partnership firm of Sulakhe & Co. on the 3rd day of January 1923 and since this firm's appointment as the managing agent of the Company under the managing agency agreement dated February 5, 1923 till the dispute was raised by the plaintiff in July 1941 this position appears to be accepted by all without any kind of reservation. All moneys received by the plaintiff Bhagwant and defendant 2 Dattatraya from the Company, were treated as joint family income, were entered in the books of account of joint family and were shown in income tax returns to be the income of the joint family.

13. The facts and circumstances of this case clearly indicate that in the partnership agreement and the managing agency agreement in which the plaintiff Bhagwant and defendant 2 Dattatraya were parties, they had become parties on behalf of the joint family representing the joint family and the

entire remuneration received by them, whether by way of commission or the Directors' fees or by way of salary for having acted as the managing agent, was joint family income. On the materials on record we have no hesitation in coming to the conclusion that the plaintiff Bhagwant and defendant 2 Dattatraya became the partners of Sulakhe & Co. which was appointed as the managing agent of the Company on the basis of the managing agency agreement for the benefit of the joint family and their interest in the partnership firm and managing agency was a part of joint family assets and whatever income was earned either by the plaintiff Bhagwant or by defendant 2 Dattatraya on the basis of the managing agency agreement belongs to the joint family and formed part of the joint family property. As the entire income coming in the hands of the plaintiff Bhagwant or defendant 2 Dattatraya on the basis of the partnership agreement and the managing agency agreement, whether on account of commission or by way of Directors' fees or remuneration for acting as the managing agent, belonged to the joint family and formed part of the joint family property, the same position must necessarily continue in the eye of law so long as the partnership agreement and the managing agency agreement continued. The plaintiff by seeking to bring about a severance in the status of the joint family, cannot deprive the joint family of this property and the income derived on the basis of the managing agency agreement continues to remain the property of the joint family, so long as this joint family asset is not partitioned and otherwise continues to remain in existence. We have, therefore, no hesitation in holding that the remuneration received by the plaintiff Bhagwant from the Company for acting as the managing agent on the basis of the managing agency agreement must necessarily be held to be the joint family property and the plaintiff Bhagwant cannot claim the same to be his personal property.

14. Mr Tarkunde had addressed a novel and interesting argument that even if the income derived by the plaintiff Bhagwant from the Company by way of remuneration for acting as the managing agent can be considered to be the income of the joint family, there should be an apportionment of this income between the plaintiff and the joint family, as the plaintiff alone had rendered all services on behalf of the family and he should, therefore, be held entitled to retain a part thereof for himself for the services rendered by him. This argument of Mr Tarkunde sounds attractive and may raise an interesting question in an appropriate case. But in the facts and circumstances of this case and taking into consideration the true nature of the partnership and the managing agency agreement and the conduct of the parties, we are of the opinion that there is no merit in the plaintiff's claim for retaining any part of the remuneration received by him from the Company for the services rendered by him. The entire income arising out of the managing agency agreement and accruing to the two members of the family, namely, the plaintiff Bhagwant and defendant 2 Dattatraya who might have rendered the services, had been earned for and on behalf of the family and as representatives of the joint family. Defendant 2 Dattatraya had continued as the managing agent for a number of years and there had been no question of apportionment of any income derived by him as his remunerations for the services rendered by him as managing agent. The character of any joint family property does not change with the severance of the status of the joint family and a joint family property continues to retain its joint family character so long as the joint family property is in existence and is not open to any member of the joint family to convert any joint family property into his personal property.

15. We now proceed to consider whether the remunerations received by the plaintiff Bhagwant from the Company as the Managing Director of the Company belonged to the joint family or not. The position of the Managing Director is entirely different from the position of the managing agent on the basis of the managing agency agreement between the firm of Sulakhe & Co. and the Company and the position of the Managing Director stands entirely on a different footing. At the time the plaintiff was appointed the Managing Director of the Company on October 19, 1957 with effect from January 16, 1957, there was complete disruption of the joint family and there was no joint

family in existence. In fact at that point of time litigation between the parties was going on. By virtue of the incorporation of Section 87-A in the Indian Companies Act by amendment in 1937 the duration of any managing agency agreement was limited to a period of 20 years only at a time, though on the expiry of the period of 20 years the managing agency agreement could be renewed by virtue of the provisions contained in sub-section (2) of Section 87-A of the Act. In view of the change brought about with regard to the duration of the managing agency agreement at a time the managing agency agreement automatically came to an end on the expiry of the period of 20 years and though there was the provision with regard to the renewal of the managing agency agreement it appears that the managing agency agreement was not renewed. It appears that the Board of Directors of the Company had passed a resolution on June 28, 1956 for the renewal of the managing agency agreement. The managing agency agreement was not ultimately renewed and it does not appear that any action was taken by the firm of Sulakhe & Co. or any partner thereof for obtaining renewal of the managing agency agreement for a further term after 1957. On the other hand, it appears that the Company had amended its Articles of Association and had proceeded to appoint the plaintiff Bhagwant as the Managing Director. It is significant to note that no partner of the firm of Sulakhe & Co. which had been appointed as the managing agent of the Company or no member of the joint family took any steps for challenging the validity of the amendment of the Articles of Association or the validity of the appointment of the plaintiff as the Managing Director of the Company.

16. Before we proceed to decide whether the remuneration received by the plaintiff as the Managing Director of the Company can be considered to be part of the joint family property, it will be appropriate to refer to a decision of this Court for proper appreciation of the legal position. Though a number of decisions had been cited from the Bar, we do not consider it necessary to refer to all the decisions, as in our view the legal position has been very lucidly and clearly discussed in the case of Raj Kumar Singh Hukam Chandji v. CIT ((1971) 1 SCR 748 : (1970) 2 SCC 436 : (1970) 78 ITR 33) by this Court after reviewing the earlier decisions on this question. After considering various earlier decisions, this Court at page 758-759 observed : (SCC p. 444, paras 16-17)

At first sight there appears to be conflict between the two lines of decisions namely Kalu Babu case (CIT v. Kalu Babu Lal Chand, (1959) 37 ITR 123 : AIR 1959 SC 1289), Mathura Prasad case (Mathura Prasad v. CIT, (1966) 60 ITR 428 (SC)), two Dhanwatey cases (V.D. Dhanwatey v. CIT, (1968) 68 ITR 365 : AIR 1968 SC 683 and M.D. Dhanwatey v. CIT, (1968) 68 ITR 385 : AIR 1968 SC 682) and Krishna Iyer case (P.N. Krishna Iyer v. CIT, (1969) 73 ITR 539 : AIR 1969 SC 893) on one side Palaniappa Chettiar case (S. RM. CT. PL. Palaniappa Chettiar v. CIT, (1968) 68 ITR 221 : AIR 1968 SC 609), Dhakappa case (CIT v. Gurunath V. Dhakappa, (1969) 72 ITR 192 (SC)) and D.C. Shah case (CIT v. D.C. Shah, (1969) 73 ITR 692 : (1969) 1 SCC 550 : (1969) 3 SCR 586) on the other. The line that demarcates these two lines of decisions is not very distinct but on a closer examination that line can be located. In order to find out whether a given income is that of the person to whom it was purported to have been given or that of his family, several tests have been enumerated in the aforementioned decisions but none of them excepting Kalu Babu case (CIT v. Kalu Babu Lal Chand, (1959) 37 ITR 123 : AIR 1959 SC 1289), makes reference to the observations of Lord Sumner in Gokal Chand case (Gokal Chand v. Hukum Chand Nath Mal. (1920-21) 48 IA 162 : AIR 1921 PC 35) that "in considering whether gains are partible, there is no valid distinction between the direct use of the joint family funds and a use which qualifies the member to make the gains by his own efforts". We think that that principle is no more valid. The other tests enumerated are :

(1) whether the income received by a coparcener of a Hindu undivided family as

remuneration had any real connection which the investment of the joint family funds;

(2) whether the income received was directly related to any utilization of family assets;

(3) whether the family had suffered any detriment in the process of realization of the income; and

(4) whether the income was received with the aid and assistance of the family funds.

In our opinion from these subsidiary principles, the broader principle that emerges is whether the remuneration received by the coparcener in substance though not in form was but one of the modes of return made to the family because of the investment of the family funds in the business or whether it was a compensation made for the services rendered by the individual coparcener. If it is the former, it is an income of the Hindu undivided family but if it is the latter then it is the income of the individual coparcener. If the income was essentially earned as a result of the funds invested the fact that a coparcener has rendered some service would not change the character of the receipt. But if on the other hand it is essentially a remuneration for the services rendered by a coparcener, the circumstance that his services were availed of because of the reason that he was a member of the family which had invested funds in that business or that he had obtained the qualification shares from out of the family funds would not make the receipt, the income of the Hindu undivided family.

This decision was no doubt given in a case arising out of an income tax matter. The various cases which have been referred in the judgment also arise out of income tax matters and they mainly deal with the question of determination of the nature and character of remuneration received by a member of the family-whether the remuneration so received is income of the joint family property or is the personal income of the individual - for the purpose of assessment of income tax on such income. It is no doubt true that the observations which we have earlier quoted have been made on the nature and character of the income received by way of remuneration by a member of the joint family while considering the question of assessment of income tax on such income; but, in our opinion, the legal principles enunciated in this decision for determining the true nature and character of the remuneration received by any member of the joint family apply equally in deciding the nature and character of the remuneration received by the Managing Director in the instant case. This decision, to our mind, correctly lays down the tests which have to be considered for deciding the question whether the income derived by any member of the joint family by way of remuneration as Managing Director is his personal income or is the income of the joint family.

17. In the facts and circumstances of this case, we have no hesitation in coming to the conclusion that the remuneration received by the plaintiff Bhagwant as Managing Director of the Company from the Company is his personal income and cannot be considered to be the income of the joint family. At the time the plaintiff Bhagwant became the Managing Director of the Company, the joint family had been completely disrupted and it cannot be said that the plaintiff was the member of any joint family of which the defendants were also members. In fact, litigation between the parties was going on. Though defendant 2 Dattatraya was also a member of the managing agency firm Sulakhe and Co., it does not appear that he took any steps for reappointment of the said firm as the managing agent. There were four outside partners interested in the managing agency agreement and it does not appear that the defendant Dattatraya or the other outside partners of the managing agency firm Sulakhe & Co. had taken any steps against the Company for not renewing the managing agency agreement. It is to be borne in mind that it was for the Company to renew the managing agency

agreement. For the purpose of appointing the plaintiff as the Managing Director, the Articles of Association of the Company had to be amended and Article 146-A had been incorporated in the Articles of Association by amendment. It does not appear that defendant 2 Dattatraya or the other outside partners of the managing agency firm Sulakhe & Co. or any other shareholder of the Company sought to prevent the Company from amending the Articles of Association or challenged the validity of the amendment of the articles. The appointment of plaintiff Bhagwant as Managing Director after the amendment of the articles also does not appear to have been challenged by defendant 2 Dattatraya or any of the other partners of the managing agency firm. The termination of the managing agency agreement with the partnership firm Sulakhe & Co. appears to have been accepted by the members of the said firm including defendant 2 Dattatraya who along with the plaintiff Bhagwant were partners of the firm representing the joint family. It is also to be noted that in the partnership firm of Sulakhe & Co. which was appointed the managing agent of the Company on the basis of the managing agency agreement, the four partners who did not belong to the family held majority shares in the partnership although by virtue of the agreement between the parties they had agreed that either the plaintiff Bhagwant or defendant 2 Dattatraya would act as the managing agent of the Company on behalf of the managing agency firm and should receive the remuneration which would be paid to the managing agent acting as such on behalf of the firm. These outside partners who held the majority shares in the partnership firm of Sulakhe & Co. which had been appointed and had been acting as the managing agent of the Company on the basis of the managing agency agreement, raised no protests for not renewing managing agency for a further term, though under sub-section (2) of Section 87-A of the amended provision, the managing agency agreement which stood terminated in 1957, could have been extended. It appears, therefore, that the majority of the partners had lost interest in the renewal of the managing agency agreement. In any event, the undisputed facts remain that the managing agency agreement was not renewed after 1957 and no action was taken against the Company or anybody else by the firm of Sulakhe & Co. which had been acting as the managing agent or by any partner thereof either for renewal of the managing agency agreement or for not renewing the managing agency agreement. It also does not appear that the firm Sulakhe & Co. or any of its partners took any action to prevent the Company from amending its articles and for appointing Bhagwant as the Managing Director of the Company. The facts and circumstances of the case go to indicate that the partners of the firm Sulakhe & Co. which had been acting as the managing agent on the basis of the managing agency agreement with the Company accepted the termination of the managing agency on the expiry of the term prescribed under the amended law without any protest and did not seek to enforce the right of renewal of the managing agency agreement or of any other provision of the agreement. As the managing agency agreement had ceased to exist at the time the plaintiff Bhagwant was appointed the Managing Director of the Company and as at that time there was no joint family of the plaintiff Bhagwant and the defendants in existence, the plaintiff Bhagwant cannot be said to have been appointed as the Managing Director of the Company either because of the managing agency agreement or because of his being a member of the joint family. The facts and circumstances make it clear that the partnership agreement or the managing agency agreement had no relevance to the appointment of the plaintiff Bhagwant as the Managing Director of the Company. As we have earlier indicated the Company had initially contemplated to renew the managing agency on the expiry of the term prescribed by law and the Board of Directors had passed a resolution accordingly. Subsequently, for reasons known to the Company, the Company decided not to continue the managing agency agreement and decided to appoint plaintiff Bhagwant as the Managing Director of the Company. For the purpose of appointing the plaintiff Bhagwant as the Managing Director, the Company had to amend its Articles of Association and the Company, in fact, duly altered the Articles of Association of the Company. Neither the partnership firm of Sulakhe & Co. which had been appointed as the

managing agent of the Company and had been acting as such till the expiry of the term nor any partner thereof had taken any effective step for renewal of the managing agency agreement or had made any effective protest for not reappointing the firm Sulakhe & Co. as the managing agents of the firm and for appointing the plaintiff as Managing Director of the Company after having amended the Articles of Association of the Company. The facts and circumstances of the case also do not go to indicate that the appointment of the plaintiff as Managing Director of the Company was by way of any return to the family because of the investments of the family funds in the business of Company. As earlier noticed the joint family had purchased only 325 shares at the time of the managing agency agreement with the Company and, in fact, other parties have invested a much larger amount in the purchase of shares. Taking into consideration the total investment made in the Company by various parties it appears that the contribution of the joint family appears to be insignificant. It cannot, therefore, be said that the appointment of the plaintiff as Managing Director, at a time when there was complete disruption of the joint family and the members of the family were fighting in Court, was by way of any return on the investment made by the joint family. It is quite clear that the plaintiff Bhagwant was appointed as the Managing Director by the Company for services to be rendered by him, as the Company might have been impressed by his performance as the managing agent for a number of years. Though undoubtedly the plaintiff Bhagwant acted as the managing agent for and on behalf of the joint family and for benefit of the joint family, yet what must have weighted with the company is the kind of services rendered by him to the Company. The Company was concerned with his services and not with the question whether he was rendering the services for and on behalf of the family. The plaintiff Bhagwant was therefore appointed as the Managing Director for the services rendered by him and for services to be rendered by him. The remuneration which the Company agreed to pay to the plaintiff Bhagwant for acting as the Managing Director was for the services to be rendered by him. This remuneration must, therefore, be the personal income of Bhagwant and does not belong to the joint family. The decisions of this Court and the principles enunciated by this Court which we have earlier noted clearly support the view we have taken.

18. In the facts and circumstances of this case there can be no question of the plaintiff Bhagwant being a trustee or acting as the trustee for the benefit of the joint family in relation to his appointment as the Managing Director of the Company.

19. It has to be borne in mind that it was the partnership firm of Sulakhe & Co. which was appointed as the managing agent of the Company and on the basis of the partnership agreement and the managing agency agreement, defendant 2 Dattatraya and thereafter the plaintiff Bhagwant acted as the managing agent of the Company and was entitled to receive the remuneration from the Company for acting as such managing agent. As we have already noticed the partnership firm consisted of six members, four of whom were outsiders and did not belong to the family. These four outside members of the partnership firm had, in fact, held the majority shares in the partnership. Defendant 2 Dattatraya and the plaintiff Bhagwant had become members of the partnership firm for and on behalf of the joint family and were representing the joint family interest. The firm had entered into the managing agency agreement with the Company. The managing agency of the Company was that of the partnership firm in which the four outside members with a majority of shares in the partnership were interested and the managing agency firm cannot, therefore, be considered to be an asset of the joint family. It was the interest of defendant 2 and the plaintiff Bhagwant in the managing agency firm on the basis of their shares in the partnership which belonged to the joint family. Furthermore, the managing agency was an agreement between the Company and the partnership firm. It would no doubt be open to the partnership firm to ask for renewal of the managing agency agreement and it would be equally open to the Company to decide

what the Company should do. We have earlier observed that on the expiry of the term of the managing agency by virtue of the changes introduced in the Companies Act no effective steps appear to have been taken by the firm Sulakhe & Co. which acted as the managing agent or any partner thereof for renewal of the managing agency agreement. The alternations of the Articles of Association of the Company and the appointment of the plaintiff as Managing Director after the amendment of the articles also went without any effective challenge by the firm of Sulakhe & Co. or any partner thereof or by any shareholder of the Company. The effect of not renewing the agreement was that the interest of the partnership firm of Sulakhe & Co. in the Company as the managing agent thereof with all the rights and privileges on the basis of the said agreement came to an end. With the termination of the managing agency agreement the interest of the joint family in the managing agency on the footing that two of the members of the joint family, namely, defendant 2 Dattatraya and plaintiff Bhagwant were as partners of the firm associated with the managing agency and were acting as the managing agent on the basis of the partnership agreement and the managing agency agreement also ceased. As we have earlier observed, the appointment of the plaintiff Bhagwant as Managing Director was not because of any special investment by the joint family in the Company and the remuneration which was agreed to be paid by the Company to the plaintiff Bhagwant for acting as the Managing Director of the Company was not by way of any return on the investment of the joint family in the Company and the plaintiff Bhagwant became entitled in his individual capacity as the Managing Director of the Company to the remuneration offered to him for the services to be rendered by him as such Managing Director. The plaintiff Bhagwant earned the remuneration in his personal capacity for services rendered by him. The argument advanced on behalf of the defendants that plaintiff Bhagwant was in the position of a trustee with regard to the remuneration received by him for acting as Managing Director of the Company and is accountable to the joint family for all such remunerations received by him is, therefore, in the facts and circumstances of this case without any merit.

20. At the time when the Company was incorporated and admittedly when the family was joint, 325 shares in the company were purchased - 200 in the name of defendant 2 Dattatraya and 125 in the name of the plaintiff Bhagwant. Admittedly the price for these shares was paid out of the joint family funds. There can, therefore, be no dispute that these shares belong to the joint family in which each branch of the joint family has an equal share. In fact, it is so conceded before us by the parties concerned. It appears that 79 further shares in the Company in the name of the plaintiff Bhagwant and four further shares in the name of defendant 1 Gopal were purchased. It further appears that the purchase price of these 83 shares were also paid out of the joint family funds. So far as the four shares purchased in the name of defendant 1 it is not disputed that the said four shares belong to the joint family. Though the plaintiff claims that the 79 shares belong to him and not to the joint family on the plea that the price paid by the joint family for the purchase of the said shares was paid to the plaintiff Bhagwant by way of loan of him, we must hold taking into consideration the facts and circumstances of this case and in particular the fact that the story of the loan by the joint family, has not been accepted, that these 79 shares also belong to the joint family. Shares which were subsequently purchased by the parties were purchased when the status of the joint family had been completely disrupted and there is no evidence to indicate that the joint family had paid for the shares subsequently purchased by the parties. Shares had been purchased by the plaintiff, his sons and other members of the family. Plaintiff's son is a doctor and has his own income. It is not established that the plaintiff purchased shares out of the remunerations earned by him as the managing agent or the Managing Director of the Company. Even if we assume that the plaintiff had paid for these shares out of the remunerations paid to him by the Company for acting as the managing agent or the Managing Director, the joint family can have no claim with regard to

any such share. The plaintiff Bhagwant may in the facts and circumstances of this case be accountable to the joint family for the remuneration earned by him as managing agent, but he is not a trustee and the shares purchased by him will not belong to the joint family. We have already held that the plaintiff was not in the position of a trustee for the benefit of the joint family in his capacity as the Managing Director of the Company and the remuneration which the plaintiff earned belonged to him and was his personal income. We, therefore, hold that 200 shares standing in the name of defendant 2, 125 shares standing in the name of the plaintiff Bhagwant, four shares standing in the name of defendant 1 and the 79 shares standing in the name of the plaintiff or his sons which were purchased out of the joint family funds belong to the joint family and each branch has equal one-third share in these shares.

21. We now proceed to consider the question of cash money which was found in the Mahalaxmi room. The plaintiff claims that in the Mahalaxmi room there was about a lac of rupees belonging to the joint family which had been secreted by the defendants. When the Receiver counted the money, it was found that there was cash money in Mahalaxmi room over twenty-one thousand rupees. There is no evidence on record which would justify the claim of the plaintiff that there was a lac of rupees in the Mahalaxmi room. Materials on record show that there was some cash money belonging to the joint family in the Mahalaxmi room. To ascertain exactly how much cash money was there in the Mahalaxmi room, it becomes necessary to direct that a proper account should be taken. The litigation between the parties is going on for decades, and any reference directing accounts to be taken on this question would necessarily mean that the litigation would be prolonged further. Taking an overall view of the matter we have decided that in the interest of justice and in the interest of the parties it will be appropriate in the facts and circumstances of this case that this Court should determine a reasonable amount on the basis of the materials which are there on the record and on the basis of the submission made by the counsel and the counsel for the parties also suggested that in the interest of the parties concerned it would be desirable that this Court should fix an amount which the Court will consider reasonable. We propose to take this aspect into consideration while passing the decree in these appeals.

22. The last question which falls for determination is on the question of ornaments, jewellery and utensils. There is no proper evidence on record which will justifiably lead to the conclusion that any ornaments, jewellery or utensils belonging to the joint family are in the possession of any particular party. Materials on record, on the other hand, suggest that these movables have already been partitioned. We are, therefore, inclined to take the view that whatever ornaments, jewellery and utensils are in the possession of any of the parties now belong to them and there is no question of any party being in possession of any joint family ornaments, jewellery and utensils.

23. In the result we hold :

(1) That all remuneration received by the plaintiff Bhagwant from the Company by way of commission, Directors' fees and remunerations as the managing agent of the Company so long as the managing agency agreement continued its existence till 1957, belong to the joint family and the plaintiff is bound to render true and faithful accounts of all such amounts received by him and to pay to the other two branches their share, namely, one-third to each of the other branches who happen to be the defendants in the suit.

(2) The position of defendant 2 Dattatraya who was the other person in the firm of Sulakhe & Co. representing the joint family and who also acted as a managing agent

is also the same. There is no question, however, of defendant 2 Dattatraya rendering any account in respect of such sums received by him as all such sums received by him had been treated without any kind of dispute as joint family income and had been entered in the books of the joint family. The question of rendition of any account by defendant 2 Dattatraya, therefore, does not arise.

(3) The remuneration received by the plaintiff as Managing Director of the Company on his appointment as Managing Director of the Company in 1957, belongs to the plaintiff personally and does not belong to the joint family. The entire remuneration received by the plaintiff after the termination of the managing agency agreement and after his appointment as Managing Director of the Company is the personal income of the plaintiff and the joint family or any member thereof has no interest or claim in the amounts so received by the plaintiff.

(4) 200 shares of the Company in the name of defendant 2, 125 shares in the Company in the name of the plaintiff which were initially acquired by the joint family and the subsequent acquisition of 79 shares by the plaintiff in his name or in the name of his sons and the acquisition of four shares in the name of defendant 1 belongs to the joint family and each branch of the joint family has an equal interest in the shares. In other words, these 408 shares belong to the joint family and these 408 shares have to be divided equally amongst the three branches of the family. All other shares in the Company standing in the names of the parties or their children do not belong to the joint family and form no part of the joint family property.

(5) So far as the cash money in the Mahalaxmi room is concerned there was undoubtedly some cash money lying in that room belonging to the joint family. The exact amount of cash money lying in the Mahalaxmi room is difficult, if not impossible, to ascertain on the basis of the materials on record. It will be equally difficult to ascertain the exact amount even if a reference is directed as on the materials on record and after hearing the submissions of the counsel for the parties, we find that there is no dependable material to come to any definite conclusion. The plaintiff claims that there was approximately a lac of rupees whereas the Receiver found only an amount of over Rs 21,000. The plaintiff Bhagwant is no doubt entitled to a reasonable amount in respect of money lying in Mahalaxmi room and we shall take this amount into account while passing the final decree herein.

(6) So far as the ornaments, jewellery and utensils are concerned, we hold that there is no material on record to establish that any party is in possession of any ornaments, jewellery and utensils belonging to the joint family. The ornaments, jewellery and utensils in the possession of the respective parties, will be treated as their own properties. There is nothing further to enquire into or decide on these questions.

24. On the basis of the aforesaid findings we now proceed to consider the nature of the relief that should be granted and the kind of decree that we should pass in these appeals. We are of the opinion that taking into consideration that the litigation between the parties has been going on for over four decades, it will be in the interest of justice and in the interest of parties that any kind of decree should not be passed which may have the effect of prolonging the litigation. In that view of the matter we are of the opinion that we should not pass any decree for accounts, as any reference for taking accounts will result in prolongation of litigation to the detriment of the interest of the parties.

The learned counsel appearing on behalf of the parties also submitted before us that we should pass a final decree to put an end to the litigation. To enable us to pass a final decree without any direction for taking of accounts between the parties we directed all the parties to place before us the relevant facts and the necessary figures in respect of their claims on each head. On the basis of the directions given by us, the parties have furnished the Court with relevant facts and figures relating to their claims in respect of every item of claim and have also made their submission before us on the basis thereof. We have carefully considered all the materials which have been placed before us by the parties and also the submissions made in support thereof by the parties. On a careful consideration of all the materials placed before us and also the submissions made on behalf of the parties, we now proceed to pass the final decree in these appeals in the following terms :

(1) The plaintiff Bhagwant who happens to be the appellant before us will pay a sum of rupees two lacs to the defendants to be divided equally between the two respective branches of the defendants. In other words, the plaintiff Bhagwant will pay a sum of rupees one lac to the heirs of defendant 1 Gopal and a sum of rupees one lac to defendant 2 Dattatraya.

(2) The said sum of rupees two lacs will be paid to the defendants in the manner aforesaid, namely, one lac to the heirs of defendant 1 Gopal and rupees one lac to defendant 2 Dattatraya within a period of two months from date.

(3) In default of payment of the said sum within the aforesaid period, the decretal amount of rupees one lac in favour of each branch of the defendants will carry interest at the rate of 9% per annum from the date of default till recovery of the said amount by the defendants. In other words, the interest on the said sum of rupees one lac each for defendant 2 and the heirs of defendant 1 Gopal will run from December 1, 1985, if the said amount is not paid by the end of November 1985.

(4) If the amount of rupees one lac or any part thereof remains unpaid by the end of November 1985 to the heirs of defendants 1 Gopal or to defendant 2 Dattatraya, the said defendants or either of them who would not be paid the entire sum of rupees one lac by the end of November 1985 will be entitled to execute the decree for the said amount of rupees one lac or any part thereof which will remain unpaid with interest on the said amount, on the basis of the decree passed herein.

(5) It is declared that 408 shares which we have held to be the property of the joint family as recorded in our finding No. 2 belong to the joint family and the plaintiff Bhagwant, defendant 2 Dattatraya and heirs of defendant 1 Gopal shall have each one-third share in the said 408 share in the Company. The said 408 shares shall be divided equally amongst the three branches and the plaintiff will get 136 shares, defendant 2 Dattatraya 136 shares and the heirs of defendant 1 Gopal will get 136 shares.

(6) Mr S.B. Sulakhe son of the plaintiff Bhagwant who happens to be the present Managing Director of the Company is hereby appointed commissioner without any remuneration to divide the shares equally in the aforesaid three lots and to have the same transferred and registered in the names of the parties on the basis of the division of the said shares to be effected in terms of the decree. The plaintiff will proceed to divide the said shares in the manner directed above within two months

from date. All the parties will give necessary co-operation to the plaintiff in the matter of effecting division of the said 408 shares in the manner aforesaid.

(7) If for any reason, the plaintiff is not able to divide the said shares within a period of two months from date of the decree, any of the parties will have the liberty to apply before the Trial Judge for the appointment of a commissioner of partition to divide the said 408 shares in three equal lots of 136 shares each in the manner directed by this decree.

(8) It is declared that the amount which would have been payable to the plaintiff as his share out of cash money lying in the Mahalaxmi room, has been taken into consideration while passing the decree for rupees two lacs against the plaintiff and the plaintiff will have no further claim against the defendants on this account.

(9) It is declared that no party has any claim against the other on account of any joint family ornaments, jewellery and utensils. It is further declared that whatever ornaments, jewellery and utensils are in the possession of any of the parties are their own properties and no other party has any claim in respect thereof.

(10) It is declared that there are no other joint family properties in respect of which any of the parties can make any claim and it is further declared that apart from what is provided in this decree, no party has or will have any claim against any other party on the basis of any property being a part of the joint family property.

(11) Save and except the costs already paid by the plaintiff to the defendants, the parties will pay and bear their own costs. It is made clear that the plaintiff will not be entitled to recover whatever costs he might have paid to the defendants and the defendants will be entitled to retain all sums received on account of costs and will not be called upon to refund any part of the amounts received by them by way of costs from the plaintiff.

(12) Any direction or finding of the High Court contrary to what we have held must necessarily stand set aside and appeals to that extent stand allowed.

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