

SUPREME COURT OF INDIA

Appasaheb Peerappa Chandgade

Vs.

Devendra Peerappa Chandgade

(A.K. Mathur and Altmesh Kabir JJ.)

19.10.2006

JUDGMENT

A.K. MATHUR, J.

1. This appeal is directed against the order passed by learned Single Judge of the High Court of Karnataka at Bangalore whereby Learned Single Judge has set aside the order and decree passed by the Additional Civil Judge, Chikodi in O.S. No. 160 of 1988 whereby learned trial court decreed the suit relating to family property i.e. Schedule -B, II, item No. 2 T.M. C. No. (Old 1846A, New 2178 (House)), III, Item -1 M.H. No. 202/235 Hindwadi Belgaum, item 2 M.H. No. 687/1 (Raviwar Peth), Item -4 C.T.S. No. 1551 (open space) (Hindwadi). The plaintiff also filed a cross-objection with reference to three business mentioned in IV (Schedule-B) namely Mahaveer Trading Company, Indu Oil Mill Company and Srikant Oil Company. The decree in respect of these companies has been granted and these companies have been held to be partnership concerned. So far as item -1 in VI Schedule, namely goods truck bearing No. MEI 7567, separate regular first appeal being RFA No. 428 of 1993 was filed and the same has been disposed of with which we are not concerned.

The real dispute between the parties is whether the properties for which a decree was passed by the trial court was joint Hindu family property or those were self-acquired property of the defendants and their children.

2. The case of the plaintiff- Appasaheb was that all the properties mentioned above were the joint family properties and therefore, he sought partition of the said properties. The following properties formed part of Schedule B which read as under.

SCHEDULE-'B'

(i) Agricultural lands situated within the village limits of Sadalaga, Taluka Chikodi.

Area A-Gs Assessment Value Rs. Ps. Rs.

Sl. No. Sy. No.

1. 893/3 10-10 40-08 1,00,000-00

2. 72/2 1-00 7-00 10,000-00

3. 52/2 0-30 6-00 7,500-00

4. 73/3 8-30

Out of this 11-30 20,000-00

2-07 45-23

(II) The joint Hindu family house properties situated at Sadalaga Taluka Chikodi.

Value No	Sl. TMC No.
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1. Old 1736 (House) New 2036 Rs. 25,000-00

2. Old 1846A

New 2178 (House) Rs. 30,000-00

3. 3130/2 (Open House) Rs. 10,000-00

4. 1986= 1644(House) Rs. 8,000-00

5. 1923=1660 (House) Rs. 9,000-00

6. 1367 = 1193 (House) Rs. 10,000-00

7. 1935 = 1669(House) Rs. 5,000-00

(III) Properties situated at Belgaum

1. M.H. No. 203/235 Hindwadi-Belgaum Rs. 2,00,000-00

2. M.H. No. 687/1, Ravivarpeth Rs. 1,00,000-00

3. M.H. No. 764/8A (Angol Mal) Rs. 1,50,000-00

4. M.H. No. CTS No. 1551 Open Space Hindwadi, Belgaum Rs. 30,000-00

(IV) The suit undivided Hindu family business at Belgaum

1. Mahaveer Trading Company, firm in the Shop No. 843 in Raviwarpeth, including Capital goods and turnover Rs. 1000-00

2. Indu Oil Company in Shop No. 677 firm Rs. 1000-00

3. Trade in Oil in the name of Srikant, Ravivarpeth, Belgaum Rs. 1000-00

(V) The suit undivided Hindu family business at Sadalaga, Taluk Chikodi, Dist. Belgaum

1. Dhanalaxmi Stores Rs. 1000-00

2. Kiran Shop in the name and style C.S. Hukeri Rs. 1000-00

(VI) The suit undivided Hindu family movables:

1. Goods truck bearing Reg. No. MEI 7567 Rs. 1,00,000-00

2. A car bearing Reg. No. MHH 30 Rs. 60,000-00

3. Scooter bearing Reg. No. CTL 3597 Rs. 12,000-00

4. Hero Honda Reg. No. CTS 7069 Rs. 15,000-00

5. Ambassador Car bearing No. MZH 9453 Rs. 50,000-00

6. Ambassador Car bearing No. 4334 Rs. 50,000-00

(VII) Share and Bank accounts.

1. Two shares each worth Rs. 1000/- in Panchaganga Sugar Factory Ichalkaranji Rs. 2,000-00

2. One share in C.K.S.S. Factory worth Rs. 1000/- Rs. 1,000-00

3. Amount in Account No. in the State Bank of India, Br. Raviwarpeth Belgaum Rs. 1,000-00

4. Amount in Account No. in Syndicate Bank branch Maruti galli, Belgaum Rs. 1,000-00

5. Amount in Account No. Ratnakar Bank Branch, Belgaum Rs. 1,000-00 (VIII) The family movables including the cooking apparatuses and utensils etc. in Belgaum and at Sadalaga family house Rs. 10,000-00 (IX) (i) Four she-buffaloes Rs. 6,000-00 (ii) Two bullocks Rs. 2,000-00 (iii) Bullock card and Agricultural implements Rs. 1,000-00 (iv) Motor pump set and pipeline Rs. 10,000-00.

The suit was contested by the defendants and they claimed that the properties mentioned in the suit Schedule are self-acquired properties and therefore, there was no question of partition. The trial court however, decreed the suit of the plaintiff as mentioned above. Aggrieved against that order the defendants filed an appeal and in the said appeal the High Court reversed the finding of the trial

court and dismissed the suit.

3. In order to appreciate the controversy between the parties, it may be appropriate to reproduce the genealogy. The genealogy of the whole family is as under:

PEERAPPA (1975)

|

KASHIBAI (1965)

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TAVANAPPA GANGUBAI SATUBAI BALAPPA DEVENDRA BABURAO ANNAPPA
AKKAPPA A PPASAHEB

(D-4) (D-5) (D-8) (GONE IN (D-1) (D-9) (D-10) (D-11) (PLFF.)

| ADOPTION) |

SUBBARAO [DIED=1944] INDUBAI

| (D-2)

||

INDUBAI SRIKANTA @ CHANDRAKANTA |

SHASHIKANTH |

(D-2) (D6) (D-7) |

|

MANGAL ABHAYKUMAR SHOBHA SHAILA SANG

EET

(D-3)

The propositus of the said family was one Peerappa. He died in the year 1975 and his wife Kashibai

predeceased him in the year 1965. The plaintiff and defendant Nos. 1,4,9 & 10 are sons and defendant Nos. 5, 7 & 11 are the daughters of Peerappa. Defendant No. 2 is the daughter and defendant Nos. 6 & 7 are the sons of defendant No. 5. Defendant Nos. 1 & 2 are the husband and wife and Defendant No. 3 is their son. Another son of Peerappa by name Balappa has gone in adoption outside the joint family. The plaintiff and Defendant Nos. 1, 4, 9 & 10 formed co-parcenary along with their deceased father. The co-parcenary family as well as the family properties given in Schedule B are said to be still undivided. The landed properties of the suit family is described in Item Nos. 1 to 4 of Schedule B (I). The house and open space described at Sl. No. 1 of (II) of the B Schedule are the ancestral properties of the joint family. The property at Sl. No. 2 of Schedule B(II) was purchased in the name of Defendant No. 5- Gangubai out of the joint family funds on or about 1964-65 which was an open space and subsequently it was got transferred in the name of Defendant No. 2 after constructing RCC building thereon out of the joint family funds. In this building the plaintiff is running joint family shop in the name and style of "Dhana Laxmi Stores" in the southern portion and in the northern portion has been leased out to Syndicate Bank at Sadalaga. The property at Sl. No. 3- of Schedule B (II) was purchased in the name of Defendant No. 7 in the year 1984-85. Similarly, the suit properties at Sl. Nos. 4 to 7 of Schedule B (II) were purchased in the name of Defendant No. 9 for the benefit of the said undivided family. The properties mentioned in SL No. (III) of Schedule B were purchased and acquired at Belgaum out of the joint family funds for joint family business described in Sl. No. (IV) of the B Schedule. Item No. (i) in Schedule B (III) was purchased in the name of Defendant No. 1 and RCC double storeyed building was constructed for the purpose of joint family out of the joint family funds. Item No. 2 of Schedule B(III) was acquired in the name of Defendant No. 3 out of the joint family funds. Item No. 4 of Schedule B (III) was purchased in the name of Defendant No. 2 for the joint family. Out of the joint family funds Item No. 3 of Schedule B (III) was purchased in the name of Defendant No. 6 along with some other properties. The joint family during the life time of Peerappa started Kirana business shop at Sadalaga in the year 1946 out of the joint family funds from various properties. The said business prospered and gave good profit within a short period. Defendant No. 1 during that period acquired experience in business and trade the family thought it better to expand the family business and seek fortune in addition to agriculture and kirana business in larger business centers. In the year 1960 a business shop was started for dealing in bhusari, oil and sugar by investing huge amount out of the joint family in the name of 'D.P. Chandgade' in Chikodi town, the taluka place. That was kept upto 1967 and Chikodi was felt a small place and as such all the brothers and their father intended to shift the business to the vast business center. So the entire business was shifted to Belgaum in 1967 and established the business in Raviwar Peth, Belgaum. The Kirana shop at Sadalaga was looked after by the plaintiff along with defendant No. 9 and defendant No. 6 upto 1967-68. The plaintiff then went to Belgaum along with Defendant No. 1 in the year 1967. The business at Belgaum also prospered. The kirana shop at Sadalaga was being looked after by Defendant Nos. 6 & 9 up to 1974. As the business at Belgaum prospered being expanded, in the year 1976 a partnership business was floated in the name of "Indu Oil Company" and thereafter, another partnership business in the name and style of "Mahaveer Trading Company" was started by the plaintiff and defendant No. 1. In the year 1967-68 another tobacco company in the name and style of "Anand Tobacco Company" was managed by Defendant No. 9 along with kirana shop with defendant No. 7. The business further expanded and then the son of Defendant No. 1 namely Defendant No. 3 became an adult and therefore, he entered into business and then the business further expanded. As the family business expanded, Defendant Nos. 1 & 2 wanted to corner the entire business including the interests of other defendants. Therefore, the plaintiff thought that it would not be proper to continue in a joint family business and demanded partition and separate possession and share in the family business and also demanded rendition of accounts of the family

business. The defendant No. 1 in collusion with defendant Nos. 2 to 11 avoided to have partition on some pretext or the other. Therefore, ultimately, no option was left to the plaintiff except to file a suit for partition and separate possession and taking accounts of the family business. Since the plaintiff's father Peerappa died after the Hindu Succession Act, 1956 came into force, therefore, the male and female both heirs of the deceased Peerappa were entitled to their share and accordingly, the plaintiff claimed that he has 9/48th share. The defendant No. 1 being a shrewd businessman and expert in trade, though he was not the eldest member of the family, with the consent of all other members of the family managed the family as the manager of the joint family after the death of the father. Hence the present suit was filed along with the following prayers:

The plaintiff therefore prays that:

(A) A decree for partition by metes and bounds be passed by determining and awarding to plaintiff his 9/48th share in all the suit Schedule 'B' properties.

(B) A decree for separate possession of the plaintiff's 9/48th share be passed directing the defendant No. 1 or responsible defendants to put the plaintiff in separate possession of his share.

(C) Accounts of the trade and business described in plaint Schedule 'B' (IV), B (V) and B(VII) taken and the plaintiff's 9/48th share in the profit to be determined and awarded to the plaintiff.

(D) Future mesne profits be awarded to the plaintiff.

(E) That the costs of the suit be awarded to the plaintiff.

4. The suit was contested by the defendants and the allegations were denied that the family still continues to be undivided Hindu family. It was alleged that the co-parcenary family of defendant No. 1 consists of the plaintiff and defendant Nos. 1,4,9 and 10 and holds the family properties under 'B' Schedule till today as undivided properties. The defendants also denied that the family holds agricultural lands as described in Schedule 'B' (I). It was also pointed out that Peerappa much earlier to the deed of memo of partition dated 19.5.1965 pertaining to the permanent tenancy right over 1/8th share in the lands at Sl. No. 52/3 measuring 6 acres 31 gunthas, Sl. No. 72/2 measuring 6 acres and 5 gunthas, Sl. No. 73/3 measuring 8 acres 30 gunthas at Sadalaga had effected partition and separation under the power of father by relinquishing his right, title and interest amongst his sons alone by allotting to his separated sons and estate of coparcenary in due course and the sons possessed and enjoyed separately, got the occupancy rights over these agricultural lands under the Karnataka Land Reforms Act. The assertion that the family owns house and open scape described in Schedule 'B' (II) is false. The allegations that the family owns ancestral house at Sadalaga was also denied. It was submitted that during the life time of Peerappa, partition was effected and each son was allotted his portion of share and this partition took place under the authority of Peerappa and much earlier to the deed of memo of partition dated 19.5.1965 and the father also relinquished his right, title and interest in the house in favour of his sons. It was also submitted that the allegations that the family purchased a house in the name of Defendant No. 5- Gangubai out of the joint family funds in or about 1964-65 and the family constructed RCC building for the joint family with the joint family funds and subsequently the property got transferred in the name of defendant No. 2 were false and frivolous. That the property bearing No. 1946 (New No. 2178) at Sadalga is exclusively absolute separate individual property of defendant No. 5. But now the property bearing old No. 1846A bearing new No. 2178 of Sadalga is absolutely separate individual property of

defendant No. 2. The allegation of joint family shop in the name and style of "Dhanalaxmi Store" and a portion of that building being given to Syndicate Bank at Sadalaga as claimed by the plaintiff was also denied and the claim that "Dhanalaxmi Store" being joint family property was also denied. It was pointed out that the property belonged to Defendant No. 2 and Defendant No. 2 has leased out a portion to the Bank and there is execution proceedings against the Bank. Other allegations at various paragraphs of the plaint were all denied.

On the basis of these pleadings the trial court framed originally the following ten issues which read as under.

1. Whether the plaintiff proves that the suit properties are the joint family properties of plaintiff and defendants Nos. 1,4,5,8,9,10 and 11?
2. Whether the defendants prove that there was partition in their family prior to 19/5/1965?
3. Whether the defendants prove that TMC No. Old 1846A and new No. 2178 of Sdalaga was exclusive property of the defendant No. 5 and now it is in the exclusive property of defendant No. 2?
4. Whether the defendants prove that TMC No. 3130/2 of Sadalaga is exclusive property of Defendant No. 7?
5. Whether the defendants prove that M.H. No. 202/235 of Belgaum i.e. Schedule B-III(i) is the self-acquired property defendant No. 1?
6. Whether the defendants prove that CTS No. 687/1 of Belgaum is the self-acquired property of defendant No. 3?
7. Whether defendants prove that suit Schedule B-III (a) property is the self acquired property of the defendant No. 2?
8. Whether the plaintiff is entitled for any share?
9. If so, what is his share and in which properties?
10. To what reliefs the parties are entitled? Additional one issue was framed later which reads as under.
11. Whether the plaintiff proves that suit property bearing Municipal H. No. 764/8A-1 situated at Anagol-Mal (Bhagya Nagar) is also ancestral property?

5. The learned trial Judge affirmed issue No. 1 partly and also answered No. 4 in favour of the plaintiff. The trial Judge also answered issue No. 8 in favour of the plaintiff and granted a decree as aforesaid. The trial court held that the acquisition of the property was from the joint family nucleus which was available with the joint family propitious, all the parties i.e. defendant Nos. 5, 8 and 11 and the sons i.e. defendants Nos. 1,4,9 and 10 and the plaintiff were to share equally and as per principle it was incumbent on the part of defendant Nos. 1 to 3 to prove specifically that it was on account of self-acquired properties came to be purchased. Learned trial Judge further held that there

is absolutely no evidence to support the plea of defendant Nos. 1 to 3 and further held that the suit property acquired vide Ex.D 46 bearing TMC Old No. 1846A and new No. 2178 standing in the name of Defendant No. 2 the suit property purchased vide Ex.D 48 dated 28.6.1971 standing in the name of Defendant No. 1; the suit property Ex. D.49 dated 24.2.1983 standing in the name of Defendant No. 3 and the suit property vide Ex.50 dated 11.8.1975 standing in the name of Defendant No. 2 are joint family acquisition wherein plaintiff and Defendant No. 9 as co-parceners can seek partition of their specific share in them. It may not be out of place to mention here that Defendant No. 1 is the brother of the plaintiff, defendant No. 2 is the wife of defendant No. 1 while defendant No. 3 is the son of defendant Nos. 1 & 2. Ultimately the trial Judge concluded as follows:

Consequently, each of the plaintiff and the defendant No. 9 is entitled to 3/16th share in the suit properties at Sl. Nos. 1 to 4 shown in para (I), and Sl. No. 1 and 2 and 4 to 7 shown in para (II), and st Sl. Nos. 1,2 and 4 shown in para (III), and at Sl. Nos. 1 to 4 shown in para (VI) of the suit Schedule 'B'

The net result is the plaintiff and Defendant No 9 were given 3/16th share by partition metes and bounds. Aggrieved against this judgment and decree the defendant Nos. 1 to 3 preferred an appeal before the High Court. In the present appeal we are only concerned with the respondent Nos. 1 to 3 who were the appellants before the High Court who felt aggrieved by the order of the trial court. On appreciation of evidence the High Court observed that in the present appeal the High Court was only concerned with Issue Nos. 3,5,6 & 7 and the grievance of the appellants before the High Court was that all the properties mentioned in those issues were self-acquired properties of Devendra, his wife and son and those properties were not purchased from the family nucleus. The High Court on appreciation of evidence set aside the order of the trial court so far as the appellants before it (i.e. Defendant Nos. 1 to 3) were concerned and dismissed the suit qua them. Hence the present appeal.

6. We have gone through the records and heard learned Counsel for the parties at length. So far the legal proposition is concerned, there is no gain saying that whenever a suit for partition and determination of share and possession thereof is filed, then the initial burden is on the plaintiff to show that the entire property was a joint Hindu family property and after initial discharge of the burden, it shifts on the defendants to show that the property claimed by them was not purchased out of the joint family nucleus and it was purchased independent of them. This settled proposition emerges from various decisions of this Court right from 1954 onwards.

7. In the case of Srinivas Krishnarao Kango v. Narayan Devli Kango and Ors. , their Lordships held that proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. Therefore, so far as the proposition of law is concerned, the initial burden is on the person who claims that it was joint family property but after initial discharge of the burden, it shifts to the party who claims that the property has been purchased by him through his own source and not from the joint family nucleus. Same proposition has been followed in the case of Mst. Rukhmabai v. Lala Laxminarayan and Ors. wherein it was observed as follows:

There is a presumption in Hindu Law that a family is joint. There can be a division in status among

the members of a joint Hindu family by definement of shares which is technically called "division of status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". A member need not receive any share in the joint estate but may renounce his interest therein; his renunciation merely extinguishes his interest in the estate but does not affect that status of the remaining members vis-a-vis the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether moveable or immoveable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property.

Similarly, in the case of *Achuthan Nair v. Chinnammu Amma and Ors.* , their Lordships held as follows:

Under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well settled proposition of law.

Similarly, in the case of *Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe and Ors.* , their Lordships have held that 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 partitioned amongst the co-sharers. By a unilateral act it is not open to any member of the joint family to convert any joint family property into his personal property.

8. In the case of *Surendra Kumar v. Phoolchand (dead) through LRs and Anr.* their Lordships held as follows:

It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted/ But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family.

Therefore, on survey of the aforesaid decisions what emerges is that there is no presumption of a

joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence.

9. In this legal background, we have to examine what exactly has been proved in the present case. As per the finding given by the trial court there is no two opinion that Peerappa was the main person who held various agricultural lands and out of that certain business started. But the case of the defendant Nos. 1 to 3 was that the properties acquired by them were out of their own earnings and not out of the joint family nucleus. The trial court has found that no evidence has been produced by the defendants to substantiate that Defendant Nos. 2 & 3 i.e. wife and son of Defendant No. 1 had individual source to purchase the aforesaid properties. Therefore, the learned trial Judge has held against them. But the High Court has reversed that finding. We fail to see any justifiable reason for the High Court to have taken a contrary view in the matter. The trial court in extensive manner dealt with each subject and came to the conclusion that the properties acquired by defendant Nos. 1 to 3 were not self-acquired properties as neither defendant No. 2 nor Defendant No. 3 i.e. the mother and son had any independent source of income for purchasing these properties. The defendant Nos. 1 to 3 had not been able to establish from evidence that they had sufficient funds out of which such properties could be purchased. The trial court in paragraph 69 of its judgment has definitely held against them. But the High Court has observed that the finding in paragraph 69 of the judgment is vague. With great respect, we do not subscribe the view taken by the High Court. The finding of trial court is categorical & clear it was observed in paragraph 69 of its judgment which is reproduced below:

... it was incumbent on the part of the defendant Nos. 1,2 and 3 to prove specifically that it was on account of self acquisition the said properties came to be purchased. Absolutely there is no evidence in this context to support plea of the defts. Nos. 1 to 3. Therefore I am to state that the suit property acquired vide Ex.D 46, bearing new TMC No. 2178 standing in the name of defendant No. 2 and the suit property purchased vide Ex. D 48 dated 28.6.71 standing in the name of the defendant No. 1, and the suit property vide Ex. D 49 dated 24.2.1983 standing in the name of defendant No. 3, and the suit properties vide Ex.D.50 dated 11.8.75 standing in the name of defendant No. 2 are joint family acquisitions wherein the plaintiff and the deft No. 9 as co-parceners can seek partition of their specific share in them.

Thus, the finding arrived at by the trial court appears to us to be categorical finding which cannot be termed to be vague. Therefore, the view taken by the trial court appears to be justified and the finding given by the High Court is absolutely vague. Hence, we affirm the finding of the trial court and set aside the order of the High Court.

10. As a result of our above discussion, we are of opinion since the defendants- respondents herein have failed to prove that the properties mentioned in the aforesaid transactions were acquired by them as self-acquired property, the judgment under appeal cannot be sustained. We, therefore, allow this appeal and set aside the order of the High Court and affirm the order of the trial court. There would be no order as to costs.