Sarnobat

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1271 OF 2004
ALONGWITH
CIVIL APPLICATION NO. 990 OF 2004

Shri Ashok Dattoba Kalate & Ors. ... Appellants.
Vs.
Tirthdas Narayandas Keswani & Anr. ... Respondents.

Mr. P. R. Yadav, for the Appellants.
Mr. Jagdish G. Reddy, for the Respondent Nos. 1 and 2.

CORAM : A. M. DHAVALE, J.

DATE : 20th AUGUST, 2018.

ORAL JUDGMENT :

1. Heard learned advocate Mr. Yadav for the appellants and learned advocate Mr. Reddy for the respondents. The following substantial question of law were framed by order dated 18th October, 2005;

(i) As per the provisions of Section 223 (paragraph 3) of the Principles of Hindu Law (Mulla) it is provided as under :-

> "Excluding the case of the property inherited from a maternal Grand father" it may be said that the only property that can be called ancestral property, is property inherited by the person from his father's father, or father's father's father. Property inherited by the person from any other relation is his self

> property and his male issues do not take any interesting them in its by per thus property inherited by the person from collateral, such as a brother, uncle, etc., or property inherited by him from a female e.g. his mother is his separate property."

(ii) Thus although, it is a normal law that the property inherited by the person from any other relation is his separate property, the words "excluding the case of the property inherited from the material grand father" clearly indicate that the property inherited from the maternal grand father will also the joint family property.

(quoted as it is from the record).

2. The issue has arisen in following facts:

The appellants were original plaintiffs. They had filed Special Civil Suit No. 105 of 1999 challenging the execution of Sale Deed by their common ancestor dated 10.1.1992 for sale of land of 1 Hector 15 R for Rs. 1,15,000/-. Shri Dattoba Kalate father of plaintiff Nos. 1 to 4 and 6 to 7 and husband of plaintiff No. 5 died on 14.10.1996. The plaintiffs claimed that they came to know about this Sale Deed later. They claimed that deceased Dattoba was in habit of consuming liquor. He was administered liquor and his signature was obtained and sale deed was executed by him under the influence of liquor. There was no necessity for him to sell the suit land.

3. Learned Civil Judge framed several issues which were

answered against the plaintiffs except limitation. The suit came to be dismissed with costs by judgment dated 21.2.2001. The plaintiffs preferred Civil Appeal No. 585 of 2001. The learned first appellate Court also held that the property was not ancestral and Sale Deed was not executed by practicing fraud on Dattoba. It was held that the suit was barred by limitation. The appeal came to be dismissed with costs by judgment dated 12.12.2003.

4. In the second appeal the only issue raised and to be considered is whether the suit property was ancestral and whether the plaintiffs being co-parceners, the deceased was not entitled to sell the property without legal necessity. The learned Judge of this court under order dated 18.07.2005 noted that, as per Section 223 of Hindu Law by Mulla the wording used is “excluding the case of the property inherited from a maternal grand father”, it may be said that the only property that can be called ancestral property is the property inherited by the person.......” On the basis of sentence it was held that property inherited from maternal grandfather is ancestral property and in this case the property inherited by Dattoba was ancestral property.

5. I have heard the learned advocate Mr. P. R. Yadav, for the Appellants and the learned advocate Mr. Jagdish Reddy, for Respondent Nos. 1 and 2. Though para 223 of book of Hindu Law of

Mulla does not disclose the sentence that property inherited by a person from his maternal grand-father is his ancestral property, such a sentence appears in a judgment in case of ***Madanlal Jain Vs. State of Maharashtra & Ors.***[1] In this case, the Appellant was taken in adoption in the family of his uncle. When his biological father died leaving behind no legal heirs, he inherited the land as nephew of his natural father (in view of adoption, his father became his uncle). In this context, it is observed that:

> "2. ... We have, therefore, to consider the limited question whether there was blending and the land inherited by the appellant formed part of the ancestral property. It is well settled that a Hindu can have interest in ancestral property as well as acquire his separate or self-acquired property. If he acquires by inheritance separate property a birth of a son or adoption of a son will not deprive him of the power he has to dispose of his separate property by gift or will. That means that a Hindu can own separate property besides having a share in ancestral property. Therefore, when the appellant inherited the land left by his uncle (natural father) that property came to him as a separate property and he had an absolute and unfettered right to dispose of that property in the manner he liked. It is equally well settled that excluding the property inherited from a maternal grandfather the only property which can be characterised as ancestral property is the property inherited by a person from his father, father's father, or father's father's

1 (1992) 2 SCC 717.

> father. That means property inherited by a person from any other relation becomes his separate property and his male issue does not take any interest therein by birth. Thus property inherited by a person from collaterals such as a brother, uncle, etc., cannot be said to be ancestral property and his son cannot claim a share therein as if it were ancestral property. There can, therefore, be no doubt that the property which the appellant inherited from his uncle (natural father) was his separate property in which his major son could not claim any share whatsoever."

In this case, there was no question of inheritance from maternal grand-father. After carefully reading the judgment, it appears that the word "maternal" is misprint for the word "natural grand-father". In any case, the ruling does not deal with any facts of inheritance of the property from maternal grand-father.

6. In ***Indrakali wd/o Indrabhan Prasad & Ors. Vs. Ravi Bhan Prasad S/o. Chandrabhan & Ors.***[1] wherein in para 17, it is observed as under:

> "17. … The plaintiff's own case is that the suit property was owned by father of Suryabhan's wife who gifted it to his daughter (wife of Suryabhan). Said Suryabhan died in the year 1946 and his wife also later on died and both of them died issueless.

1 2012 (1) M.P.L.J. 436

Since the property in dispute was of father of Suryabhan's wife and it was gifted to her, the same would become her *Stridhan* in view of Article 126 of the Mulla's Hindu Law (21st edition). Hence for all practical purpose, it is hereby held that suit property was the *stridhan* of Suryabhan's wife and if that would be the position it cannot be said to be the ancestral property of plaintiff and defendant <u>because the ancestral property means all property inherited by male Hindu from his father, father's father or father's father's father</u> (see Article 221 of Mulla's Hindu Law). The property inherited from collaterals and property inherited from female would be excluded from the ancestral property. In this context Article 221(3) of Mulla's Hindu Law is quite clear, which reads thus :

221(3) *Property inherited from collaterals* – Property inherited from females – Excluding the case of property inherited from a maternal grandfather, it may be said that the only property that can be called ancestral property, is property inherited by a person from his father, father's father, father's father's father. Property inherited by a person from any other relation is his separate property, and his male issues do not take any interest in it by birth. Thus property inherited by a person from collaterals, such as a brother, uncle

> etc. or property inherited by him from a female, e. g. His mother, is his separate property (emphasis supplied)."

In this case also, there was no issue of inheritance of property of maternal grandfather.

7. In ***Maktul, Appellant Vs. Mst. Manbhari & Ors.***[1] There was specific issue about the nature of property inherited from maternal grand-father's estate. In view of customary law prevailing in Punjab, it was observed that *"if a Hindu governed by the customary law prevailing in Punjab succeeds to the maternal grand-father's estate, is the property in his hands ancestral property qua his own sons? This is the short and interesting question of law which arises in the appeal.*" After considering the substantial issue, it was answered in the negative in following words:

> "11. In the result we confirm the finding of the High Court that the property in suit is not ancestral property and that the appellant has no right to bring the present suit. The appeal accordingly fails and must be dismissed."

8. Learned advocate Mr. Reddy, appearing for respondent Nos. 1 and 2 relied on following judgments:

1 AIR 1958 SC 918

(i) ***Mangammal @ Thulasi & Anr. Vs. T. B. Raju & Ors.***[1]

Wherein it is observed that:

> "7. Before proceeding further, it is apt to have an understanding of the concept of ancestral property in a nutshell. Any property inherited upto four generations of male lineage from the father, father's father or father's father's father i.e. father, grand-father etc., is termed as ancestral property. In other words, property inherited from mother, grandmother, uncle and even brother is not ancestral property."

ii) In ***Ranganatha Naidu Vs. Balaram Naidu & Ors.***[2]***, judgment dated 6th January, 1981 by Justice Suryamurthy***, relying on Privy Council judgment, it was observed that, "property inherited from maternal grandfather, is not ancestral property in the hands of the son. Enjoyment of family income by the son will not give rise to inference of abandonment by father or intention to throw the properties into hotchpot as joint family properties."

iii) ***Muhammad Husain Khan & Ors, Appellants Vs. Babu Kishva Nandan Sahai, Respondent***[3] wherein the Privy Council held that *"the estate which was inherited by the father from his maternal grandfather cannot be held to be ancestral property in which his son has interest*

1 2018 SSC Online SC 422
2 (Madras HC), Appeal No. 685 of 1975, dt. 6Th January, 1981.
3 Indian Appeals, VOL. LXIV, 255

jointly with him."

9. In the light of above consistent views, it is well settled that the property inherited by a person from his paternal ancestors, namely, his father, father's father and father's father's father, is ancestral property. The only exception is given in ***Commissioner of Wealth Tax Vs. Chandrasen***[1] wherein it is held that the property inherited by a person from his father under S. 8 is his self-acquired property and not ancestral property.

9. In the light of above consistent view, I hold that the property inherited from maternal grand-father cannot be ancestral property. The substantial questions framed are accordingly answered in the negative.

10. Hence, the appeal deserves to be dismissed and is accordingly dismissed with costs.

11. In view of dismissal of the second appeal, pending Civil Application No. 990 of 2004 does not survive, and is accordingly disposed of.

Sd/-
[A. M. DHAVALE, J.]

1 AIR 1986 SC 1653