

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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RSA-2044-1989 (O&M).
Reserved on: 03.04.2024.
Date of Decision: 18.04.2024.

JOGINDER SINGH

... Appellant

Versus

AVTAR SINGH

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Argued by: Mr. P.S. Rana, Advocate,
for the appellant.

Mr. Ritesh Aggarwal, Advocate,
for the respondents.

VINOD S. BHARDWAJ, J.

The appellant-plaintiff is in present second appeal against the judgment and decree dated 29.04.1986 passed in Civil Suit No.108 dated 01.04.1985 by the Sub Judge First Class, Kharar and the subsequent dismissal of Civil Appeal No.422 of 13.06.1986 preferred by him, by the Additional District Judge, Ropar, vide judgment and decree dated 21.12.1988.

2 The facts in brief are that the appellant-plaintiff filed a civil suit for declaration to the effect that he is the owner of 1/6th share of 1/3rd share shown to have been transferred by defendant No.2-Rakha Singh (father of

appellant-plaintiff) in favour of respondent-defendant No.1 Avtar Singh (brother of appellant-plaintiff Joginder Singh) comprised in Khewat/Khatauni No.51/58 and 54/61 Khasra Nos. 2//18/3,3//24/2, 5//2/2,3/1 3/2,5/6/1,7/8, 12, 13, 14, 15, 16, 17, 18, 19/1/2,4//10,11,20,6//312//14, 5, 5/1,18//18/2, 136//1/2136//1, 2//19/2, 22,2//23, 5//23, 24, 25, 5//4, 6/2, 9, 10/2, 11/1, 11/2, vide jamabandi for the year 1981-82, situated within the revenue limits of village Gudana, through a collusive decree dated 24.09.1984 in suit No. 318 dated 01.09.1984 passed by Sh. T.R.Bansal, Sub Judge Ist Class, Kharar, after the death of defendant no.2-Rakha Singh and that the said judgment and decree has no effect on the rights of the appellant-plaintiff.

3 Factually, the dispute is between two brothers namely Joginder Singh (appellant-plaintiff) and Avtar Singh (respondent-defendant No.1) pertaining to the share of their father defendant No.2- Rakha Singh (since deceased). The consent decree dated 24.09.1984 (Ex. P-1) suffered by Rakha Singh in favour of Avtar Singh was challenged on the ground that the said property was a joint Hindu coparcenary property and that the appellant-plaintiff had a subsisting right in the said property. However, taking advantage of the advanced age and weak and compromised mental faculty and abilities of defendant No.2-Rakha Singh, his brother Avtar Singh influenced Rakha Singh to transfer the suit land in his favour notwithstanding that Rakha Singh was not competent to transfer the same being a joint Hindu Family property and the same could be alienated only for a legal necessity. It was also submitted that there was no family settlement on the basis whereof, the consent decree could be obtained,

hence, the said decree was obtained on wrong, false and misleading narration of facts.

4 The defendants filed a joint written statement and submitted that the appellant-plaintiff had already separated from them in the year 1972 and he was given 1/3rd share. Ever since then, appellant-plaintiff had been residing separately and is separate in mess, residence and cultivation. The appellant-plaintiff was alleged to have threatened the defendants to implicate them in false security proceedings and that defendant no. 2-Rakha Singh, their father, transferred his share in the suit property out of his own accord, love and free will in favour of Avtar Singh. It was thus reiterated that there was no undue influence or mis-declaration and that the property did not remain a joint Hindu family coparcenary property after the partition had already taken place and the appellant-plaintiff had been given his 1/3rd share. He cannot thus claim any further share in the remaining property. It was also contended that as on the date when appellant-plaintiff sought separation of his status from the property, there were two other daughters who were entitled to a share in the property, however, notwithstanding the same, 1/3rd share was given to the appellant-plaintiff. It was also averred that though Rakha Singh was 65 years of age as on the date of institution of the present suit, however, he was fully active and had alert mental faculties, clearly understood his welfare and could not have been misled. It was averred that the appellant-plaintiff had been exerting undue pressure on the defendants and seeking more share in the land, to which he was not entitled. It was submitted that the decree in favour of Avtar Singh was suffered out of free will, voluntarily and without any pressure, undue influence or

coercion and that the suit filed by the appellant-plaintiff deserved a dismissal.

5 The averments as contained in the plaint were reiterated in the replication, whereupon the following issues were framed:-

- 1 Whether the parties are members of the joint Hindu family and the suit property is a coparcenary property in which the plaintiff is subsisting right as alleged OPP.
- 2 Whether the plaintiff is entitled to injunction as prayed for? OPP
- 3 Whether Joginder Singh is residing Separately on the basis of a decree dated 13.6.1972 as alleged if so its effect ? OPD
- 4 Relief.

6 Parties led their respective evidence on the aforesaid issues. It was noticed that the appellant-plaintiff Joginder Singh was undisputedly a separated member of the family since 1972 as the civil suit filed by him for seeking separate share was decreed on 13.06.1972 vide judgment and decree (Ex.D-3 and Ex.D-4). In the said suit, appellant-plaintiff Joginder Singh and respondent-defendant No.1-Avtar Singh, had instituted the suit against their father and each of them got 1/3rd share along with rights in the shamlat land. Hence, the father had retained his 1/3rd share along with rights in the shamlat land. The said decree was acted upon vide mutation Ex.D-5 to Ex.D-7. It was also noticed that appellant-plaintiff himself submitted that he was residing separately from the defendants and was separate in mess,

residence and cultivation. As against the solitary self-serving statement of PW.1 appellant-plaintiff Joginder Singh, the defendants examined Rakha Singh (father of defendant No.2) as DW.1, wherein he reiterated his stand and deposed that he had given his 1/3rd share out of his own free will to his other son Avtar Singh since he used to take care of him whereas appellant-plaintiff used to give beatings to him.

7 Upon consideration of the said evidence, it was concluded by the Sub Judge that the suit property was no more found to be a coparcenary property in the hands of defendant vis-à-vis the plaintiff and that the appellant-plaintiff had no subsisting right to the same. In the absence of a subsisting coparcenary, he could not seek injunction against the defendants and that the consent decree dated 24.09.1984 had been affirmed by Rakha Singh not only in the written statement filed in the present civil suit but he also withstood the test of cross-examination. It was thus held that the said consent decree dated 24.09.1984 cannot be stated to have been obtained by fraud or undue influence. It was also held that while examining the issue of the consent decree in a subsequent suit, the Court does not go behind the earlier decree or re-examine the facts involved therein. The said decree undisputedly pertained to the share of Rakha Singh and he has re-affirmed the alienation of the land and of having done so out of his own free will, voluntarily, out of love and affection and without any coercion and undue influence. Hence, there was no valid basis for finding fault in the said decree. Hence, the suit was dismissed.

8 Aggrieved thereof, an appeal was filed by the appellant-plaintiff before the District Judge, Ropar. Vide judgment and decree dated

21.12.1988, the Additional District Judge, Ropar, dismissed the said appeal. An application was also moved by the appellant-plaintiff for impleading the vendees of the land as some portion of the suit land had in the meanwhile been sold by Avtar Singh. It was noted by the Addl. District Judge, Ropar, that there was no necessity for impleading the vendees as a party in the appeal as the transfer of land by way of a sale deed was during the pendency of the suit and that the vendees in any case would be bound by the decree passed. He also moved a separate application for impleading his son Paramjit Singh as a party in the appeal on the ground that no family settlement took place between his father and other family coparceners. The said application was also dismissed since Paramjit Singh had no independent right other than that of Joginder Singh appellant-plaintiff and as per the established law, the son could not claim partition of the joint family property owned by his father. As Paramjit Singh was not entitled to any share independently other than his father, hence, the said application was dismissed being a dilatory tactic.

9 The arguments of the parties were heard and it was noticed that the judgment and decree dated 13.06.1972 (Ex.D3 and Ex.D-4) showed that the appellant-plaintiff was separate in residence from the father and that the joint family had been disrupted in the year 1972 leaving no subsisting right in favour of the appellant-plaintiff to claim any subsisting right or title in the property that fell to the share of his father. The appeal was accordingly dismissed by the Addl. District Judge, vide judgment and decree dated 21.12.1988.

10 Hence, the present appeal.

11 Learned counsel for the appellant-plaintiff has argued that both the Courts have committed an error in appreciating the evidence. Appellant-plaintiff had been ousted from succeeding to the estate of Rakha Singh only on the basis of the judgment and decree passed dated 24.09.1984. He submits that respondent-defendant Avtar Singh was also a co-plaintiff with the appellant-plaintiff in the suit decreed on 13.06.1972 and as such, he too would be deemed to have been separated from the status of the Joint Hindu Family. It is further argued that once the status of Joint Hindu Family had come to an end, the very foundation of the suit whereby the collusive decree was passed on 24.09.1984 in favour of Avtar Singh was bad. In the said suit filed by the Avtar Singh against his father, it has been averred that they are the constituents of Joint Hindu Family and that the properties are coparcenary in nature in which he has subsisting right. It is argued that as the defendant Avtar Singh was co-plaintiff with him in the earlier suit, hence, Joint Hindu Family came to an end and that any admission by the father in the written statement filed in the said suit is incorrect, and therefore, the judgment and decree dated 24.09.1984 was bad and liable to be set aside. It is also argued by the learned counsel that the additional application filed by appellant-plaintiff were wrongly rejected.

12 Controverting the same, counsel for respondent-defendant no.1 Avtar Singh has argued that at the time of filing of the initial suit, respondent-defendant no.1 Avtar Singh was minor and appellant-plaintiff was never appointed as a guardian or custodian on behalf of Avtar Singh, hence, the said judgment and decree cannot operate against respondent-defendant no.1 Avtar Singh. It is further submitted that the specific plea

raised in the plaint filed by Avtar Singh claiming the family to be a Joint Hindu Family and property to be a Joint Hindu Family property between Avtar Singh and Rakha Singh was duly admitted by Rakha Singh. Once Rakha Singh admitted to the claim and reiterated sufferance of the collusive decree in favour of Avtar Singh in the subsequent suit as well, the pleadings and status of parties to the previous suit cannot be disputed by a third party. The very fact that the appellant-plaintiff admitted severance of his status and separate mess and residence, he cannot claim himself to be the part of the Joint Hindu Family any further. He further argued that the father Rakha Singh appeared in the witness box and supported his deposition as well as written statement and reiterated his free and voluntary will to transfer his share in the property to the respondent-defendant no.1 Avtar Singh. It is submitted that even if the said argument of the appellant-plaintiff is accepted, it is also well settled that a Joint Hindu Family can be reunited to constitute a fresh Joint Hindu Family. It is argued that both the Courts have satisfied themselves with respect to the voluntary and willful alienation of the property by Rakha Singh in favour of respondent-defendant no.1 Avtar Singh and that there is no evidence referred to by the appellant-plaintiff to arrive to a conclusion to the contrary. He further submits that the Courts would not re-appreciate the facts of the consent decree and are only required to see whether the same was an act of fraud or not. Re-appreciation of the factual aspects in the earlier suit is not to be re-examined.

13 No other argument has been raised.

14 I have heard learned counsel appearing for the respective parties and have also gone through the record.

15 The undisputed facts which emerge from a perusal of the judgments are to the effect that the appellant-plaintiff had earlier instituted a civil suit seeking partition of his share along with that of respondent-defendant No.1 Avtar Singh. It was averred in the said civil suit that the plaintiffs had separated from the joint family and that a judgment and decree was passed in the said civil suit bestowing $1/3^{\text{rd}}$ share each on the appellant-plaintiff(s) vide judgment and decree dated 13.06.1972 (EX.D-3 and EX.D4). It has also emerged from the testimony of Rakha Singh as well as from the admission made by the appellant-plaintiff himself that he was separate in mess, residence and in cultivating possession of his share in the land. Hence, the appellant-plaintiff had severed all his ties with the family. It has also emerged that at the time of filing the civil suit in the year 1972 respondent-defendant no.1 Avtar Singh was a minor.

16 It has also emerged that the subsequent collusive decree with regard to his $1/3^{\text{rd}}$ share in the land was suffered by Rakha Singh in favour of Avtar Singh on the basis of a claimed family settlement. The subsequent decree in favour of Avtar Singh agitated Joginder Singh to challenge the same.

17 He has laid much emphasis on the severance of status of the joint family, also with Avtar Singh, who was his co-plaintiff, and to contend that the fundamental claim of collusive decree in favour of Avtar Singh about a joint Hindu Family was hence false.

18 The reference made by the appellant-plaintiff to the previous suit and to contend that the Joint Hindu Family ceased to exist also with respect to respondent-defendant no.1 Avtar Singh cannot be accepted at this

juncture for two reasons i.e. firstly, for the reason that the appellant-plaintiff was never appointed as a guardian or custodian of Avtar Singh. In the absence of any such order, he could not have instituted a suit as a guardian of respondent-defendant no.1 Avtar Singh. Thus, the said judgment and decree could not have been held enforceable in so far as respondent-defendant no.1 Avtar Singh is concerned and, secondly, notwithstanding the above, there is no prohibition in law for a Joint Hindu Family to be re-created. The context of Joint Hindu Family is deeply rooted in tradition and culture and is characterized by a common ancestor. Recreation of Joint Hindu Family involves bringing together members of Joint Hindu Family who wish to live together, share resources and jointly manage the family affairs. Hence, a separation or division of Joint Hindu Family is not an irreversible process and a recreation of Joint Hindu Family can be done by the consenting parties. There is a presumption against re-union after partition, however, the said presumption can be rebutted by leading credible and reliable evidence. Support in this regard can be drawn from the judgment of the Hon'ble Supreme Court in the matter of **R.Janakiammal Vs. S.K. Kumarasamy (deceased) through legal representatives and others, reported as (2021) 9 SCC 114**. The relevant part of same is extracted as under:-

“56. The judgments of [Pushpa Devi](#) (supra) as well as [Banwari Lal](#) (supra) were referred to and relied by this Court. This Court held that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or

compromise, it is that court and that court alone who can examine and determine that question.

57. In subsequent judgment, Triloki Nath Singh Vs. Anirudh Singh (Dead) Through Legal Representatives and Ors., (2020) 6 SCC 629, this Court again referring to earlier judgments reiterated the same preposition, i.e., the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and separate suit is not maintainable. In paragraphs 17 and 18, following has been laid down:-

“17. By introducing the amendment to the Civil Procedure Code (Amendment) 1976 w.e.f. 1st February, 1977, the legislature has brought into force Order 23 Rule 3A, which creates bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the court of competent jurisdiction once and for all.

18. Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3A of [Order 23 CPC](#) put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The scheme of [Order 23 Rule 3 CPC](#) is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The court can be instrumental in having an agreed compromise effected and finality attached to the same. The court should never

be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to [Order 23 Rule 3 CPC](#) before the court.”

58. The above judgments contain a clear ratio that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful, i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable. In Suit No.1101 of 1987, the plaintiff prayed for a declaration declaring that the decree passed in O.S. No. 37 of 1984 is sham and nominal, ultravires, collusive, unsustainable invalid, unenforceable and not binding on the plaintiffs. We have noted the grounds as contained in the plaint to challenge the consent decree in foregoing paragraphs from which it is clear that the compromise, which was recorded on 06.08.1984 was sought to be termed as not lawful, i.e., void or voidable. On the basis of grounds which have been taken by the plaintiff in Suit No.1101 of 1987, the only remedy available to the plaintiff was to approach the court in the same case and satisfy the court that compromise was not lawful. Rule 3A was specifically added by the amendment to bar separate suit to challenge the compromise decree which according to legislative intent to arrest the multiplicity of proceedings. We, thus, do not find any error in the judgment of trial court and High Court holding that Suit No.1101 of 1987 was barred under Order XXIII Rule 3A.”

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82 The concept of reunion in Hindu Law is well known. Hindu Joint Family even if partitioned can revert back and reunite to

continue the status of joint family. Mulla on Hindu Law, 22nd Edition, while deliberating on reunion has status following in paragraphs 341, 342 and 343:-

“341. Who may reunite,- ‘A reunion in estate properly so called, can only take place between persons who were parties to the original partition’. It would appear from this that a reunion can take place between any persons who were parties to the original partition. Only males can reunite.

342. Effect of reunion,- The effect of a reunion is to remit the reunited members to their former status as members of a joint Hindu family.

343. Intention necessary to constitute reunion: To constitute a reunion, there must be an intention of the parties to reunite in estate and interest. In Bhagwan Dayal v. Reoti Devi, the Supreme Court pointed out that it is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status. Such an agreement may be express or may be implied by the conduct of the parties. The conduct must be of an incontrovertible character and the burden lies heavily on the party who asserts reunion.”

83. The Privy Council in Palani Ammal Vs. Muthuvenkatacharla Moniagar and Ors., AIR 1925 PC 49 [LQ/PC/1924/81] has held that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it

must be strictly proved as any other disputed fact is proved. In paragraph 9, the Privy Council laid down following :-

“9. But the mere fact that the shares of the coparceners have been ascertained does not by itself necessarily lead to an inference that the family had separated. There may be reasons other than a contemplated immediate separation for ascertaining what the shares of the coparceners on a separation would be. It is also now beyond doubt that a member of such a joint family can separate himself from the other members of the joint family and is on separation entitled to have his share in the property of the joint family ascertained and partitioned off for him, and that the remaining coparceners, without any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained after such a partition of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous coparcener had separated from them. It is also quite clear that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. The leading authority for that last proposition is Balabux Ladhuram v. Rukhmabai (1903) 30 Cal. 725.”

84. Another judgment which needs to be noticed is judgment of Madras High Court in Mukku Venkataramayya Vs. Mukku

Tatayya and Ors., AIR 1943 Mad. 538 [LQ/MadHC/1942/239]
. In the above case, there was partition in the family in the year 1903 as a result of which the father with his second wife and children separated and begin to live apart from his sons by the first wife. The case of the respondent was that he and his brothers continued to remain joint after their father decided to remain away from them in 1903. An alternative case was also put forward that there has been a reunion amongst the brothers after the partition. Madras High Court in paragraph 5 stated:-

“5.But if a general partition between all the members takes place, re- union is the only means by which the joint status can be re-established. Mere jointness in residence, food or worship or a mere trading together cannot bring about the conversion of the divided status into a joint one with all the usual incidents of jointness in estate and interest unless an intention to become re-united in the sense of the Hindu law is clearly established. The rule is, if I may say so with respect, correctly stated by the Patna High Court, in *Pan Kuer v. Ram Narain Chowdhary*, A.I.R. 1929 Pat. 353 [LQ/PatHC/1929/52] where the learned Judge observes that:

To establish it, (reunion), it is necessary to show not only that the parties already divided, lived or traded together, but that they did so with the intention of thereby altering their status and of forming a joint estate with all its usual incidents.

85. The High Court held that the brothers, who had divided, lived and traded together, the case of the reunion was accepted. In paragraph 17, following was laid down:-

“17. The question then is, whether this finding is sufficient to support a case of reunion. We are conscious that the burden of proof is heavily on the respondent and also that proof of mere jointness in residence, food and worship does not necessarily make out reunion. What is to be established is that not only did the parties who had divided lived and traded together, but that they did so with the intention of thereby altering their divided status into a joint status with all the usual incidents of jointness in estate and interest. In our opinion the way in which the brothers dealt with each other leaves no room for doubt that it was their deliberate intention to reunite so as to reproduce the joint status which had existed before the partition of 1903. The immediate object of the partition was to enable the father to live separately from his sons by the first wife, as misunderstandings had arisen between them. As between the sons themselves there never was any reason for a separation inter se and there can be no doubt that the moment they separated away from their father they desired to live and lived Together in joint status. It is true that at that time the first respondent was a minor. But this can make little difference if after he attained majority he accepted the position in which the appellant and Nagayya had already begun to live together. In our view it is not necessary that there should be a formal and express agreement to reunite. Such an agreement can be established by clear evidence of conduct incapable of explanation on any other footing. Such, in our view, is the position here established. That being so, the claim of the appellant to the exclusive ownership of the properties in suit must be negated. The appeal fails and must therefore be dismissed with costs.”

86. One more judgment on the concept of reunion which need to be referred to is the judgment of Karnataka High Court is *M/s. Paramanand L. Bajaj, Bangalore Vs. The Commissioner of Income Tax, Karnataka, II, Bangalore, (1981) SCC Online Karnataka 131*. Justice Rama Jois after referring to Smritis and relevant judgments on the subject laid down that reunion is the reversal of the process of partition, following was held in paragraphs 8 and 12:-

“8. The basic proposition of Hindu Law on reunion is laid down in *Brihaspati Smriti* (Gaekwad's Oriental Series, Vol. LXXXV-pp 214-215), also vide *Smriti-Chandrika III Vyavaharakanda Part II (1916)* published by Government of highness the Maharaja of Mysore pp 702-703; English version *J.R. Gharapura (1952) Part III pp 667-670*).

विभक्तो य पुनः पितृभ्रातृचैकत्र सस्थितः ।

पितृव्येण वा वप्रीत्यतः संसृष्टः स उच्यते ॥

He who being once separated dwells again through affection with his father brought or paternal uncle is termed reunited.

संसृष्टौ यी पुनः प्रीत्यतः परस्परभागीनी

When two coparceners have again become reunited through affection, they shall mutually participate in each others properties.

The view expressed by Devanna Bhatta, the author of *Smriti-Chandrika* on the text of *Brihaspati* is-

सहवसे पुरुषाणामङ्गुल्य संसर्ग भ्रातृ धनद्वारेण
संसर्गो वक्ष्य इति दंतव्य वहनिमित्तभूतवच्छेदकप्र
नोदेन विभक्तानां पूर्ववदेकराशीकरणपर्यन्तरसर्गौ
न पुनः सहवसमव्रनिति मन्तव्यम् ।

Association not necessarily being by co-residence, the association is expressed to be through wealth; so by way of removing the distinguishing factor of that, it should be understood that the re- association of the separated members shall be to the extent of pooling together(all) the wealth etc., as before, and not merely by a co-residence only.

Mitakshra on Yaj.II 138-139, which lay down special rule of inheritance at a partition among reunited members explains the effect of reunion as follows:

*विभक्तं धनं पुनर्मिश्रीकृतं सस्मृष्टं
तदस्य स्तीति सस्मृष्टी।*

Effects which had been divided and which are again mixed together are termed re-united. He, to whom such appertain, is a re-united parcener. The aforesaid provisions have been the subject matter of interpretation in number of cases.

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12. On a consideration of the basic texts on the point and the views of commentators expressed in Mitakshara and Smriti-chandrika and the case law cited before us and having due regard to the real purpose and intent of the Hindu law governing HUF, it appears to us that provision for reunion has been provided for, for enabling erstwhile members of a Hindu undivided family, to come together and to form once again a joint family governed by Mitakshara law. The mutual love, affection arising from blood relationship and the desire to reunite proceeding therefrom, constitutes the very foundation of reunion. This is evident from the text of Brihaspati in which even the relationship of persons who could reunite is specified though some of the commentators have taken the view that it is only illustrative and not exhaustive and that reunion is possible

even among persons not specified in the text of Brihaspati. (See: Virmitrodaya, translated by Gopalachandra Sarkar (1879) pp 204- 205; Vivadachintamani Gaekwad's Oriental Series Vol. XCIX pp 288-289). But even so there is no controversy that reunion is possible only among persons who were on an earlier date members of a HUF. Reunion therefore is a reversal of the process of partition. Therefore, it is reasonable to take the view that reunion is not merely an agreement to live together as tenants in common, but is intended to bring about a fusion in interest and estate among the divided members of an erstwhile HUF so as to restore to them the status of HUF once again and therefore reunion creates right on all the reuniting coparceners in the joint family properties which were the subject matter of partition among them to the extent they were not dissipated away before the date of reunion. That would be the legal consequence of a genuine reunion is forcefully brought about by the text of Brihaspati, which provides “where coparceners have again reunited through affection, they shall mutually participate in each others properties”. Mitakshara states that mixing up of divided properties is the effect of reunion. Therefore it follows, no coparcener, who is a party to a reunion and who admits reunion, shall be heard to contend that the property which he had got at an earlier partition and still with him has not become the property of the reconstituted HUF. But there can be no doubt that reunion, when disputed must be proved as any disputed question of fact and the circumstances that all the reuniting members have not brought back their properties to form the common-stock, may support the plea taken by any concerned party that there was no reunion. However, if reunion is admitted by all the parties to the reunion or it is proved, the share of the properties of reunited members got at an earlier partition and in their possession at the time of

reunion becomes the properties of the joint family, notwithstanding the fact that some of them have failed to throw those properties into the common hotch pot, whether with or without the knowledge or consent of each other. It is a different aspect if reunion itself is not admitted by the persons who are parties to a reunion and it is not proved by the party pleading reunion, in which event there would be no reunion at all.”

(emphasis in original)

87. We may now notice the judgment of this Court dealing with reunion in a Hindu Undivided Family. In *Bhagwan Dayal Vs. Reoti Devi*, AIR 1962 SC 287 [LQ/SC/1961/302] , this Court examined the principles of Hindu Law and principles of Hindu Joint Family. In paragraph 16, it was held that the general principle is that every Hindu family is presumed to be joint unless the contrary is proved; but this presumption can be rebutted by direct evidence or by course of conduct. In the above case, one of the questions was as to whether there was reunion between members of the Joint Family after partition. This Court quoted with approval the judgments of Privy Council in *Palani Ammal (supra)* and laid down following in paragraph 22:-

“22. For the correct approach to this question, it would be convenient to quote at the outset the observations of the Judicial Committee in *Palani Ammal v. Muthuvenkatacharla Moniagar* [(1924) LR 52 IA 83, 86] :

“It is also quite clear that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly

proved as any other disputed fact is proved. The leading authority for that last proposition is Baldbux Ladhuram v. Rukhmabai [(1903) LR 30 IA 190].”

It is also well settled that to constitute a reunion there must be an intention of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion. The legal position has been neatly summarized in Mayne's Hindu Law, 11th. Edn., thus at p.569:

“As the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a reunion. To establish it, it is necessary to show, not only that the parties already divided, lived or traded together, but that they did so with the intention of thereby altering their status and of forming a joint estate with all its usual incidents. It requires very cogent evidence to satisfy the burden of establishing that by agreement between them, the divided members of a joint Hindu family have succeeded in so altering their status as to bring themselves within all the rights and obligations that follow from the fresh formation of a joint undivided Hindu family.”

As we give our full assent to these observations, we need not pursue the matter with further citations except to consider two decisions strongly relied upon by the learned Attorney-General. Venkataramayya v. Tatayya [AIR 1943 Mad 538] [LQ/MadHC/1942/239] is a decision of a Division Bench of the Madras High Court. It was pointed out there that “mere jointness in residence, food or worship or a mere trading together cannot bring about the conversion of the divided status into a joint one with all the usual incidents of jointness in estate and interest unless an intention to become reunited in the sense of the Hindu law is clearly established.” The said proposition is unexceptionable, and indeed that is the well settled law. But on the facts of that case, the learned Judges came to the conclusion that there was a reunion. The partition there was effected between a father and his sons by the first wife. One of the sons was a minor. The question was whether there was a reunion between the brothers soon after the alleged partition. The learned Judges held that as between the sons there was never any reason for separation inter se, and that the evidence disclosed that on their conduct no explanation other than reunion was possible. They also pointed out that though at the time of partition one of the brothers was a minor, after he attained majority, he accepted the position of reunion. The observations relied upon by the learned Attorney-General read thus:

“In our view, it is not necessary that there should be a formal and express agreement to reunite. Such an agreement can be established by clear evidence of conduct incapable of explanation on any other footing.”

This principle also is unexceptionable. But the facts of that case are entirely different from those in the present case, and the conclusion arrived at by the learned Judges cannot help us in arriving at a finding in the instant case.”

88. The above observations indicates that this Court also approved the Madras High Court judgment in Mukku Venkataramayya(supra). Again this Court in Anil Kumar Mitra and Ors. Vs. Ganendra Nath Mitra and Ors., (1997) 9 SCC 725 [LQ/SC/1996/2061] held that the acts of the parties may lead to the inference that parties reunited after previous partition. In paragraph 4, following observations have been made:-

“4.It is true that by the acts of the parties that even after the previous partition, they continued to be members of the joint family. But it should be by conduct and treatment meted out to the properties by the members of the family in this regard.....”

19 In the above settled legal position, the pleadings raised in the civil suit filed by Avtar Singh against Rakha Singh gain a significant importance since a specific plea of Joint Hindu Family was raised which was admitted by Rakha Singh. Further, the father also stood his ground in his testimony as a witness. It is hence no more open for the appellant-plaintiff now to question the factual aspect that was not disputed by the consenting parties in the said *lis* and to seek re-opening or re-examination and re-consideration of the facts that were not disputed or denied by the concerned parties to the *lis*. It is not for the appellant-plaintiff to question the status of Joint Hindu Family between Avtar Singh and Rakha Singh.

20 The burden to prove existence of Hindu Undivided Family was sufficiently discharged by respondent-defendant No.1 Avtar Singh in the

present suit. Reference to support the same is also required to be made to the judgment of the Hon'ble Supreme Court in the matter of **Bhagwant Sharan Vs. Purshotam and others, reported as 2020 (6) SCC 387.** The relevant part of the same is extracted as under:-

“10. At the outset we may note that a lot of arguments were addressed and judgments were cited on the attributes of HUF and the manner in which it can be constituted. In view of the facts narrated above, in our view, a large number of these arguments and citations need not be considered. The law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. Reference in this behalf may be made to the judgments of this Court in Bhagwan Dayal vs. Reoti Devi (AIR 1962 SC 287). Both the parties have placed reliance on the this judgment. In this case this Court held that the general principle is that a Hindu family is presumed to be joint unless the contrary is proved. It was further held that where one of the coparceners separated himself from other members of the joint family there was no presumption that the rest of coparceners continued to constitute a joint family. However, it was also held that at the same time there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family. However, it is important to note that this Court in Bhagwati Prasad Sah and Ors. vs. Dulhin Rameshwari Kuer and Ors.2, it held as follows:-

“.... Except in the case of reunion, the mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their dealings with properties, would not give them the status of coparceners under the Mitakshara law.”

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12. In **D.S. Lakshmaiah and Ors. v. L.Balasubramanyam and Ors. reported as (2003) 10 SCC 310**, this Court held as follows:

“The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

Similar view was taken in **Mst Rukhmabai v. Lala Laxminarayan and Others. (1960) 2 SCR 253** and **Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade, reported as (2007) 1 SCC 521**. The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same.

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21. An admission made by a party is only a piece of evidence and not conclusive proof of what is stated therein. It is in this light that we have to examine the admission made by Hari Ram and his brothers while filing the written statement to the suit filed by Seth Budhmal. In paragraph 6 the averment was that the defendants constituted trading Joint Hindu Family. It is obvious that the admission was with regard to a trading family and not HUF. In view of the law cited above, it is clear that not only jointness of the family has to be proved but burden lies upon the person alleging existence of a joint family to prove

that the property belongs to the joint Hindu family unless there is material on record to show that the property is the nucleus of the joint Hindu family or that it was purchased through funds coming out of this nucleus. In our opinion, this has not been proved in the present case. Merely because the business is joint would not raise the presumption that there is a Joint Hindu Family. As far as paragraph 8 is concerned in our view there is no clear-cut admission. The allegation made was that the minors were represented by defendant nos. 1-3, who were head of their respective branches. In reply to this it was stated that defendant nos.1-3 were neither the head or the karta, nor the mortgage transaction was made in that capacity. This admission cannot be said to be an unequivocal admission of there being a joint family.”

21 It is evident from a perusal of evidence brought before this Court that the existence of the Joint Hindu Family with respondent-defendant No.1 Avtar Singh was admitted by defendant Rakha Singh (father of the parties) and that the said evidence has remained un-impeached. Respondent-defendant No.1 Avtar Singh was taking care of his father and they were joint in mess and residence as well. The said fact could not be dispelled by the appellant-plaintiff by leading any cogent, creditworthy and reliable evidence.

22 Another argument raised by the appellant-plaintiff was to the effect that property was a coparcenary property and that the same could not be divested even by a consent decree by the Karta. The said argument of the appellant-plaintiff is liable to be rejected solely on the ground of absence of any pleadings or issue in this regard. A factual aspect requiring evidence to

be led is being raised at the stage of second appeal, which is impermissible as there is no application for amendment of plaint and for leading additional evidence. The said argument is additionally being rejected for the reasons that consequent to the collusive decree dated 13.06.1972 whereby the appellant-plaintiff sought partition of the share and segregated himself from the coparcenary (without conceding to the said status) he has no subsisting right in the said property. Furthermore, for averring that the defendant No.2 Rakha Singh had no right to alienate the property, the same being ancestral in nature, the burden lay upon the appellant-plaintiff to establish that the said property had been inherited three generations prior to construe the said property as an ancestral property. Neither there was any pleading nor any such evidence has been led by the appellant-plaintiff. Still further, once a partition is effected between the coparceners (assuming it for the sake of arguments and without conceding to the same), yet, the appellant-plaintiff having severed his status and having taken his share in the coparcenary property, has no subsisting right in the said property and the same became absolute in the hands of the Karta. Thus considering it from either perspective, the argument is bereft of any merits not only for the want of pleadings and evidence but also on legal principles.

23 Further, the aspect to prove that respondent-defendant No.1 Avtar Singh constituted a Joint Hindu Family with Rakha Singh, was an issue that was required to be adjudicated by the Court in the civil suit decided vide judgment and decree dated 24.09.1984. Once defendant No.2 Rakha Singh admitted the factum of a Joint Hindu Family with respondent-defendant No.1 Avtar Singh, the same was no more an issue required to be

proved by respondent-defendant No.1 Avtar Singh. This Court would thus not go behind the earlier decree, in the second and subsequent suit, much after the rights amongst the parties have already been settled.

24 The appellant-plaintiff could not refer to any evidence or law on the basis whereof the findings concurrently recorded by both the Courts could be said to be illegal, perverse and unsustainable and/or liable to be set aside.

25 The present appeal is accordingly dismissed. The judgment and decree dated 29.04.1986 passed in Case No.108 dated 01.04.1985 by the Sub Judge First Class, Kharar and the judgment and decree dated 21.12.1988 passed in Civil Appeal No.422 of 13.06.1986 by the Additional District Judge, Ropar, are affirmed.

26 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

April 18, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No