

Defendant No.5, who claims to be a purchaser of the suit property, and who was arraigned by way of an amendment after Defendant Nos.1 to 4 transferred the property to him during the pendency of the suit. It is the case of the Appellant that both the Trial Court and the First Appellate Court were in error by allowing the partition of the suit property.

3 It is not in dispute between the parties that the suit property was an ancestral property jointly held by the family of the predecessor in title of the Plaintiffs (i.e. one Dattatraya, son of Defendant No.1) and Defendant Nos.1 to 4 (Defendant No.1 being the father and Defendant Nos.2, 3 and 4, respectively, being the two brothers and sister of Dattatraya). The property admittedly being a joint family property, Dattatraya, and through him the Plaintiffs, would ordinarily be entitled to 1/5th share thereof. The controversy in this appeal as between the Appellant on one hand and Respondent Nos. 1 and 2 (original Plaintiffs) on the other is that the share of Dattatraya, predecessor of the latter, was already partitioned and given to him during his lifetime. Mr. Soni, learned Counsel for the Appellant, took me through the pleadings and evidence of the parties in this behalf. It is averred in the written statement of Defendant Nos.1 and 4 that the whole of the undivided share of late Dattatraya was, during his lifetime, separated and given to him. On the other hand, the evidence of Defendant Nos.1 to 4 (through Defendant No.1, the father) takes a position that Defendant No.1 had paid from time to time the cash amounts to late Dattatraya and his wife (Plaintiff No.1) in response to his demand for his share in the joint family property; and that Defendant No.1, the father, had spent for medicines of late Dattatraya and Plaintiff No.1, and also given a new rickshaw alongwith its permit to late Dattatraya, and arranged for a

room at Pune for the residence of late Dattatraya and Plaintiff No.1 after making a large deposit. The examination in chief also takes a position that Defendant No.1 incurred costs of residence, clothing and food of late Dattatraya and Plaintiff No.1. What is, however, pertinent to note is that this examination in chief stops short of claiming that what was given to late Dattatraya amounted to the entire of his 1/5th share in the joint family property. This coupled with the cross examination of Defendant No.1, where he admits that there was no division of property amongst his children, undermines the Defendants' case that late Dattatraya separated from his joint family and was given his entire 1/5th share in the joint family property at the time of such separation. Based on this evidence, the Trial Court and the First Appellate Court have come to a concurrent finding of fact that there was no partition of the joint family property as between late Dattatraya and Defendant Nos.1 to 4. The conclusion drawn by the Trial Court and the First Appellate court in this behalf does not give rise to any substantial question of law for the consideration of this Court. The finding of both the Courts below is supported by evidence. It does not take into account any irrelevant fact or material, or disregard any relevant or germane fact or material.

4 Accordingly, there is no merit in the Second Appeal and the same is dismissed.

5 In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also dismissed.

(S.C. GUPTE, J.)