

Court No. - 18

Case :- WRIT - B No. - 3017 of 1980

Petitioner :- Jageshwar And Others

Respondent :- Sunder Lal And Others

Counsel for Petitioner :- Hargur Charan,A.K. Tripathi,Ankit Pande,Nishi Agarwal,R.S. Pandey,Virendra Bhatt

Counsel for Respondent :- C.S.C.,N.P.Singh,Nirmal Tewari,P.L. Mishra,Rajesh Kumar,S.D.Singh,Tripathi B.G. Balak,V.B.Verma

Hon'ble Manish Kumar,J.

1. Heard.

2. Present petition has been preferred challenging the impugned order dated 15.11.1976 passed by the Settlement Officer (Consolidation) and the impugned revisional order dated 26.09.1980 passed by the Deputy Director of Consolidation.

3. Learned counsel for the petitioners has submitted that the petitioners and the respondents belong to the family of late Binda, who had two sons Sarju and Dwarika. Sarju had two sons namely Baiju and Gayadeen while Dwarika had two sons namely Neemar-petitioner and Sukhnandan-respondent no. 6. Baiju had two sons namely Jagannath-respondent no. 4 and Badri-respondent no. 5 whereas Gayadeen has three sons namely Sundarlal-respondent no.1, Shiv Shankar-respondent no. 2 and Ram Kumar-respondent no. 3.

4. It is further submitted that late Binda was a tenure holder of Khata Nos. 332 Aa, Ba and Sa, 356 and 51. After the demise of Binda, the family of the petitioners and the respondents entered into a compromise/family settlement for Khata No. 356 but for Khata Nos. 332 Aa, Ba and Sa and Khata No. 51, there was a dispute. After the demise of Sarju, the respondents being legal heirs had preferred an application for mutation of their names in the revenue records in Khata Nos. 332 Aa, Ba and Sa and 51 alleging that the land of Khata Nos. 332 Aa, Ba and Sa and 51 was self acquired property of late Sarju.

5. It is further submitted that the petitioners had preferred an objection in the said case and raised an objection that it is a Joint Hindu Family property acquired from the Joint Hindu Family funds so all the parties have an equal share in Khata Nos. 332 Aa, Ba and Sa and 51 as it has been agreed between the parties by a compromise for Khata No. 356. The Consolidation Officer had passed an order treating petitioners and respondents as joint owner or co-tenure holder of Khata

Nos. 332 aa, 332 ba, 332 sa and 51. Against the said order, an appeal was preferred by the respondents before the Settlement Officer Consolidation who had passed an order setting aside the order passed by the Consolidation Officer dated 13.02.1976 with a finding that the petitioners have failed to establish the five relevant factors for the purpose of joint tenure holdership as a Joint Hindu Family property. Against the order passed by the Settlement Officer Consolidation, the petitioners preferred a revision before the Deputy Director of Consolidation and the revision preferred by the petitioners has also been dismissed/rejected by judgment and order dated 26.09.1980. Feeling aggrieved by the orders passed by the appellate as well as revisional authority, the present petition has been filed before this Court.

6. It is further submitted that the appellate authority while deciding the appeal has failed to consider the evidence adduced by the petitioners and without appreciating the evidence and the statements of the witnesses produced by the petitioners correctly had passed the impugned order dated 15.11.1976.

7. It is further submitted that the order passed by the Consolidation Officer is an order after considering all the relevant factors which could not be interfered with by the Appellate Authority.

8. It is further submitted that the Revisional Authority had not seen even a single ground of the revision and affirmed the order passed by the Appellate Authority without application of mind.

9. It is further submitted that the Khata Nos. 332 Aa, Ba and Sa and 51 was Joint Hindu Family property and the same was purchased from the funds of the Joint Hindu Family.

10. On the other hand, learned Counsel for the private respondents has submitted that Khata Nos. 332 Aa, Ba and Sa and 51 was purchased by their father late Sarju out of his own fund. Hence, it is not a Joint Hindu Family property and it has rightly been held by the Appellate Court and the Revisional Court that it is a property belonging to the late Sarju, whose name is recorded in the revenue records i.e. in the Basic Fasli year 1374-76.

11. It is also submitted that in the appellate order, it has been mentioned that the name of late Sarju-the predecessor of the respondents was recorded in the Khatauni since 1356.

12. It is further submitted that in the appellate order, there is a specific finding while dismissing the appeal preferred by the

petitioners that petitioners have failed to prove the joint tenure holdership in the light of five essential ingredients and this finding of the appellate authority has never been challenged by the petitioner even in the present petition, as no averment has been made in the present petition that this finding given by the appellate Court is bad or perverse hence, the Revisional Court has rightly upheld the order passed by the Appellate Court.

13. After hearing learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that the dispute is with regard to the property of Khata Nos. 332 Aa, Ba and Sa and 51 between the parties. The petitioners are claiming their rights on the said property as Joint or Co-tenure holder as it is a Joint Hindu Family property, which had been purchased from the funds of Joint Hindu Family.

14. On being asked from the learned counsel for the petitioners as to what documents or evidences were led by him before the Court below that the petitioners and the respondents are Joint Hindu Family as the burden is on the petitioners to prove that there existed a joint family which had the requisite funds and nucleus out of which the property in question has been purchased, he is unable to reply the same. It is relevant to mention here that the appellate order has been passed with a specific finding, which is quoted hereinbelow:-

अतः सहखातेदारी के लिए जो ५ तत्व जरूरी हैं उनमें से किसी को भी विपक्षी के द्वारा साबित नहीं किया गया है।

15. The five essential ingredients set out in the earlier part of the appellate order are also being quoted hereunder for convenience:-

१. पहले जायदाद किसकी थी और किसकी मदद से खरीदी गई।
२. भूमि परिवार के मुखिया के नाम खरीदी गई है।
३. भूमि के खरीदे जाते समय परिवार में कोई बटवारा न हुआ हो।
४. भूमि का लगान सारे परिवार की ओर से जो व्यक्ति देता है और आमगौड़ी के बाद प्रत्येक व्यक्ति अपना हिस्सा अदा करता हो।
५. प्रत्येक सहखातेदार का अपने हिस्से से कब्जा हो।

16. The aforequoted findings have neither been challenged before Revisional Court nor before this Court. In the present petition neither any pleadings have been made nor any submission has been advanced that the said findings recorded by the Appellate Court is perverse and bad.

17. As the submission of learned counsel for the petitioners that the property belongs to a Joint Hindu Family, is not tenable in the eyes of law as per law regarding the Joint Hindu Family Property it is now fairly well settled that in order to successfully claim the share regarding the Joint Hindu Family property, the burden is on the party to prove that there existed a joint family which had the requisite funds and nucleus out of which the property in question has been purchased. The onus is upon the petitioner to adduce evidence to indicate that the property was the Joint Hindu Family Property which they have failed to prove and in absence of any evidence to that effect the petitioner could not have been granted the benefit of getting the property treating as Joint Hindu Family Property. The petitioner except simply making averment in the writ petition, nothing has been placed on record to establish that the gatas of Khata Nos. 332 Aa, Ba and Sa and 51 were purchased from the nucleus of Joint Hindu Family and the property as such is a Joint Hindu Family Property.

18. In the case of ***Jai Narain v. D.D.C. & others reported in (1979) RD 198***, it was held that the presumption is only in respect of jointness and not that any property acquired by members of the family is a joint family property and this is a matter of evidence and not of presumption. In the present case, the petitioners have failed to adduce any evidence that the property is a joint family property.

19. In the case of ***Bodh Raj v. Joint Director of Consolidation Faizabad and Others, in Writ Petition No.676 of 1980*** connected with ***Writ Petition No.23 of 1980, decided on 22.09.1995***, wherein it has been held that there is a presumption with respect to the jointness of family and if it is shown or proved to the satisfaction of the Court then property inherited from a common ancestor will be deemed to be a joint property of all. It is also clarified in the said judgement that joint family funds must be used for purchase of the property in order to make it joint and property is entered in the name of one person then it has to be proved by other party, who claims to be a joint property that it was acquired by the joint family funds, which the petitioners have failed to establish.

20. The Hon'ble Supreme Court in the case of ***D.S. Lakshmaiah and Another Vs. L. Balasubramanyam reported in 2003 (10) SCC 310***, the relevant portion reads as under:-

"18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property.

If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

21. Similarly, the Coordinate Bench of this Court in the case of ***Kunj Bihari Vs. Ganga Sahai Pande reported in 2013 SCC Online All. 13489: 2013 (99) ALR 826*** wherein tracing the history and considering the earlier decision on the point of Joint Hindu Family and property, the burden of proof etc. This Court has held as under:-

"24. The "patriarchal family" may be defined as a group of natural or adoptive descendants, held together by subjection to the eldest living ascendant, father, grand-father, great-grandfather. Whatever be a formal prescription of law, the head of such a group is always in practice, despotic; and he is the object of respect, if not always of affection, which is probably seated deeper than any positive institution. Manu says, "three persons, a wife, a son and a slave, are declared by law to have in general no wealth exclusively their own; the wealth which they may earn is regularly acquired for the man to whom they belong." Narada says, "he is of age and independent, in case his parents be dead; during their lifetime he is dependent, even though he be grown old.

25. The "joint family" is normally a transition form from "patriarchal family". At the death of common ancestors or head of house, if the family chooses to continue united, the eldest son would be the natural head. The former one was head of family by natural authority, the later other can only be so by a delegated authority. He is *primus but inter pares*. An undivided Hindu family thus is ordinarily joint, not only in estate but in food and worship. The presumption, therefore, is that members of a Hindu family are living in a state of union unless contrary is established. This presumption however varies inasmuch as it is stronger in case of real brother than in case of cousin and farther one go, from the founder of family, the presumption becomes weaker and weaker. However, there is no presumption that a family, because it is joint, possesses joint property. Under Mitakshara Law, possession of property is not necessary requisite for constitution of a joint family, though where persons live together, joint in food and worship, it is difficult to conceive of their possessing no property whatever, such as, at least, ordinary household articles which they would enjoy in common.

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32. The joint undivided family is the normal condition of Hindu society as observed in *Raghunadha Vs. Brozo Kishroe* (1876) 3 IA 154 and *Neelkisto Deb Vs. Beerchunder* (1989) 12 MIA 523. An HUF is ordinarily joint not only in estate but in food and worship. Unless contrary is established, the presumption is that the members of a Hindu family are living in a state of union (see: *Govind Dass Vs. Kuldip Singh* AIR 1971 Delhi 151 and *Bhagwan Dayal Vs. Mst. Reoti Devi* AIR 1962 SC 287). If, however, one of the coparceners is admittedly living separately from other members of the family, neither it can be said that other members do not constitute a Hindu joint family nor the member living separately, who has stripped his relation with the joint family, can be said to be still a coparcener or member of joint family. Simultaneously, merely if some members are working and living at different places, though own a joint family in common, it cannot be said that they do not form a joint Hindu family. Since it is only a presumption, the strength thereof necessarily varies in every case. The presumption of union is stronger in the case of brothers than in the case of cousins and farther one goes from the founder of the family, the presumption becomes weaker and weaker.

33. Brothers may be presumed to be joint but conclusion of jointness with collaterals must be affirmatively proved. The presumption lies strongly in favour of father and son that they are living jointly unless proved otherwise.

34. This presumption, however, does not apply in respect of property. There is no presumption that a family, because it is joint, possess joint property. As per Mitakshara law, the possession of property is not a necessary requisite for the constitution of a joint family, though where persons live together, joint in food and worship, it is difficult to conceive that they are possessing no property whatever, such as ordinary household articles which they would enjoy in common.

35. In *Sher Singh Vs. Gamdoor Singh* 1997 (2) HLR 81 (SC), the Court said that once existence of a joint family is not in dispute, necessarily the property held by family assumed the character of a coparcenary property and every member of family would be entitled, by birth, to a share in coparcenary property, unless any one of the coparcener pleads, by separate pleadings and proves, that some of the properties or all the properties are his self-acquired properties and cannot be blended in coparcenary property. Merely because the family is joint, there is no presumption of joint property. A Hindu, even if

he be joint may possess separate property. Such property belongs exclusively to him. Neither member of the coparcenary, nor his male issue, acquires any interest in it by birth. On his death (intestate), it passes by succession to his heirs and not by survivorship to the surviving coparcener. The existence of joint family does not raise presumption that it owns properties jointly. But once joint family nucleus is either proved or admitted so as to draw inference that such property could have been acquired out of joint family funds, the burden shifts to the party alleging self acquisition, to establish affirmatively, that such property was acquired without aid of joint family. Initial burden always lies upon the party asserting that any item of property is joint family property.

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38. In *Appalaswami Vs. Suryanarayanamurti and Ors.*, AIR 1947 PC 189, it was held that Hindu law is very clear. Proof of existence of a joint family does not lead to the presumption that property held by any member of family is joint. The burden rests upon one who asserts that an item of property is joint, to establish that 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 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 joint family property/fund.

39. Again in *Srinivas Krishnarao Kango Vs. Narayan Devji Kango* AIR 1954 SC 379, it was held that proof of existence of a joint family does not lead to the presumption that property held by any member of family is joint. The burden rests upon anyone asserting that any item of property is 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 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 joint family property.

40. The legal proposition which emerges therefrom is that initial burden is on the person who claims that it is joint family property but after initial burden is discharged, the burden shifts to the party claiming that the property was self acquired and without the aid of joint family property/fund.

22. In ***Rukhmabai Vs. Lala Laxminarayan*** AIR 1960 SC 335, the Court said:

"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 refinement of shares which is technically called "division in 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 the 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 movable or immovable, 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..." (emphasis added)"

23. In the Basic Fasli Year Khatauni 1374-76 i.e. prior to the consolidation proceedings, which is a determinative factor for title, name of the predecessor of the respondents i.e. late Sarju was entered and from the appellate order, it is found that the name of late Sarju had been entered since Fasli year 1356 till 1376 and this fact has not been either denied or disputed by the petitioners.

24. Learned counsel for the petitioners has failed to adduce any evidence regarding Joint Hindu Family and that the property of 332 Aa, Ba and Sa and 51 was purchased from the funds of Joint Hindu Family rather he relied upon the compromise with regard to the Khata No. 356 by which the predecessors of the petitioners and the respondents had entered into the compromise as joint tenure holder in Khata No. 356 only but it does not establish that the Khata Nos. 332 Aa, Ba and Sa and 51 were also purchased from the funds of Joint Hindu Family, rather it could be read against the petitioners that if the compromise had entered into between the parties for one Khata, which was belonging to the original tenure holder late Binda then at that time why the compromise was not entered between the parties for Khata Nos. 332 Aa, Ba and Sa and 51.

25. In view of the facts, circumstances and discussion made hereinabove, the present petition is devoid of merits hence, dismissed.

Order Date :- 23.4.2024

Ashish