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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.422 OF 2016
WITH
INTERIM APPLICATION NO.61 OF 2020
IN
SECOND APPEAL NO.422 OF 2016**

Subhash Manikrao Narkar

...Appellant

Versus

Mahavir Manikrao Narkar (Since Deceased)
Through Legal representative

1a. Mrs. Vijaya Mahavir Narkar and Ors. ...Respondents

- Mr. Surel S. Shah a/w Mr. Ishaan Kapse, for the Appellant.
- Ms. Shruti Tulpule, for the Respondent Nos.1a & 1b.

CORAM : MADHAV J. JAMDAR, J.

DATE : 28th JUNE 2023

P.C. :

1. Heard learned counsel appearing for the Appellant and learned counsel appearing for the Respondents.

2. The learned counsel appearing for the Appellant submitted that following substantial question of law arises in this Second Appeal:-

“Whether finding of both the Courts that the plaintiff has failed to prove that the plaintiff and the defendant constitutes joint Hindu family and also failed to prove that the suit properties are joint properties, is contrary to the evidence on record?

Pallavi

3. It is the contention of the learned counsel appearing for the Appellant that Mahavir i.e. the defendant is the elder brother of the plaintiff. There is age difference of 13 years between both of them. The said defendant was acting as 'Karta' of the family. It is the submission of learned counsel appearing for the Appellant that the defendant was doing the business of theatre and the said business was, in fact, family business where the plaintiff was helping the defendant. Therefore, it is the contention of the Appellant that the properties which are purchased are the properties of joint family of the plaintiff and the defendant.

4. On the other hand, it is the contention of learned counsel appearing for the Respondents that admittedly, there is no ancestral property or any property left by the father of the plaintiff and the defendant. She submitted that the defendant was merely working as 'Manager' of a theatre and he was not having any theatre business as contended by the Appellant. She submitted that the income received by the defendant working as 'Manager' is only his personal income and therefore, the suit properties cannot be termed as joint properties of plaintiff and defendants.

Pallavi

5. Before considering the rival submissions, it is necessary to set out certain admitted facts:-

- (i) One Manikrao was having two sons viz. Subhash and Mahavir;
- (ii) Said Manikrao passed away on 6th November 1965;
- (iii) It is admitted position that no properties were left by said Manikrao;
- (iv) When said Manikrao passed away, the plaintiff was minor as he passed 10th Std. Examination in 1967;

6. The main crux of the argument of the learned counsel appearing for the Appellant is that since 1967, the Appellant started working in the said theatre business of joint family. However, the factual position on record clearly shows that the defendant was merely working as 'Manager' in the said theatre and there was no such theatre business of the joint family. Both the Courts have concurrently held that the defendant was working in theatre and he was not having any theatre business.

7. It is the contention of the Appellant that in the year 1967, he completed his 10th Std. Examination and at that time, he was 18 years of age and immediately he started working in said theatre. It is

Pallavi

his case that he was getting salary of Rs.12/- to 27/- between 1967 to 1975. Both the Courts have disbelieved the said case. However, even if such case is accepted, the said income is personal income of the plaintiff and in view of the same, it cannot be said that the same is family business.

8. Therefore, there is no substance in the substantial question of law raised by learned counsel for of the Appellant. Accordingly, Second Appeal is dismissed, however, with no order as to costs.

9. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is dismissed.

[MADHAV J. JAMDAR, J.]