

Court No. - 18

Case :- WRIT - B No. - 178 of 1983

Petitioner :- Pancham And Others

Respondent :- Deputy Director Of Consolidation Sultanpur And Others

Counsel for Petitioner :- H.S.Sahai,Ajay Kumar Verma,Mahesh Chandra Shukla,Mohan Singh,Rankaj Kumar Vishwakarma,Sudhir Kumar Misra,U.S. Sahai,Vinod Kumar

Counsel for Respondent :- U.P.Singh,Ajay Kumar Verma,Ajay Verma,C.S.C.,Kaushal Kishore,Sudhir Kumar Misra

Hon'ble Manish Kumar,J.

1. Heard Sri Mohan Singh, learned counsel for the petitioners, Sri Sudhir Kumar Misra, learned counsel for Respondent Nos.3/1, 3/2, 3/2/1, 3/2/2, 3/2/3 and 3/3 and Sri Kaushal Kishor, learned counsel for Respondent Nos.4 and Sri Hemant Kumar Pandey, learned Standing Counsel for the State.

2. The present writ petition has been preferred for quashing of the impugned order dated 12.02.1981 passed under Section 9(2) of the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred as 'the Act, 1953') by Consolidation Officer and the revisional order dated 30.12.1982 passed under Section 48 of the Act, 1982.

3. Learned counsel for the petitioners has submitted that the predecessors of the present petitioners i.e. Petitioner No.1 and Late Bairagi father of Petitioner Nos.2, 3 and 4 had filed objection under Section 9 of the Act, 1952 claiming co-tenancy right over Khata No.112 on the ground that the family of the petitioners and the opposite parties were Joint Hindu Family and Late Ramhit was the *Karta* of the family. Being the *Karta* of the Joint Hindu Family his name alone was recorded under the representative capacity in the revenue records.

4. It is further submitted that the consolidation officer had rejected the objection filed under Section 9A of the Act, 1953 by impugned order dated 12.02.1981 against which Late Pancham and his cousin brother late Bairagi the father of the Petitioner Nos. 2,3 and 4 had preferred an appeal and the said appeal was decided on the basis of the compromise / agreement entered between the petitioners and the respondents.

5. It is further submitted that against the appellate order Pandohi had preferred a revision under Section 48 of the Act, 1953, who is the brother of Ram Lakhan and son of Late Nidhi.
6. It is further submitted that the Revisional Court committed manifest error of law in allowing the revision without giving due weightage to the admission made by respondent No.4 Ronghai and the compromise filed which was duly verified before the Assistant Settlement Officer, Consolidation and also failed to consider the admission made by the opposite parties in the reconciliation proceedings by filing a compromise.
7. It is further submitted that the Respondent No.1 had misread the evidence with respect to the rent receipts and Khasra entries. It is also submitted that in CH Form 2A issued under Rule 21 the name of the petitioner No.1 and Bairagi are recorded.
8. It is further submitted that the predecessors of the petitioners Late Pancham i.e. Petitioner No.1 and Late Bairagi father of Petitioner Nos.2,3 and 4, were in possession of the gatas and have been depositing the rent.
9. On the other hand, learned counsel for the respondents have submitted that there is no illegality in the impugned revisional order and the same has been passed after appreciating and considering the evidence.
10. Sri Sudhir Kumar Mishra, learned counsel for Respondent Nos.3/1, 3/2, 3/2/1, 3/2/2, 3/2/3 and 3/3 has submitted that Pandohi the brother of Ram Lakhan and son of Nidhi had never signed any agreement nor participated in alleged conciliation proceedings between Late Pancham and Ram Lakhan. It is further submitted that the petitioners have failed to show any entry in the name of petitioners in the revenue records.
11. After hearing the learned counsel for the parties and going through the record of the case the position which emerges out in the present case is that as far as the submission of learned counsel for the petitioners that the property belongs to a Joint Hindu Family is concerned, it 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 an averment in Para 3 of the writ petition, nothing has been placed on record to establish that the gatas of Khata No.112 were purchased from the nucleus of Joint Hindu Family and the property as such is a Joint Hindu Family Property.

12. 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.

13. 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.

14. 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."

15. Similarly, the Coordinate Bench of this Court in the case of ***Kunj Bihari Vs. Ganga Sahai Pande*** reported in ***2013 SCC Online Alld. 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* (1889) 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 form 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.

41. 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"

16. The CH Form 2A issued under Rule 21 which has heavily been relied by the learned counsel for the petitioners to establish the title over Khata No.112 as a co-tenure holder but after the perusal of the same which has been enclosed as Annexure No.S.A.-4 to the supplementary affidavit filed on 20.09.2023 on behalf of the petitioners in which only the name of Late Pancham was entered only in Gata No.95 as tenure holder and in rest of the gatas the name of Late Pancham and Late Bairagi are not shown as tenure holder except in Column No.9 in some gatas the name of Late Bairagi and in some gatas name of Late Pancham had been shown as 'कब्ज़ा बहुत दिन से बतौर सहखातेदार बताया'.

17. On being asked a specific query from the learned counsel for the petitioners to show any provision or case law that the title can be established on the basis of the possession and by

depositing the rent, except where the rights have been claimed to have been perfected by adverse possession. The learned counsel for the petitioners has very fairly submitted that there is neither any provision in the statute or any law which provides possession and depositing the rent for the purpose of determination of title.

18. The title is to be seen from the basic fasli year from the date of consolidation proceedings and as per admitted case of both the sides, the consolidation year was 1970 and basic fasli year would be 1363 and in both the Khatauni of basic fasli year enclosed by the petitioners in their supplementary affidavit, even in that Khatauni the name of Late Pancham and Late Bairagi are also not recorded, so from the revenue records the petitioners have failed to show entry in their names in the revenue records. The entries in the Khatauni, which is a document of title and the entries in the Khasra which is a document of possession only, the petitioners had failed to show any entries in the Khatauni. Even CH Form 2A which has heavily been relied as admitted except Gata No.95 in other Gatas of Khata No.112 the petitioners were not recorded as tenure holders. The petitioners had not enclosed any copy of Khasra which determines the possession.

19. Learned counsel for the petitioners is also unable to dispute that the names of the petitioners or their predecessors were never ever entered in the revenue records in the gatas of Khata No.112 and the entry shown in CH Form 2A issued under Rule 21 the name of Petitioner No.1 is on separate Gata, which is not in Khata No.112.

20. The compromise on the basis of which the petitioners are claiming their right is nonest in the eyes of law for the reason it is an admitted case of the parties that Pandoi and Ram Lakhan are the co-tenure holders of the gatas of Khata No. 112 the compromise / agreement was signed only by Ram Lakhan and it was not signed by the Pandoi who had preferred the revision, the petitioners have failed to establish their title / ownership on the gatas of Khata No.112 from the revenue records as discussed above and this Court finds no illegality in the revisional order.

21. In view of the facts and circumstances of the case and the discussion made hereinabove, the writ petition is devoid of merits and is accordingly **dismissed**.

Order Date :- 3.4.2024

S. Kumar