

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.146 OF 1998

JUDGMENT:

The present City Civil Court Appeal is directed against the judgment and decree, dated 19.03.1998, in O.S. No.305 of 1989 passed by the IV Senior Civil Judge, City Civil Court, Hyderabad (for short 'trial Court'), under Section 96 read with Order XLI, Rule 1 of the Code of Civil Procedure, 1908 (for short 'Code').

2. By the aforesaid judgment, the trial Court holding that the appellant - plaintiff failed to establish that the suit schedule property is the ancestral property of the father of defendant No.1 and, as such, he is not entitled to share therein, dismissed the aforesaid suit.

3. The appellant herein is the plaintiff in the aforesaid suit, while respondent Nos.1 to 4 are defendant Nos.1 to 4.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed originally in the aforesaid suit.

5. Certain relevant facts are necessary to project in the direction of reappraisal of pleadings and proof based on appreciation of evidence let in by both sides.

i) Admittedly, the plaintiff is the son of defendant No.1. His paternal grandfather was one Devsi Ratansi Shah belonging to Gujarat State originally. He purchased the plaint schedule property bearing

door No.15-2-217, 218 and 220, located at Maharaj Gunj, Hyderabad in the year 1355 Fasli. The plaintiff claims that his grandfather though, purchased the suit house, but taken the sale deed in the name of his father, defendant No.1, a minor, aged 12 years on the date of purchase.

ii) According to the plaintiff, after purchase of the suit house, Devsi Ratansi Shah shifted to Hyderabad and started business in one of the mulgies and died in the year 1961 survived by himself, defendant No.1 and defendant No.1's three sisters, Devika Shah and others. By the date of his death, defendant No.1 had only one son i.e., himself (plaintiff) and daughter. Subsequent thereto, defendant No.1 got yet another son, who was named Bharat Kumar, but the said Bharat Kumar was given in adoption to the sister of defendant No.1, Devika Shah.

iii) He alleges that none of the sisters were alive, and the suit schedule property devolved on them i.e., himself and defendant No.1. Thus, the plaintiff claims share in the suit house alleging that it is ancestral or coparcenary property and devolved on them by succession.

iv) He alleges that Devika Shah, sister of defendant No.1, filed a suit in O.S. No.181 of 1971 for partition of the very same house claiming that she is one of the heirs and survivors of Devsi Ratansi Shah. The said suit ended in settlement between defendant No.1 and

Devika Shah, under which a portion of the suit house was allotted to her and even transferred to her, which was in an extent of 30 square yards of area with ground floor and first floor. She took the said portion, which constitutes a separate portion from the main building and on the date of suit it was in possession of Bharat Kumar. Thus, the suit schedule property area was the balance of 302 square yards, which is sought to be partitioned by the plaintiff.

v) He also claims that he lived in the suit house till himself and his father shifted to Bangalore in 1975, and till 1984 year they lived there. He was got married there and came down to Hyderabad and started living separately. When they shifted to Bangalore, the suit house was let out to number of tenants and it used to fetch Rs.1,400/- per month, but the actual collection was Rs.1,000/- as two of the tenants were not tendering rents due to disputes and he was paying Rs.450/- to Rs.500/- per month towards his share, but from the month of January, 1989, defendant No.1 stopped payment of any amount to him, and on demand, he refused to pay him and, therefore, he laid the suit for partitioning the plaint schedule property and to allot half share therein by metes and bounds.

vi) The plaintiff also alleges that they are governed by Hindu Law of Heritance, and the suit schedule property belonged to Devsi Ratansi Shah and on his death, the property became ancestral or coparcenary property and devolved on them as the plaintiff is *Aprathibandhu Daya* (unobstructed heritage). He also called upon

defendant No.1 to supply the details and information in regard to the movable properties i.e., jewellery and cash, which are subject to partition.

6. Defendant No.1 filed a written statement completely controverting the allegations mentioned in the plaint.

i) According to him, Devsi Ratansi Shah, his (defendant No.1) father, came to Hyderabad in or about 1940 or 1941 year and with the help of late Shah Narsi Velji started business in old gunny bags and empty tins which were very modest type of business from which he could hardly maintain the family. He admits other allegations in relation to his sisters and plaintiff being the son and his daughter, Kusum and the birth of Bharat Kumar. He would admit that his sister, Devika Shah and Bharat Kumar filing suit in O.S.No.181 of 1971 against himself and his other sisters and mother for partition of the property mentioning the very same allegations leveled in the present plaint. In the said suit, his sisters claimed $1/5^{\text{th}}$ share in the property seeking to pass preliminary decree and for appointment of Commissioner to work out the shares. According to him, in the said suit, ultimately he admitted that he is the sole and absolute owner of the plaint schedule property, but since Bharat Kumar happens to be his natural son, he agreed to settle a portion of the property on him subject to certain terms and conditions as detailed in the compromise.

ii) He would set out his stand that the plaint schedule house was purchased in his name from the moneys given as gift by his maternal grandfather, Jivaraj Samath, who had only two daughters, namely, Jethi Bai and Mal Bai without any male issues and he gave Rs.15,000/- to his mother Jethi Bai in the year 1945 to purchase the house in his (defendant No.1) name for his benefit and, accordingly, the plaint schedule house was purchased for Osmania Sikka Rs.17000-00 equivalent to Indian Government Rs.14,571.40 ps. According to him, the Law of inheritance is absolutely not applicable to the facts of the case. He denied the allegation that he used to pay the amounts of Rs.400 to Rs.500/- per month in the rentals towards share of the plaintiff. He denied the constructive possession claimed by the plaintiff. Therefore, he sought to dismiss the suit with exemplary costs.

7. Defendant Nos.2 and 3 were impleaded by virtue of certain portions of the plaint schedule properties purchased by them.

i) Defendant No.2 also alleges that defendant No.1 sold away an extent of 214.99 square yards to her under a registered sale deed, dated 17.04.1982, the property bearing No.15-2-220 in her favour, and she has been in possession since then and defendant No.1 also sold away the extent of 75 square yards in her favour under yet another registered sale deed, dated 09.11.1984 and put her in possession.

ii) The plaintiff, in fact, executed a rental deed, dated 09.11.1984 in her favour concerning the portion bearing door No.15-2-220 in the first floor and, thus, the plaintiff accepted and acknowledged the ownership and possession of defendant No.2.

8. Defendant No.3 also filed written statement that he purchased the property from defendant No.2 under a registered sale deed, dated 19.04.1991 supporting the case of defendant No.1. According to him, after the purchase of the property under registered sale deed, he entered into agreement of sale, dated 28.05.1992 with a third party, M/s. Tulasi Constructions, who in turn constructed a complex with residential and non-residential blocks and sold the entire blocks to different purchasers and, as such, third party rights were created on 28.05.1992 itself and, therefore, the suit is liable to be dismissed with exemplary costs.

9. The trial Court basing on the aforesaid pleadings, settled the following issues:

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- i) Whether the suit property is ancestral and coparcenary property and is liable to be partitioned?
- ii) Whether the plaintiff get 1/2 share in the suit property?
- iii) To what relief? ”

10. To substantiate their respective claims, the plaintiff examined himself as PW.1 and marked Exs.A-1 to A-7. Whereas,

defendant No.1 was examined as DW.1 and Exs.B-1 to B-22 were marked on behalf of the defendants.

11. Heard Sri B. Madhava Reddy, learned counsel for the appellant - plaintiff, and Sri S. Balchand, learned counsel for respondent No.2 - defendant No.2, and Sri Narayana Rao Mandewalkar, learned counsel for respondent No.3 - defendant No.3. Though service on respondent Nos.1 and 4 were completed, none appears.

12. The definite case of the plaintiff is, that the plaint schedule property was acquired with the income derived from the ancestral nucleus, and only for convenience sake, sale deed was taken in the name of defendant No.1 by his paternal grandfather, Devsi Ratansi Shah, and on the demise of Devsi Ratansi Shah, defendant No.1 as a son, himself got the property by survivorship as his brother, Bharat Kumar, who was born subsequent to the death of Devsi Ratansi Shah, was given in adoption to Devika Shah, one of the sisters of defendant No.1.

i) His further case is that when Devika Shah filed suit in O.S. No.181 of 1971 on the file of the II Additional Judge, City Civil Court, Hyderabad, arraying defendant No.1 and others as opposite parties, the said suit was ended in settlement, in which, defendant No.1 allotted 30 square yards area comprising portion of ground floor and first floor and, thus, it was allotted towards the share of Devika

Shah and Bharat Kumar and, therefore, the plaint schedule property is not exclusive property of defendant No.1.

ii) His further case is that, they went to Bangalore from Hyderabad in 1975 and lived there jointly till 1984, and later he started living in Hyderabad separately, and even he was being given Rs.450/- to Rs.500/- towards his share of rents as plaint schedule property was let out to different tenants, and in the month of January, 1989, when defendant No.1 stopped payment of rents for that month and denied to pay the same when he demanded for payment, he instituted the present suit for the relief of partition and allotment of half share in the plaint schedule property with incidental reliefs.

iii) His further case is that defendant No.1 made new constructions over the plaint schedule area and since sale deed was taken in the name of defendant No.1 when he was 12 years old, during which time, he had no capacity to earn and acquire the plaint schedule property, the plaint schedule property constitutes ancestral property. According to him, the other issues of defendant No.1 are not alive and, thus, others are not entitled to any share in the plaint schedule property.

13. As against the stand taken by the plaintiff, the defendants come out with the stand that the suit property is exclusive property of defendant No.1; that his maternal grandfather - Jivraj Samanth had given a sum of 15,000/- of British Currency to his mother - Jethi Bai

to purchase a house in his (defendant No.1) name and for his benefit, and the suit property was, thus, purchased for Osmania Sikka of 17,000/-, which is equivalent to 14571/- of British Currency. His case is that jewellery was also given to his mother by his maternal grandfather. His further case is that his maternal grandfather executed a Will in favour of his maternal aunt - Mal Bai, in which there is also reference made by his maternal grandfather giving 15,000/- along with some other articles, which document is also marked as Ex.B-10. Thus, according to the defendants, the suit house was purchased for his benefit under the guardianship of his father who had no capacity or independent income to purchase the suit house.

14. The defendant No.1 also denied the other allegations of sharing the rents and the demand alleged to have made by him for partitioning the property. The defendant No.1 also taken the stand in regard to the allotment of 30 square yards in favour of Devika Shah and Bharat Kumar and ultimately the said suit was ended in compromise under the settlement deed and he settled the 30 square yards with constructed portion thereon, both ground and first floor in favour of Bharat Kumar, adopted son of Devika Shah. According to him, in the said suit, it was admitted by the parties that he is the sole and absolute owner of the property bearing house No.15-2-217, 218 and 220, situated at Maharaj Gunj, Hyderabad, and the plaintiff in the said suit has no right, interest and not entitled to claim any part thereof. It is, therefore, his stand that his paternal grandfather had no

income at all to utilize the same for the purpose of acquiring the plaintiff schedule property and his father started business in old gunny bags having come out from Kutch, and when he became old, he started looking after the business in the name and style 'Velji Devsi' and maintained books of accounts throughout which were also marked as documents in 'B' series.

i) The Court below on appreciation of evidence, both, oral and documentary, let in by the parties, dealt with elaborately and arrived at the finding that the initial burden rests on the plaintiff to prove the existence of ancestral nucleus from which, funds were generated to acquire the suit schedule property. The trial Court also taken the view, that there was no necessity for defendant No.1's father to take the sale deed in the name of defendant No.1 instead of taking the sale deed in his name in case, the funds were generated from ancestral nucleus or the business he was doing in gunny bags and empty tins. The trial Court also recorded a finding that the plaintiff failed to prove at the relevant point of time, his grandfather was financially sound and referred to the evidence of DW.1 in his chief-examination which reflects that DW.1, in fact when joined service the income from the house was Rs.200/- per month and no piece of paper was filed to show that his grandfather was earning amounts adequate to acquire the property, and that defendant No.1 was assisting him throughout. The trial Court also found that none of the witnesses from Kutch village of Gujarat State were examined by the plaintiff to prove that they had

ancestral agriculture farms numbering 12 and had adequate income and his father was being educated from the money derived thereon and helping his father in business. Thus, the trial Court has elaborately dealt with the answers given by PW.1 in his cross-examination and arrived at the conclusion that even the settlement deed basing on which the suit O.S.No.181 of 1971 was ended in compromise would not advance the case of the plaintiff on the plea of forgery and fabrication of Exs.B-10 and B-14 set up by the plaintiff as nothing was elicited in the cross-examination of DW.1 to favour the stand put forth by the plaintiff. Thus, the trial Court recorded findings against the plaintiff and at the end even referring to the sales effected in favour of defendant No.2 and 3 dismissed the suit without costs.

15. Questioning the said judgment and decree, the plaintiff preferred the present appeal, agitating the following grounds:

i) That the Court below did not properly appreciate the oral and documentary evidence and did not consider the statement made by Jethi Bai, mother of defendant No.1 in O.P. No.134 of 1971 on the file of the then I Additional Judge, City Civil Court, Hyderabad, wherein she deposed that suit house was acquired by her husband for Rs.18,000/- about 28 or 30 years back which document was marked as Ex.A-7 is not disputed by defendant No.1.

ii) It is also one of the grounds that the trial Court completely failed to appreciate that Exs.B-10 and B-11 are brought into existence by defendant No.1 only with a view to see that they supported his stand which the Court below did not properly appreciate despite the fact that defendant No.1 in his cross-examination answered that he does not know whether the writing in Ex.B-14 is new or not, and even the answers that he has not filed any proof that his mother told him that his mother had received Rs.15,000/- as mentioned in Ex.B-10.

iii) His further ground is that the Court below did not properly appreciate Exs.A-6 and B-22, which are translations of sale deed (Ex.A-4) and Will (Ex.B-21), which clearly mention that the signature of DW.1 is not occurring on Ex.A-4 and Ex.B-20, original sale deed in Urdu language contradicts the stand taken by defendant No.1 to the extent that he was present in the registration office and signed on the sale deed under the endorsement of Registrar about the person who paid the sale consideration.

iv) He also agitates that the trial Court heavily relied on Ex.B-5, which is a compromise memo filed in O.S. No.181 of 1971 between defendant No.1 and his sister, Devika Shah, and it does not bind him, but the trial Court did not consider the importance of the document, Ex.B-7, the plaint filed by Devika Shah in the said suit, in which, she has contended that the house was purchased by her father, Devsi Ratansi Shah and claimed her share in the property and, therefore, Ex.B-10 has no evidentiary value against the appellant -

plaintiff in the presence of Ex.B-7, which is not considered by the Court below.

v) The appellant also agitates that the Court below did not consider the important documents marked in 'B' series and wrongly contended that the old house was reconstructed by defendant No.1, which is nobody's case, and a new construction has come up admittedly by purchasers - defendant Nos.3 and 4.

vi) Certain other grounds have been agitated in connection with Ex.A-4, B-20, B-10 and B-14 on the ground of forgery and fabrication and sought to allow the appeal by decreeing the suit for the reliefs prayed.

16. The submissions made by the learned counsel for the appellant are based on the grounds agitated in the grounds of appeal.

17. The learned counsel for respondent No.1 would submit that there is absolutely nothing on record to show the existence of ancestral nucleus, the income derived thereon or the generation of income to acquire the plaint schedule property and the plaint schedule property assuming the character of ancestral property. He would also submit that a thorough examination of Ex.B-6 would completely condemn the case of the plaintiff and substantiates the case of defendant No.1 that the plaint schedule properties are exclusive properties of defendant No.1, besides Exs.B-10 and B-14, which

cannot at all be sidelined as the plaintiff completely failed to prove the plea of forgery and fabrication of Exs.B-10 and B-14.

i) He would further submit that mere statement of the mother of the plaintiff as a witness in O.P. No.173 of 1971 would not amount to proof that the father of defendant No.1 purchased the plaint schedule property from his own funds, but taken the sale deed in the name of defendant No.1.

ii) He would also submit that the Court below did not deviate in appreciating the evidence on record, more particularly, has evaluated the answers given in his cross-examination and recorded the findings against the plaintiff.

Thus, he would support the findings recorded by the Court below and the conclusion arrived at dismissing the suit and it does not warrant any interference at all.

18. On the basis of the arguments advanced by the learned counsel for both sides and the grounds agitated by the appellant, the following points would arise for determination:

- i) Whether there was ancestral nucleus, and if so, whether it generated income, and if so, whether the income so generated was adequate to purchase the plaint schedule property?

- ii) Whether Exs.B-10 and B-11 are outcome of forgery as pleaded by the appellant?
- iii) Whether the appellant is entitled to partition of the plaint schedule property and, if so, to what share?
- iv) Whether the judgment and decree passed by the Court below cannot be sustained?
- v) To what other relief, to which the appellant is entitled?

POINT No.(ii)

19. Ex.B-10 is positive of the original Will with corresponding negative and Ex.B-14 is document bearing No.DO 48526. Ex.B-11 is the true translation of Ex.B-10 and the trial Court recorded a finding on this aspect of the case that the plaintiff completely failed to prove that both these documents are forged documents and created for the purpose of the case as no evidence in that direction was placed except vaguely asserting in his chief examination by PW.1 and getting suggested to DW.1 in his cross-examination that Exs.B-10 and B-11 are forged and brought into existence in an attempt to prove the stand taken by defendant No.1 that his maternal grandfather has given the amount of Rs.15,000/- British Currency and jewellery and the deposition of mother of PW.1 in O.P. No.134 of 1971 marked as Ex.A-7, nothing is placed before the Court below to substantiate that stand by the plaintiff. The trial Court has thoroughly scanned the evidence of PW.1 and DW.1 and Exs.B-10 and B-11 as a cluster of documents while appreciating the case of the plaintiff and the stand taken by defendant No.1 and recorded finding that the plaintiff failed

to prove that Exs.B-10 and B-11 are forged and fabricated documents which finding does not suffer from any legal infirmity. The effect is that Ex.B-10 contains the recitals that the maternal grandfather of defendant No.1 gave Rs.15,000/- British Currency to the mother of defendant No.1 and the jewelry. It was so mentioned, in the context of bequeathing the other property in favour of the other daughter. Therefore, this point is held against the appellant - plaintiff.

POINT No.(i)

20. As to existence of nucleus, the plaintiff did not even assert it in his chief-examination. In fact, when his definite case is that the plaint schedule property acquires the character of ancestral property, the entire burden rests on him to prove that the plaint schedule property was acquired by utilizing the income derived or generated from the ancestral nucleus. In which direction, he is obligated with the duty to prove that their family owned and possessed the assets yielding income and only in the cross-examination when he was thoroughly pursued he has given certain answers which give rise to inferences favouring the defendants' case rather than his case and condemning his case. What all the plaintiff as PW.1 asserts in his chief-examination is that the sale consideration under Ex.A-4 was paid by his grandfather and denied the stand of the defendant No.1 that property under Ex.A-4 was purchased by his maternal grandfather. When he was pursued in the cross-examination, he would answer to certain questions that he does not know the name of

his maternal grandfather and so also the maternal grand father of his father; that the name of his paternal grandmother is Jethi Bai; that he does not know the name of sister of his paternal grandmother; that he does not know when his paternal grandfather came to Hyderabad; that his paternal grandfather was having one house in Kutch; that he does not know that because of often drought situations in Kutch Region, people were migrating to other places in search of service or other works; that he does not know whether his paternal grandfather was income tax assessee or not at the time of the purchase of the property and so also he does not know that his paternal grandfather whether indebted or not. But, he gives an answer that on account of love and affection, the property was purchased in the name of his father. He expresses ignorance as to whether his grandfather did not show in his income tax returns annual rating value of suit property, but volunteered whether his grandfather was Income Tax Assessee or not and he has no idea about the income of his paternal grandfather in those days.

i) He further answers that he does not remember the sale consideration for which the property was purchased but the same is mentioned in the sale deed. He would answer that his paternal grandfather died in the year 1961 and his paternal grandmother died in the year 1976 or so; he admits that his father had three sisters, viz., Champa Bai, Mal Bai and Devika Shah. He admits that Devika Shah was unmarried and died somewhere in the year 1974 and 1978.

Champa Bai died 7 or 8 years prior to his deposition. Mal Bai died after the death of Champa Bai. He was at Bangalore when his paternal grandmother died.

ii) For certain other answers touching the source of acquiring the suit property, he would answer that he was not aware whether the money was provided by maternal grand parents of his father for purchase of the property in the name of his father. Of course, he volunteered that the statement was false. He answers to yet another question that he does not know if his maternal grand parents were illiterates. His paternal grandfather never asserted that suit property belongs to him, and similarly his father also did not assert that the property belongs to him exclusively. He denied the suggestion made there-for.

iii) When these were the answers given by him in his cross-examination, certainly, it has to be held that initial burden resting on him to prove that there existed ancestral property constituting nucleus generating income and that income was adequate besides meeting the family maintenance expenses to acquire the suit property stood unsubstantiated. Therefore, it is difficult to hold that the initial burden resting on him stood discharged. In such an event, there is absolutely no necessity for defendant No.1 to establish that the suit property is self-acquisition, even going to the extreme that there is evidence on record to show that the suit property was purchased for the benefit of defendant No.1. The fact that the sale deed was taken in the name of

defendant No.1 is not in dispute. Defendant No.1's father standing as guardian is also not in dispute. When defendant No.1's father, paternal grandfather of the plaintiff was entering into sale transaction and purchasing the suit property, there was absolutely no need or necessity for him to take the sale deed in the name of a minor boy and he would have purchased the property in his name in case he was meeting the sale considering from the income derived from the ancestral nucleus, if any. This accounts for strong circumstance which gives an inescapable inference that unless the funds were provided by the maternal grandfather of defendant No.1 as per the stand taken by defendant No.1, there was absolutely no need for the paternal grandfather of the plaintiff to take the sale deed in the name of defendant No.1. This apart, there is absolutely no evidence worth-the-name on record from the side of the plaintiff that in gunny bags business his paternal grandfather was earning income and was capable of saving some amount besides meeting the family expenses. The family consisted of six members not only the paternal grandfather, but also defendant No.1 and his three sisters constituting the said family. Absolutely, nothing is forthcoming from the plaintiff in the direction of proving that his paternal grandfather was capable of earning huge profit on gunny bags business and the said business was prospering at the relevant time.

iv) Turning to the case of defendant No.1, Exs.B-10 and B-11 though, the plaintiff claimed that they were brought into existence by

forging and fabricating for the purpose of substantiating the case put forth by him, it cannot be said that Exs.B-10 and B-11 are totally untrue. The reasons assigned by the trial Court are based on proper evaluation of Exs.B-10 and B-11 and, therefore, cannot be faulted. The reasons assigned by the Court below in arriving at the findings are based on process of reasoning in accordance with evidentiary rule. It is no doubt true, in the deposition, the paternal grandmother of PW.1 stated that her husband paid the amount for the purchase of the suit property, but again the same has to be substantiated by the plaintiff. In which direction, there is absolutely nothing and just basing on that assertion made by her in her deposition, certainly, it cannot be said that it would set the effect of Exs.B-10 and B-11 at naught, which are substantiated through the documentary evidence Exs.B-14 and B-15.

v) It is no doubt true, an attempt is made to disprove the contents of Exs.B-13 and B-14 by PW.1 confronting them to DW.1 in his cross-examination. But, however, the answers given by DW.1 would not give rise to any inference to substantiate the stand of the plaintiff in arriving at Exs.B-10 and B-11 are fabricated documents. In fact, Ex.B-11 is true translation of Ex.B-10. Admittedly, the original of Will is not forthcoming, but the fact remains that the said Will was filed in O.S. No.181 of 1971, which suit was instituted by Devika Shah, paternal aunt of the plaintiff and the endorsement is that the originals were destroyed for the reason that the parties did not take

back the originals filed in that suit and appears to have contented with the compromise decree and the settlement memo which are marked as Ex.B-5.

vi) Incidentally, Exs.B-5 to B-7 require consideration. One of the submissions made by the learned counsel for the appellant is that in the plaint filed in O.S. No.181 of 1971 by Devika Shah, she has clearly taken the stand that the suit property was acquired by PW.1's paternal grandfather and the Court below completely overlooked the same and rested on the compromise memo - Ex.B-5, which ought not to have been but that ground as well as the defence by the learned counsel for the appellant appears to be incorrect. The plaint constitutes part of pleading. Without any proof, a plea is raised, that plea unless proved through the evidence in accordance with the evidentiary rule cannot be given any weight. On the other hand, the compromise memo Ex.B-5 cannot at all be sidelined as the compromise memo is the outcome of the understanding of the parties to the suit proceedings. Devika Shah appears to be an Advocate as per the answer given by PW.1 in his cross-examination, who is the aunt of PW.1 and remained unmarried, and admittedly taken Bharat Kumar in adoption who is no other than the younger brother of the plaintiff. The fact that though, she claimed 1/5th share in the plaint schedule property, but the settlement was to the effect that 30 square yards portion was given to Devika Shah under the compromise decree and the parties agreeing that the suit schedule property belongs to

defendant No.1 are all circumstances that would completely condemn the case of plaintiff that the suit property is ancestral property and he is legitimately entitled to half share.

vii) Thus, viewed from any angle, certainly, there is absolutely no convincing evidence being placed by the plaintiff to hold that he is successful in proving that there was at least ancestral nucleus generating income and if not it is adequacy or otherwise to purchase the suit property and that with the income derived from the suit property was acquired and the suit property attains the character of ancestral property entitling him for half share in the property. Therefore, even the findings recorded by the trial Court thereon do not suffer from any legal infirmity warranting interference. Hence, this point is also held against the appellant - plaintiff.

POINT Nos.(iii) & (iv)

21. In view of the findings recorded on point Nos.(i) and (ii), it is to be invariably held that the plaintiff is not entitled to any share in the joint family property and the judgment and decree passed by the Court below do not suffer from any patent illegality warranting interference and, therefore, the appeal is liable to be dismissed.

POINT No.(v)

22. In the result, the present appeal is dismissed. In the circumstances of the case, both parties are directed to bear their own costs.

As a sequel thereto, miscellaneous applications, if any pending in the appeal, stand closed.

A. SHANKAR NARAYANA, J

May 01, 2018.
Mgr

