

IN THE HIGH COURT OF BOMBAY AT GOA***FIRST APPEAL NO.146 OF 2010***

1. Shri Ramnath Narayan Pai,
son of late Narayan Ramkrishna Pai,

2. Smt. Rohini Ramnath Pai,
wife of Ramnath N.Pai,

Both r/o H.No.88, Pai Compound
Mundvel, Vasco-da-Gama.

... Appellants.

Versus

1. Shri Eknath Narayan Pai
s/o late Narayan Ramkrishna Pai,

2. Smt. Sunita Eknath Pai,
wife of Eknath Narayan Pai

Both r/o Flat No.6, Pai
Compound, Mundvel,
Vasco-da-Gama.

3. Shri Vishwanath Narayan Pai
s/o late Narayan Ramkrishna Pai.

4. Smt. Vanita V. Pai, wife of
Vishwanath N.Pai,
Both r/o Sarasvati Niwas,
1st Floor, Flat No.1,
Veddem, Vasco-da-Gama.

5. Smt. Vasundhara Manjrekar,
major, married, r/o Near Komal Vilas
Hotel, Masti Katli Road, Honnawar,
Karnataka State.

6. Shri Gopal Krishna Vaikunt Bhat,
r/o 2403, Rayer Peth,

Opp. Dr. Karoor House,
Sirsi, Karnataka State 581401.

7. Smt. Raksha Raghavdas Sawakar,
major, married, wife of Raghavdas Sawakar,
r/o Village Chendia, Taluka Karwar,
Karnataka State.
8. Smt. Pradnya Pramod Prabhu,
major, married, wife of Pramod Prabhu,
r/o J N 2/79/A-6, Section 9, Vashi,
New (navi) Mumbai 400 703.
9. Smt. Mamata Manjunath Dhond,
major, married, c/o Hotel Janata Aminaide,
Siddhapur, Karnataka State.
10. Smt. Mohini Bhaskar Gangulikar,
major, married, wife of Bhaskar
Gangulikar, r/o Helena Apartment,
2nd Floor, Swatantrapath,
Vasco-da-Gama, Goa 403 802.
11. Smt. Meena Rajesh Tirodkar,
major, married, wife of
Rajesh Tirodkar, r/o Near
Asilo Hospital (Government
Hospital), Mapusa, Bardez, Goa.
12. Shri Babu Sheikh,
r/o Janki Apartment, Building
No.2, Ground Floor, Flat No.1,
New Vaddem, Vasco-da-Gama,
Goa.
13. Smt. Asha Bi Shekh,
r/o Janki Apartment, Building
No.2, Ground Floor, Flat No.1,

New Vaddem, Vasco-da-Gama,
Goa.

Respondents.

Mr. Nitin Sardesai, Senior Advocate with Mr. Deep Shirodkar,
Advocate for the Petitioner.

Mr. U.R.Timble with Ms. Yadika Mandrekar, Advocates for
Respondent nos.1 to 4.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 4 October 2018.

Oral Judgment (Per N.M.Jamdar, J.) :

1. By this Appeal, the original Defendant nos.1 and 2 have challenged the judgment and decree dated 26 July 2010 passed by the learned Civil Judge Senior Division, Vasco, in Special Civil Suit No.20/2005.

2. The Respondent nos.1 to 4 are the original Plaintiffs. The Defendant nos.10 and 11 are purchasers of the properties. The other Defendants are the siblings of the Plaintiff.

3. The Respondent no.1, the Plaintiff, filed a Special Civil Suit seeking partition of various properties. The parents of the Plaintiff and the Defendants hailed from Karnataka and settled in Goa during the Portuguese regime. It is an admitted position that the parties are governed by Hindu Law and not by the law prevalent in Goa.

4. Narayan Pai was the father of the Plaintiff and the Defendants. He had four sons and seven daughters. Narayan expired on 11 November 1974. The mother of the Plaintiff and the Defendants expired in the year 1993. One of the sisters also expired.

5. According to the Plaintiff, their parents had acquired some properties in Goa. These properties are situated at Mundvel Vaddem, Vasco-da-Gama, Zuarinagar, Sancoale, Ella, Dongri, Tiswadi, Vaddem Vaso-da-Gama and certain flats situated at Margao and two shops at Vasco. According to the Plaintiff, there were three businesses being jointly family businesses that is: M/s Saraswati Timber and Tiles Depot at Vaddem; M/s Narayan Road Lines and M/s Canara Timbers at Vasco. It is the case of the Plaintiff that the Narayan had set up the family business and had also purchased a plot at Mundvel are constructed residential houses, commonly known as Chawl, and the rooms were rented. It was also the case of the Plaintiff that after the death of Narayan, all brothers jointly purchased another plot at Vasco and they were functioning as one family and the business was being managed by all brothers. The Plaintiff also stated that the Appellant-Defendant no.1 purchased plots at Old Goa and at the Dabolim. According to the Plaintiff, a flat was purchased at Margao and these purchases were from the joint family funds. The Plaintiff stated that all the properties were joint family properties, and the Plaintiff and Defendants were always

constituted a joint Hindu family and they were governed by the provisions of Hindu law, as applicable. The Plaintiff contended that the Defendant no.1 started acting against the interest of the family and sought to appropriate himself the joint family property. Therefore, the shares in the various assets of the joint family needed to be determined. The Plaintiff contended that the Plaintiffs and Defendants were entitled to 1/10th share in the properties and 1/3rd share in the joint family business. It was also contended that on 18 June 1989 an agreement was executed between the Plaintiff and the Defendants wherein the parties decided for separate share and this agreement constituted a family settlement. The Plaintiff also contended that the Defendants sought to sell certain properties to the Defendant nos.10 and 11 and said Sale Deed could not have been executed since the properties were joint family properties. The Plaintiff prayed for partition of the joint family properties and the businesses. They also prayed for cancellation of the agreement executed by the Appellants with the defendant nos.10 and 11 and that they be directed to deposit the consideration of Rs.7,75,000/- received. The Plaintiff in the alternative prayed that the agreement of settlement dated 18 June 1989 be enforced.

6. The Appellants filed their Written Statement and contested the suit. The Appellants contended that there was no joint family and also no joint family property. The Appellants contended

that various properties mentioned in the plaint are in the name of the Appellants and the argument is that they were purchased in his name is not tenable, in view of the provisions of the Benami Transactions Act, 1988. The Appellants contended that the properties were purchased by them through their own funds and were purchased after Narayan expired on 11 November 1974. The Appellant contended that in some of the properties they allowed the family members to stay and that did not mean that there existed a joint family. The Appellants also stressed their independent right to the property in question and to the business. The Appellants also made a counter claim for eviction of the Plaintiff nos. 1 and 2 from the flats and for grant of permanent injunction. The Plaintiff filed their written statement to the counterclaim. The Plaintiff no.1 was examined himself as PW-1. The Plaintiff no.2 was examined as PW-2 and the Advocate who drafted the agreement dated 18 June 1989 was examined as PW-3. The Defendant no.1 examined himself. The parties produced documentary evidence on record.

7. The learned Civil Judge, inter alia, framed the main issue as to whether the plaintiffs prove that the plaintiffs and the defendants are entitled for partition and allotment of the suit joint undivided Hindu family properties as detailed in para 15-B as per the shares detailed in para 15-E of the plaint. Issues were also framed regarding the joint family business, specific performance, deposit of

the amount and injunction. The learned Judge by the judgment and decree dated 26 July 2010 decreed the suit by determining the shares and ordering the partition of the properties and business.

8. We have heard Mr. Nitin Sardesai, learned Senior Advocate for the Appellants and Mr. U.R. Timble, Advocate for Respondent nos. 1 to 4.

9. Having heard the learned counsel for the parties at length, we are of the opinion that the proceeding needs to be remanded to the trial court for fresh consideration. The reasons for this conclusion are as follows.

10. The learned Judge has proceeded on the basis that the properties are joint family property and, therefore, they need to be partitioned. The learned Judge has considered the Appellant, defendant that is the siblings and their parents, as a joint family and the properties as ancestral properties that require to be partitioned.

11. There is a clear conclusion in the discussion of the judgment of the trial Court. Various concepts such as joint Hindu family, joint business, ancestral properties are mixed up and are used interchangeably. The parties herein are governed by Mitakshara. Under the Mitakshara Law the property inherited by a Hindu from his father, father's father, or father's father's father is an ancestral

property. A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. Every coparcener has a joint interest and a joint possession in joint family or coparcenary property. A Hindu, even if he is part of joint family may possess separate property. No other member of the coparcenary, acquires any interest in such property by birth. Such property is not liable to partition. Such property passes by succession to his heirs, and not by survivorship to the surviving coparceners. A property could be acquired in business by persons constituting a joint Hindu family. In such case it has to be determined based on evidence, whether it is a joint property, or whether it is a property of jointly acquired or whether it is a partnership property. If it is partnership property, it is governed by the provisions of the Indian Partnership Act, 1932.

12. The learned Civil Judge has, however, not applied this settled position of law regarding different concepts to appreciate the oral and documentary evidence on record. Unless a specific finding was given as regards the existence of a joint Hindu family and joint Hindu family business or a partnership, the case would not proceed further.

13. The Plaintiffs had based their claim on the existence of a joint Hindu family and joint Hindu family properties describing

Defendant no.1 as a 'Karta' of the Joint Family, after the death of their father. This position was denied by the Defendant, who contended that no joint family at all existed constituting him as a 'Karta'. The learned Civil Judge straight away proceeded to construe the existence of a Joint Hindu Family (HUF) as well as a joint Hindu family property/business. The learned Civil Judge failed to appreciate the evidence of Plaintiff no.1 in its correct perspective as to whether there was anything to indicate the existence of a joint Hindu family or joint Hindu Family property/business. The evidence of Plaintiff no.1 indicated that his income was shared only with his wife and that the buildings were constructed by M/s. N.R.Pai and Sons, which was a firm. The learned Civil Judge did not consider the recitals of the agreement dated 18 June 1989. There is no satisfactory discussion on the evidence adduced by the parties. Direct conclusions are drawn. Even one of the properties which the learned Judge has recorded as not to be partitioned, has been directed to be partitioned.

14. Thus, remand of the matter is necessary because there is a fundamental flaw in the assessment of the evidence, which can not be cured even in First Appeal. The settled position of law as regards the joint family properties, ancestral properties and joint business are not applied to the facts.

15. In view of the above discussion, First Appeal no.

146/2010 is allowed. The judgment and decree passed by the learned Civil Judge, Senior Division, Vasco, dated 26 July 2010 is quashed and set aside. The Special Civil Suit No.20/2005 stands restored to the file of the learned Civil Judge Senior Division, Vasco, to be decided on its own merits.

16. The Suit will be decided on the basis of the evidence, which is already led in the Suit. The learned Civil Judge Senior Division, if there are no other earlier time-bound commitments, will make an endeavor to dispose of the Suit within a period of one year from today.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.