

A.F.R.

Court No. - 18

Case :- WRIT - B No. - 3434 of 1981

Petitioner :- Ram Bahal and others

Respondent :- D.D.C. And Others

Counsel for Petitioner :- M.L.Trivedi,A.S.Chaudhary,Balram Yadav,Hari Prakash Yadav,Jay Prakash Yadav,Mohammad Danish,Mohd. Mansoor,P.V.Chaudhary

Counsel for Respondent :-

R.A.Upadhyay,B.L.Shukla,B.R.Singh,Balram Yadav,C S C,Jai Prakash Yadav,K.S. Mishra,P.L. Mishra,Pankaj Shukla,Pradeep Kumar Singh,Vijay Bahadur Verma

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner, Shri Hemant Kumar Pandey, learned Additional Chief Standing Counsel and Shri Vijay Bahadur Verma, learned counsel for the private respondents.

2. Present petition has been preferred for quashing of the impugned order dated 16.01.1981 passed by the Settlement Officer (Consolidation) and the impugned revisional order dated 09.07.1981 passed by the Deputy Director of Consolidation.

3. Learned counsel for the petitioners has submitted that in the Basic year Khatauni, the land of Khata No. 875 having several gatas were recorded in the name of Chillar, the predecessors in interest of the petitioners.

4. Learned counsel for the petitioners has further submitted that the Sheo Nandan alias Nannan had three sons namely, Chillar, Manju and Hansraj. Chillar had one son namely Pheru. Pheru had six sons namely Chitbahal, Ram Bahal, Munnu, Hannu, Dhannu and Nanhu whereas Chit Bahal had one son namely Raj Deo. All these persons are petitioners in the present petition. Manju had one son namely Mathura and Mathura had one son namely Ram Daur, who is the respondent in the present petition. Hans Raj had one son namely Baldeo while Baldeo had three sons namely Ram Baran, Ram Karan and Ram Dular while Baldeo and Ram Karan are the respondents in the present petition.

5. It is further submitted that at the time of consolidation proceedings started in the village, the objections under Section 9 A(2) were preferred by the respondent nos. 3, 4 and 5 and after their demise, their successors/legal heirs have been substituted in the present petition (for the sake of brevity, hereinafter referred to as, the respondents) claiming their rights on two counts, firstly, on the basis of property being Joint Hindu Family and secondly, on the basis of adverse possession over the land. The said objections of the respondents were rejected by the Consolidation Officer by its order dated 29.04.1980. Against the said order dated 29.04.1980, the respondents had preferred an appeal which was partly allowed by order dated 16.01.1981 holding that the co-tenancy being a Joint Hindu Family has not been proved but the adverse possession has been proved. Against the appellate order dated 16.01.1981, two revisions were preferred i.e. Revision Nos. 1382 and 1349 by the petitioners and respondents respectively under Section 48 of the Act, 1953.

6. It is further submitted that the revisions were decided by the common judgment dated 09.07.1981, which is impugned herein, whereby the revision preferred by the petitioners was rejected and the revision preferred by the respondents was allowed admitting the co-tenancy on the basis of revenue and irrigation receipts filed by the respondents by giving the findings that, which was not denied by the petitioners hence co-tenancy has been proved in favour of the respondents and a finding has also been given that the Settlement Officer Consolidation has wrongly allowed the appeal on the basis of adverse possession whereas the matter was to be seen in the light of claim of the respondents as a co-tenancy/co-tenure holder of a Joint Hindu Family.

7. It is further submitted that the disputed property was a self acquired property of Chillar, the great grand father of the Raj Deo-the petitioner and the property was not purchased from the fund/ nucleus of Joint Hindu Family.

8. It is further submitted that respondents had failed to establish that the property in dispute was purchased from the fund/nucleus of Joint Hindu Family and as per the law settled, the onus is upon the person who is claiming that property was purchased from the fund/nucleus of Joint Hindu Family and to prove that land/property was purchased from fund/nucleus of Joint Hindu Family, the respondents at no point of time had ever succeeded to establish or led any evidence for the same. In support of his submissions learned counsel for the petitioner has placed reliance upon the judgment in the case of **Jai Narain v. D.D.C. & others reported in (1979) RD 198** wherein it was

held that the presumption is only in respect of jointness and not that any property acquired by members of the family is a joint family property and this is a matter of evidence and not of presumption. In the present case, the petitioners have failed to adduce any evidence that the property is a joint family property.

9. In the case of ***Bodh Raj v. Joint Director of Consolidation Faizabad and Others, in Writ Petition No.676 of 1980 connected with Writ Petition No.23 of 1980, decided on 22.09.1995***, wherein it has been held that there is a presumption with respect to the jointness of family and if it is shown or proved to the satisfaction of the Court then property inherited from a common ancestor will be deemed to be a joint property of all. It is also clarified in the said judgement that joint family funds must be used for purchase of the property in order to make it joint and property is entered in the name of one person then it has to be proved by other party, who claims to be a joint property that it was acquired by the joint family funds, which the petitioners have failed to establish.

10. The Hon'ble Supreme Court in the case of ***D.S. Lakshmaiah and Another Vs. L. Balasubramanyam reported in 2003 (10) SCC 310***, the relevant portion reads as under:-

"18. 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."

11. Similarly, the Coordinate Bench of this Court in the case of ***Kunj Bihari Vs. Ganga Sahai Pande reported in 2013 SCC Online Alld. 13489: 2013 (99) ALR 826*** wherein tracing the history and considering the earlier decision on the point of Joint Hindu Family and property, the burden of proof etc. This Court has held as under:-

"24. The "patriarchal family" may be defined as a group of natural or adoptive descendants, held together by subjection to the eldest living ascendant, father, grand-father, great-grandfather. Whatever be a formal prescription of law, the head of such a group is always in practice, despotic; and he is the object of respect, if not always of affection, which is probably seated deeper than any positive institution. Manu says, "three

persons, a wife, a son and a slave, are declared by law to have in general no wealth exclusively their own; the wealth which they may earn is regularly acquired for the man to whom they belong." Narada says, "he is of age and independent, in case his parents be dead; during their lifetime he is dependent, even though he be grown old.

25. The "joint family" is normally a transition form from "patriarchal family". At the death of common ancestors or head of house, if the family chooses to continue united, the eldest son would be the natural head. The former one was head of family by natural authority, the later other can only be so by a delegated authority. He is *primus but inter pares*. An undivided Hindu family thus is ordinarily joint, not only in estate but in food and worship. The presumption, therefore, is that members of a Hindu family are living in a state of union unless contrary is established. This presumption however varies inasmuch as it is stronger in case of real brother than in case of cousin and farther one go, from the founder of family, the presumption becomes weaker and weaker. However, there is no presumption that a family, because it is joint, possesses joint property. Under Mitakshara Law, possession of property is not necessary requisite for constitution of a joint family, though where persons live together, joint in food and worship, it is difficult to conceive of their possessing no property whatever, such as, at least, ordinary household articles which they would enjoy in common.

.

.

32. The joint undivided family is the normal condition of Hindu society as observed in *Raghunadha Vs. Brozo Kishroe* (1876) 3 IA 154 and *Neelkisto Deb Vs. Beerchunder* (1989) 12 MIA 523. An HUF is ordinarily joint not only in estate but in food and worship. Unless contrary is established, the presumption is that the members of a Hindu family are living in a state of union (see: *Govind Dass Vs. Kuldip Singh* AIR 1971 Delhi 151 and *Bhagwan Dayal Vs. Mst. Reoti Devi* AIR 1962 SC 287). If, however, one of the coparceners is admittedly living separately from other members of the family, neither it can be said that other members do not constitute a Hindu joint family nor the member living separately, who has stripped his relation with the joint family, can be said to be still a coparcener or member of joint family. Simultaneously, merely if some members are working and living at different places, though own a joint family in common, it cannot be said that they do not form a joint Hindu family. Since it is only a presumption, the strength thereof necessarily varies in every case. The presumption of

union is stronger in the case of brothers than in the case of cousins and farther one goes from the founder of the family, the presumption becomes weaker and weaker.

33. Brothers may be presumed to be joint but conclusion of jointness with collaterals must be affirmatively proved. The presumption lies strongly in favour of father and son that they are living jointly unless proved otherwise.

34. This presumption, however, does not apply in respect of property. There is no presumption that a family, because it is joint, possess joint property. As per Mitakshara law, the possession of property is not a necessary requisite for the constitution of a joint family, though where persons live together, joint in food and worship, it is difficult to conceive that they are possessing no property whatever, such as ordinary household articles which they would enjoy in common.

35. In Sher Singh Vs. Gamdoor Singh 1997 (2) HLR 81 (SC), the Court said that once existence of a joint family is not in dispute, necessarily the property held by family assumed the character of a coparcenary property and every member of family would be entitled, by birth, to a share in coparcenary property, unless any one of the coparcener pleads, by separate pleadings and proves, that some of the properties or all the properties are his self-acquired properties and cannot be blended in coparcenary property. Merely because the family is joint, there is no presumption of joint property. A Hindu, even if he be joint may possess separate property. Such property belongs exclusively to him. Neither member of the coparcenary, nor his male issue, acquires any interest in it by birth. On his death (intestate), it passes by succession to his heirs and not by survivorship to the surviving coparcener. The existence of joint family does not raise presumption that it owns properties jointly. But once joint family nucleus is either proved or admitted so as to draw inference that such property could have been acquired out of joint family funds, the burden shifts to the party alleging self acquisition, to establish affirmatively, that such property was acquired without aid of joint family. Initial burden always lies upon the party asserting that any item of property is joint family property.

.
.

38. In Appalawami Vs. Suryanarayanamurti and Ors., AIR 1947 PC 189, it was held that Hindu law is very clear. Proof of existence of a joint family does not lead to the presumption that property held by any member of family is joint. The burden rests upon one who asserts that an item of property is joint, to establish that fact. But where it is established that the family

possessed some joint property which, from its nature and relative value, may have formed the nucleus, from which property in question may have been acquired, the burden shifts to the party alleging self-acquisition, to establish affirmatively that the property was acquired without the aid of joint family property/fund.

39. Again in *Srinivas Krishnarao Kango Vs. Narayan Devji Kango AIR 1954 SC 379*, it was held that proof of existence of a joint family does not lead to the presumption that property held by any member of family is joint. The burden rests upon anyone asserting that any item of property is joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value, may have formed the nucleus, from which property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of joint family property.

40. The legal proposition which emerges therefrom is that initial burden is on the person who claims that it is joint family property but after initial burden is discharged, the burden shifts to the party claiming that the property was self acquired and without the aid of joint family property/fund.

12. In ***Rukhmabai Vs. Lala Laxminarayan AIR 1960 SC 335***, the Court said:

"There is a presumption in Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by refinement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis- a-vis the family property, A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether movable or immovable, held by a member of, a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property.

to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property..." (emphasis added"

13. It is lastly submitted that the respondents were claiming their rights on the basis of Ikrarnama alleged to be executed between the petitioners and the respondents on 16.07.1940, which was disputed by the petitioners and stated before the revisional Court that it is a forged Ikrarnama. The Consolidation Officer had given a finding in its order dated 29.04.1980 that Ikrarnama was not proved by the respondents.

14. Per contra, Shri Hemant Kumar Pandey, learned Additional Chief Standing Counsel and Shri Vijay Bahadur Verma, learned counsel for the private respondents have submitted that the revenue receipts and the irrigation receipts which are 37 in numbers, filed by the respondents to establish their possession on the said land has rightly been appreciated by the Revisional Court in favour of the respondents and coming to a finding that the receipts which have not been denied by the respondents amounts that the respondents and the petitioners are co-tenure holders of the land in dispute.

15. It is further submitted that petitioner no. 5 -Rajdeo (who has expired during the pendency of the writ petition, in his place, his legal heirs have been substituted and all the petitioners, who died during the pendency of writ petition have been substituted by their legal heirs, they shall be addressed as petitioners), in his objection had come with a case that the property was acquired by his great grandfather and grandfather and subsequently the great grandfather had been deleted by moving an amendment in the objections. So, the property which is in dispute would belong to Sheo Nandan, hence all the respondents are co-tenure holders of the said property.

16. After hearing learned counsel for the parties and going through the records of the case, the position which emerges out in the present case is that the dispute is with regard to Khata No.-875 having several gatas and the respondents are claiming that it is a property of Joint Hindu Family entered in the name of Chilar by the *Karta* of the family, late Sheo Nandan.

17. On being asked to establish whether the respondents, at any point of time or any stage of the proceedings before the court below had ever proved the Joint Hindu Family, learned counsel for the respondents has very fairly replied that it was only stated and not otherwise.

18. The second query put forth by this Court before learned counsel for private respondents that was there any document or evidence led by them to establish that the said land was purchased from the funds/nucleus of Joint Hindu Family, learned counsel for private respondents has very fairly replied that it was not, but on the basis of Iqarnama, the property was distributed amongst the family members of Sheo Nandan.

19. Again a query was put forth before the learned counsel for private respondents whether the Iqarnama was proved or not as the learned counsel for respondents has argued that the Iqarnama was not denied by anyone whereas from the revisional order itself, there is an observation of the Revisional Court that the Iqarnama was claimed to be a forged document by the petitioner before the revisional authority and the Consolidation Officer had not accepted the Iqarnama. It is also not disputed that iqarnama was not proved before the Revisional court. So the claim on the basis of iqarnama could not be sustained or relied upon.

20. As far as the submission of learned counsel for the private respondents regarding grandfather and great grandfather of petitioner no. 5 is concerned, Chit Bahal was the father of petitioner no. 5 and Pheru was his grandfather and late Chilar was his great grandfather, not the late Sheo Nandan. Once it is not disputed that late Sheo Nandan was not the great grandfather of the petitioner no. 5 then how the property entered in the name of Chilar could be a Joint Hindu Family Property of other two sons of late Sheo Nandan namely Bhajju and Hansraj, the predecessors of the respondents.

21. The Revisional Court gravely erred in drawing an inference of the property being Joint Hindu Family property merely on the basis of possession of land revenue and irrigation receipts with the respondents. The possession of receipts would not lead to any such inference. Admittedly, all receipts are in the name of the petitioners. Rather it was for the respondents to explain how they procured possession of the receipts which were in the name of other person, namely, one of the petitioners. The rights as Joint Hindu Family Property owner would not accrue by mere possession of receipts in the name of one of the petitioners. The respondents had to discharge their burden to prove that the property was acquired out of nucleus of Joint Hindu Family which they never had been able to prove. The party which files a document must explain his possession in case otherwise in the normal course entitled to have possession of such document but which are in the name of other parties.

22. In view of the aforesaid discussion and in the light of the

judgments of Jai Narain (supra), Bodh Raj (supra), Lakshmaiah (supra), Kunj Bihari (supra) and a recent judgment of this Court in the case of ***Pancham and others Vs. Deputy Director of Consolidation, Sultanpur (Writ B-178 of 1983), order dated 03.04.2024*** relied by learned counsel for the petitioners, impugned order dated 16.01.1981 passed by the Settlement Officer (Consolidation) and the impugned revisional order dated 09.07.1981 passed by the Deputy Director of Consolidation are quashed.

23. The writ petition is allowed.

Order Date :- 29.4.2024

Ashish