
(2010) 06 BOM CK 0022
In the Bombay High Court
Case No : Suit No. 2715 of 2004

Bhargav Dilip Dholi

APPELLANT

Vs

Smt. Chandrabala P. Dholi and Others

RESPONDENT

Date of Decision : 30-06-2010

Acts Referred:

Bombay Inams (Kutch Area) Abolition Act, 1958 — Section 2, 6
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 4, Order 20 Rule 18
Evidence Act, 1872 — Section 106

Citation : (2011) 3 ALLMR 726

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : Jayshree Dholi, Constituted Attorney, for the Appellant; Manjiri Shah, Z. Jariwala, Jyoti Ghag, Sameer Khedekar, instructed by Thakore Jariwala and Associates for Deft. Nos. 1 to 8 and 10 to 18, for the Respondent

Judgement

Roshan Dalvi, J.—The Plaintiff has sued for partition of the properties stated to be belonging to the Hindu Undivided Family (HUF) of which the Plaintiff claims to be the coparcener. The Plaintiff claims 1/20th share in the properties of the HUF shown in the list of assets annexed as Exhibit-A to the Plaint.

2. The relationship between the parties is admitted. The Plaintiff is the son of Defendant No. 2 and the grandson of Defendant No. 1 and one Premji Velji Dholi/Joshi (Premji). The Plaintiff is the great grandson of one Velji Ghiga Dholi/Joshi. Defendant Nos. 3 and 4 are the Plaintiff's uncles and the sons of Defendant No. 1 and the said Premji. Defendant Nos. 5 to 15 are the wives and children of Defendant Nos. 2, 3 and 4. Defendant Nos. 16, 17 and 18 are the 3 partnership firms in which the Plaintiff claims 1/20th share. The partnership of Defendant No. 16 is the oldest partnership floated by the Plaintiff's grandfather. The partnerships of Defendant Nos. 17 and 18 were thereafter floated by the Plaintiff's father and uncles during the subsistence of the first partnership. All the partners of the 3 partnerships have been family members inducted from time to time therein by Premji since the first induction of Defendant No. 3, the eldest

son of Premji on 26.10.1965, as shall be dealt with presently.

3. It is the case of the Plaintiff that his great grandfather owned an agricultural immovable property consisting of land and a house in village Bara, Taluka Abdasa, District Kutch in the State of Gujarat. After the death of his great grandfather, his grandfather Premji inherited that property. He sold the right, title and interest of his grandfather in the ancestral property to the cultivator who was cultivating the agricultural land, one Shamji Omarji Bhanushali. The Plaintiff has relied upon and produced as Exhibit-D in evidence of Mutation Entry No. 66 in Form 6 certified by the Talathi of village Bara, Abdasa, showing the mortgage rights of the Plaintiff's great grandfather Velghi Ghiga and the right of the aforesaid cultivator (who was the mortgagor) for the land under Survey No. 152. The entry showing the mortgage of the land is made on 11.2.1962. It is the Plaintiff's case that from the proceeds of such sale the Plaintiff's grandfather Premji came to Mumbai to start his business. The Plaintiff's grandfather initially started his business as a partner in M/s. Shivdas Haridas & Company and later started his own partnership in the name of M/s. Premji Odhavji & Company. It is further the Plaintiff's case that his grandfather, who was initially a partner with certain outsiders, got those partners retired from the firm and inducted his own sons and thereafter his wife as well as his grandsons and his daughters-in-law in the partnership firm of M/s. Premji Odhavji & Company. It is also the Plaintiff's case that the sons of Premji being Defendant Nos. 2, 3 and 4 herein, floated 2 other partnership firms in the names of Dilipkumar & Company and Dholi Brothers in which they took their own grandmother, their wives and their children as partners from time to time. It is, therefore, the Plaintiff's case that from the nucleus of the HUF property being the ancestral property consisting of the ancestral land and house in which his great grandfather had right, title and interest consequent upon the mortgage created by the cultivator Bhanushali and later sold to Bhanushali, the initial partnership business was started by the Plaintiff's grandfather. The Plaintiff's grandfather made profits in the initial partnership business. After retiring therefrom, he started his own partnership firm. He admitted his sons as partners and continued therein until his death in 1991. From the profits of that firm made by his wife and sons, they floated other firms and made further profits.

4. It is the Plaintiff's case that from the profits of those firms the Defendants have purchased various movable and immovable properties in which the Plaintiff has 1/20th share. It is his case that he is the only coparcener and family member who has been excluded from the partnership businesses and the properties of the HUF in view of the divorce of his parents. The Plaintiff has accordingly sued for partition of his share.

5. The Defendants have admitted the relationship of the parties. The Defendants have also admitted the various partnership firms mentioned by the Plaintiff in which they have been partners initially along with the Plaintiff's grandfather Premji and later amongst themselves. The Defendants have also admitted to

have acquired various properties more specially 4 residential flats purchased by Defendant Nos. 1, 2, 3 and 4. They have not stated from which funds they have purchased those flats.

6. It is their case that Premji had no immovable ancestral property in village Bara, which he could sell and the proceeds of which he could bring to Mumbai to start his business. It is their case that the agricultural land was in the possession and cultivation of the said Bhanushali, who was declared a tiller of the land and accordingly an owner of the land, and so Premji or his father Velji Ghiga had no land which they could sell even to the same cultivator. It is their case that Premji came to Mumbai and started his business from his own funds and not from the proceeds of the ancestral property at village Bara. It is the case of the Defendants that Velji came to Mumbai since 1951 and commenced business as a partner in M/s. Shivdas Haridas & Company. It is the Defendants' case that Premji never received any amount from the agricultural land and hence the Plaintiff has not shown any nucleus of the HUF property, from which any business was carried on by Premji or the Defendants. The Defendants, therefore, contend that the properties, more specially residential flats were purchased by them out of their own separate self acquired funds from their separate businesses which were not family businesses and are their self acquired properties in which the Plaintiff has no share. The Defendants contend that the businesses were contractual partnerships, though incidentally only family members have been partners therein and there has been no business of the HUF of Premji or the Defendants.

7. It is the case of the Defendants that the Plaintiff has been paid maintenance along with the alimony being paid to his mother upon divorce obtained by consent of the parties in the divorce petition filed by the Plaintiff's mother and the Plaintiff is not entitled to any further amount as a coparcener in the HUF of the family of Premji.

8. Upon such a case between the parties, the following issues came to be framed:

- (1) Whether the Plaintiff is a member of the HUF of his grandfather one Premji Velji Dholi.
- (2) Whether Premji Velji Dholi died leaving behind the assets and properties listed in the Schedule, Exhibit-A to the Plaint.
- (3) What relief, if any, the Plaintiff is entitled to?

It may be mentioned that upon the presumption in law of the existence of a joint family amongst Hindus and upon the admission of the relationship between the parties, the Plaintiff's status as a member of the HUF of his grandfather Premji is admitted. The aforesaid issues, therefore, do not arise for consideration. The properties listed in Exhibit-A to the Plaint are admitted to be the properties of the Defendants though not of Premji. What is essentially disputed is the right of the Plaintiff as a coparcener in the business conducted by the family members, who

are other coparceners, being the Defendants in this Suit along with Premji, and after his death amongst some of themselves as businesses of the HUF. What is also disputed is the right of the Plaintiff in the admitted properties shown in the list Exhibit-A to the Plaint. What is also disputed is that those properties were the properties of Premji or acquired from joint family funds or out of joint family businesses. Consequently, the issues already framed are required to be recast under the provisions of Order XIV Rule 4 of the Code of Civil Procedure. The issues are recast and answered as follows:

(1) Whether the Plaintiff's grandfather Premji Velji Dholi/Joshi started his business from the funds of the Hindu Undivided Family (HUF) to which he belonged. - Yes

(2) Whether the partnership firms in which Premji and the Defendants carried on business are the businesses of the HUF. - Yes

(3) Whether the movable and immovable properties, in the list of assets, Exh.-A to the Plaint being 3 flats and 1 godown in the names of Defendant Nos. 1, 2 and 4, purchased from the profits of the HUF businesses, the bungalow in village Bara and the ornaments can be taken as HUF properties in which the Plaintiff, as a coparcener, has 1/20th share. - Yes

(4) What relief, if any, is the Plaintiff entitled to ? - As per final order.

9. The Plaintiff's constituted attorney as well as the Counsel on behalf of the Defendants have extensively argued on each of the aforesaid aspects.

10. The Plaintiff's mother, who is his Constituted Attorney, has led evidence on behalf of the Plaintiff. The Plaintiff has further led evidence of the Tahsildar of village Bara and one of the panchas who made the panchanama in the presence of the Tahsildar of village Bara. The Defendants have not led any oral evidence.

11. The Plaintiff has got produced the panchanama prepared in the presence of the Talathi of village Bara, a certificate issued by the Talathi, a mutation entry under Form No. 6 bearing No. 66 in respect of Survey No. 52, which was admittedly ancestral land of the father of Premji, a Dakhla certificate of the Talathi in respect of a house in village Bara, certified copies of Form No. 6 of the record of rights, 7/12 extract Form No. 8 of the record of rights as well as the extract of page 22 in the record of rights dated 21.3.1958 in respect of the agricultural property at village Bara. The Plaintiff has also produced the extract of the Registrar of Firms in respect of the firms of M/s. Shivdas Haridas & Company, M/s. Premji Odhavji & Company, M/s. Dilipkumar & Company and M/s. Dholi Brothers. Which are relied upon by the Defendants 1, 2, 3 & 4 themselves in their written statement. The Plaintiff has further produced the certified copies of the Income Tax Returns of the said firms for a number of years. The Plaintiff has also got produced and relied upon the various partnership deeds of the aforesaid firms showing admission and retirement of various Defendants as partners from time to time and the agreements for purchase of several flats with regard to the

residential premises of the Defendants. Such documents relied upon by Defendant Nos. 1, 3 and 4 themselves in their Written Statement have been admitted in evidence by consent of the parties.

12. The Defendants have further relied upon and got produced the certified copy of the consent decree of divorce showing the settlement between the parents of the Plaintiff for the alimony paid to the Plaintiff's mother and the maintenance paid to the Plaintiff.

13. The rights of the parties would be essentially determined from the documentary evidence produced by the Plaintiff which essentially consists of the documents relied upon by the Defendants themselves and the certified copies of Government records.

14. Issue Nos. (1) & (2): The Plaintiff is admittedly the great grandson of Velji Ghiga, the grandson of Defendant No. 1 and Premji, the son of Defendant No. 2, the nephew of Defendant Nos. 3, 4, 8, 10 and 15 and the cousin of Defendant Nos. 5, 6, 7, 9, 11, 12, 13 and 14.

15. It has been the Plaintiff's case that his great grandfather Velji Ghiga owned a house and agricultural land in village Bara Tal: Abdesa, Dist.: Kutch in the State of Gujarat.

16. The Revenue records contained in the Mutation Entry under Form-6 bearing No. 66 shows the Plaintiff's great grandfather to be the mortgagee in respect of an agricultural land under Survey No. 152 of Village Bara. The agricultural land is shown to be cultivated by a farmer/cultivator Bhanushali. It is the Plaintiff's case that after the death of his grandfather Velji Ghiga his father Premji Velji sold off that land to the said farmer and came to Mumbai to settle down. From the proceeds of that sale he commenced his business. That was the business of Commission Agent and dealer in grains in partnership initially with outsiders and later, upon retirement of the outside partners, with his sons who were one by one and from time to time inducted in the business. This essential case of the Plaintiff must be reflected in the documentary evidence.

17. The aforesaid Entry No. 66 under Form-6, Exhibit-D in evidence shows the status of the Plaintiff's great grandfather as the mortgagee of the property. It shows that it was cultivated by the farmer Bhanushali. The Plaintiff's grandfather could have sold the property to none else but the farmer who cultivated the land. This sale could be only the statutory sale as permitted by the agrarian laws. The relevant law applicable to the said land was the Bombay Inams (Kutch Area) Abolition Act 1958 (the Act) u/s 2(x) of the Act. Under the Act an "Inamdar" is a holder of an Inam including a co-sharer or any person lawfully holding an Inam under or through him. Under explanation 1 to the aforesaid Section where the Inam land has been mortgaged or otherwise transferred by the holder for the time being of the Inam and the holder has lost his right of redeeming such land, the mortgagee would become the Inamdar of such land. The Plaintiff's grandfather has been shown as the mortgagee. He was, therefore, the Inamdar

of the land under Survey No. 152 of village Bara.

18. u/s 6 of the Act the occupancy rights in Inam lands are conferred upon the holder of the land who, on payment to the State Government of the occupancy price equal to 6 times the amount of full assessment of such land within the period not later than 31-3-1967, would be entitled to all the rights and be liable for all the obligations in respect of such lands as an occupant under the Code (the Land Revenue Code), the Land Revenue Code applicable in that State and the rules thereunder.

19. Under the proviso to Section 6 of the Act if the Suit land is cultivated personally by a person other than the Inamdar or member of his family for a continuous period of 3 years immediately before the appointed day and such person pays to the State Government within such period not later than 31-3-1967 in lumpsum or by installments as may be prescribed, a sum equal to 12 times the amount of the full assessment of the land and the cost of improvement, if any, an amount equal to 6 times the amount of full assessment is required to be paid to the Inamdar as compensation and, if so paid such person would be entitled to all the rights and be liable for all the obligations in respect of such land as an occupant under the Code and the Rules thereunder.

20. The aforesaid farmer Bhanushali admittedly cultivated the land of the Plaintiff's great grandfather. He is shown as such cultivator in the Revenue Records. He became the holder of the land upon such cultivation. As such holder he is entitled to be declared the owner with full rights and obligations of ownership upon payment of 12 times the assessment of the land out of which 6 times the assessment of the land (i.e. half the assessment paid to the State Government) is to be paid to the Inamdar. The Plaintiff's great grandfather was the Inamdar. Bhanushali was admittedly the cultivator. Bhanushali would become the owner only upon payment of the aforesaid assessment. Half that assessment has to be paid to the Plaintiff's great grandfather. It is this amount that the Plaintiff states was the amount received by the Plaintiff's great grandfather upon sale of his agricultural land in village Bara. The Plaintiff's case as reflected in the record of rights, the certified copies of which are produced by the Plaintiffs and carry the presumption of their correctness under the Indian Evidence Act r.w the aforesaid Act shows the consideration the Plaintiff's grandfather received upon the death of his father when he "sold off the land" and came to Mumbai to start business. The Plaintiff's case of such land belonging to his great grandfather and utilised as such by his grandfather, the son of the Inamdar is made out by the Revenue entries produced by the Plaintiff.

21. It is the case of the Defendants that the cultivator Bhanushali "became the owner" of the said land. This case itself reflects the Defendants admission of the fact that an agricultural land initially did belong to the Plaintiff's great grandfather upon the acceptance of the fact that there was a cultivator so that he statutorily became an owner of the land. However what is missed is that even a cultivator cannot become a statutory owner without consideration. The statute

itself lays down the extent of consideration payable to the State Government and to the Inamdar by the cultivator. Consequently, the cultivator would become the owner, but not without payment of the consideration to the great grandfather of the Plaintiff. The Plaintiff's case is that after the death of his great grandfather his father sold the land to the cultivator, which case is not denied by any contrary case shown by the Defendants, but is sought to be brushed aside upon a mere denial that it could not have been done under the Statute. A reading of these facts together shows that indeed the agricultural land belonged to the Plaintiff's great grandfather. He received consideration thereof. This was prior to 1960 it had to be received before 31st March 1967 under the statute. It was paid by the cultivator. Upon such payment the cultivator became the owner. Upon such payment the Plaintiff's grandfather could have had no right and no obligation in the said land and consequently he would not have any interest legally or otherwise in residing in the village, but would come to Bombay with the proceeds of his father's land. The admission that the cultivator "became the owner" of the land itself substantiates the Plaintiff's case. It shows the nucleus of the HUF.

22. It is contended by the Plaintiff that the property of his great grandfather had further consisted of a house in village Bara. The Plaintiff has produced certain record of rights showing house No. 2/70 extracted in Form 8 in Exhibit-W in evidence. 23. The Record of Rights shows Defendant Nos. 2, 3 and 4 as the residents of that house. This extract from the record of rights carries a presumption as to its correctness. The Plaintiff has sought to produce certain photographs of that property showing certain pooja being performed at the time of his engagement. These photographs are not admitted to be showing house No. 2/70 and have not been proved as such. However, the Defendants, who have not examined themselves, have admitted in their Written Statements that the residence of great grandfather of the Plaintiff was a temple. The Defendants claim no rights therein on the ground that the Plaintiff's great grandfather Velji Ghiga was the temple priest supported by his son, a fact not proved by the Defendants, in the absence of any evidence led on their behalf.

24. The evidence shows admissions obtained from each of the 3 witnesses of the Plaintiff that the only residential property of the Plaintiff's grandfather or his great grandfather in village Bara was a temple premises. Implicit in this further admission is the case of the Defendants that that temple was initially at least a residential premises which was the private property of the Plaintiff's great grandfather. It could have been used as a temple by subsequent continuous usage and custom. This would not deviate from the fact that it was indeed the property of the Plaintiff's great grandfather.

25. Taking into account these facts, the principles of Hindu Law, as laid down by the Privy Council as well as the Supreme Court with regard to such an HUF and its properties would be required to be seen:

(i) There is a presumption that a Hindu family is joint.

(ii) Existence of a joint family itself does not cause a presumption that the property held by the members of the family is joint.

(iii) The initial burden to establish the existence some joint family property is on the person who alleges that a property is joint or shows a nucleus, from which a new property or assets could have been acquired.

(iv) What is the nucleus, depends upon the nature and the value of the property.

(v) Existence of such nucleus by itself would not prove that the new assets acquired by any member of the family would be joint family property.

(vi) If a member of a joint family was in a position to utilise the joint family assets to acquire further assets or if such a member had control or command over the joint family assets to acquire further assets, then alone can such further properties be taken to be joint family properties.

(vii) Whether or not such family assets were sufficient to form the nucleus for further acquisition is a question of fact.

(viii) Such a fact can be proved by direct evidence or circumstantial evidence which should be unequivocal and clinching.

(See: Dandappa Rudrappa Hampali and others Vs. Renukappa alias Revanappa and others, which inter alia followed the case of Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, and Mudi Gowda Gowdappa Sankh Vs. Ram Chandra Ravagowda Sankh, .

26. In the earliest case of Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, , the extent of income of the property which formed the nucleus yielded for acquisition of further properties came to be considered. In that case, a building in occupation of the family members yielded no income. It was held that it could not form a nucleus out of which the acquisition could be made even though the building had considerable value. On the other hand, a running business in which capital was invested, though comparatively smaller, might produce substantial income which could form the foundation for subsequent acquisitions. Hence it was held that such a question could be a question of fact to be determined on the evidence in the case. Since the burden lays upon the Plaintiff to show that the property claimed by the Plaintiff was joint property, the nucleus from which a further property could have been acquired has to be shown initially by the Plaintiff after which the onus would shift to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of joint family property. The Plaintiff would, therefore, have to show that the nucleus of the joint family property assisted the Defendant in acquisition of the properties claimed by the Plaintiff.

27. In that case the income from the ancestral land was held upon evidence led in the case, not sufficient even for the maintenance of the family members. Consequently, the claim of the Plaintiff for the half share in subsequent

acquisitions of houses was negatived and held not proved upon the Plaintiff's case that those were to be treated as joint family properties upon being acquired with the aid of joint family funds from earlier ancestral properties. The contention of the Plaintiff that family possessed income producing nucleus in the ancestral Vatan lands and consequently, there was a presumption that the later acquisitions were made with aid of joint family funds was negatived and was held to be a fact required to be proved by the Plaintiff. It was observed that it would be necessary to see the extent of the ancestral properties, the income they were yielding, the amounts that were invested in the purchases and further constructions. It was further observed in that case that any income from the Vatan lands, which were ancestral properties and which was about 150 per annum, was insufficient even for the maintenance of the family members. It was, therefore, held that the Plaintiff failed to discharge the burden that laid on him to establish sufficient nucleus.

28. In the case of Mudi Gowda Gowdappa Sankh Vs. Ram Chandra Ravagowda Sankh, on the question of fact, it was held that there was adequate nucleus of joint family properties from which later acquisitions could have been made. The ancestral lands in that case yielded an income of Rs. 143/-. One of these lands was Bagayat land. The income from that land was assessed at Rs. 5,000/- to Rs. 6,000/- before the first world war. The family was stated to have 8/12 bullocks for the purpose of cultivation and most of the lands were cultivated personally by the family members. In the earlier years further lands were acquired. Income was, therefore, held to be more than sufficient to form a nucleus for the purchase of the properties at different dates. Consequently, the onus, which initially was upon the Plaintiff, was held to be discharged and the onus shifted upon the Defendants to show that the properties were self acquisitions.

29. In the case of AIR 2003 3800 (SC) the Plaintiff as one of the three branches of a joint family claimed 1/3rd share each upon the premise that the disputed properties were joint Hindu family funds. The Court was called upon to determine whether the disputed properties were self acquired properties of the Defendant or joint family property. There was no evidence of income generated from that property or value of the ancestral property. No separate income to acquire the property was shown. It was not shown that the joint family property yielded any income to show that a nucleus was available for further purchase. The share which the father of the parties took under an earlier partition was shown to be the nucleus from which all his further acquisitions sprang. It was held that where it was established that the family possessed some joint property which formed its nucleus from which the property in question may have been acquired, the burden shifted on the party alleging self acquisition to establish the fact that the property was acquired without the aid of joint family property affirmatively. Considering the judgments in the case of Srinivas Krishnarao Kango (supra) in respect of the value of the nucleus as well as the burden of proof and considering further other cases laying down the law relating to proof of acquisition from the nucleus, it was held that in that case the question of fact relating to the initial

burden, that there was a nucleus in the form of income, was not discharged and the onus did not shift. Consequently, it was held in paragraph 18 of the judgment thus:

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.

30. In the case of State of A.P. and Another Vs. T. Yadagiri Reddy and Others, , upon considering the earlier cases, it was observed that the original land holder had agreed to alienate the land under an agreement for sale. The ancestral land of 9/10 acre was being cultivated by himself. Further land was purchased by him. The consideration was paid from joint earnings of himself and his sons from the 24 cultivation of lands held by the joint families. It was held that the nucleus of the joint family was shown and the income therefrom was accounted for purchase of further lands which was then partitioned. Consequently, it was observed thus:

There is a case to believe that the declarant was having ancestral lands and out of the income of these lands, he purchased the lands from Shri Khaja Shakhir Hussain etc. in the year 1956 and, therefore, these lands also form part and parcel of joint family properties in which his five major sons will have equal notional share and the share of the declarant will be 1/6th.

31. The aforesaid settled law must be considered upon the facts in this case.

32. It may be that the Plaintiff's share in such property may be negligible, but the factum of the house property belonging to the HUF is established by the fact of having a temple in the premises of the Defendants' predecessor-in-title which by usage has been of outsiders as public property. Similarly the fact of the agricultural land belonging to the HUF is seen from the admission that the cultivator Bhanushali became the owner of the agricultural land of Velji Ghiga.

33. The agricultural land and the house at village Bara (shown as bungalow in the list Ex. A) are, therefore, the properties of the HUF of the Plaintiff's grandfather, Premji. The aforesaid agricultural land at village Bara, therefore, forms the nucleus of the HUF properties.

34. It is from the proceeds of that land that the grandfather of the Plaintiff commenced his business. He is stated to have admittedly come from his village in Kutch to Mulund (W) in Mumbai. He admittedly started his business in partnership with outsiders. The Defendants' case is that he came penniless to Mumbai and started from scratch. It is the Plaintiff's case that he came to

Mumbai with the proceeds of such sale, however small. This Court is not concerned with the amount of consideration received by the Plaintiff's grandfather. It is not important to know whether it was a specious amount received to start a business in luxury since the Defendants claim that he is a rags to riches story. No amount is small for such a resourceful man. He made it with the little that he got. The proceeds of his business were brought into his family. His own family consisted of his wife and his 3 children, Defendants 1 to 4 herein. Whatever be the proceeds of such business, it would be the income of the joint Hindu Family, which is presumed to be joint, which partakes in the proceeds. Once a property is shown to be belonging to the HUF of a Hindu, as the land in village Bara is shown to be, and from the proceeds of that nucleus a business is established, the income therefrom derived by such person would be the income of the HUF. From that income further properties may be acquired.

35. To adjudicate upon the Plaintiff's claim of partition and payment of his 1/20th share as a coparcener of the HUF, the Plaintiff must show the property of the HUF in or from which he claims his share and further how that property or the income derived from that property came to be utilised or appropriated by the Karta of the HUF or the coparceners of the HUF to obtain or acquire any other property from the proceeds of such property. If the proceeds of the income of the property are utilised in acquiring further properties of the HUF, the Plaintiff must show if those funds were used for the purchase of further properties.

36. It may be mentioned the Plaintiff claims a share upon partition in the property of his great grandfather which came to be used and appropriated by his grandfather and from the proceeds of the appropriation he acquired further properties thereafter along with his father and uncles. The extent of proof to discharge the onus which lies upon the Plaintiff would be only to the extent of showing the particular property of the HUF and if it was used for acquisition of further properties. The Court would not be concerned with the extent of the properties, the amounts raised from the properties or utilised in the acquisition of further properties or the accounts thereof.

37. The property of the HUF of the Plaintiff's great grandfather and its appropriation later by his grandfather and the further acquisitions by his grandfather and later by his father and uncles must necessarily be proved by documentary evidence. The properties of such period of time as would belong to the Plaintiff's great grandfather cannot be orally stated to so belong to him from the personal knowledge of the Plaintiff or his constituted attorney. Consequently, the oral evidence with regard to the properties about what the Plaintiff was informed by any of the witnesses would be excluded by the documentary evidence.

38. The certified copies of the extract of the Registrar of Firms of Shivdas Haridas & Company and M/s. Premji Odhavji & Company essentially show how the Plaintiff's grandfather Premji carried on his business upon migrating to Mumbai. It may at once be pointed out that there are 2 extracts of M/s. Shivdas Haridas &

Company issued by the Registrar of Firms marked Exhibit-R in evidence. The first extract shows the entry of commencement of business as on 22.12.1949 with 4 partners who are outsiders, who are shown to have joined on 22.10.1949. Premji is shown to have joined on 1.11.1951 by an entry made on 27.10.1971, 20 years after he joined as a partner. The other extract of the said firm of M/s. Shivdas Haridas & Company issued by the Registrar of Firms shows Premji Velji having joined as a partner on 20.10.1960 by an entry made on 18.4.1961. Along with the Plaintiff, 4 other partners of the said firm are also shown to have joined the firm on 20.10.1960. Premji is shown to have retired from that firm on 20.2.1963 by an entry made on 25.3.1963. In view of these inconsistent entries relating to Premji joining the said firm as a partner, it would have to be seen as to which entry is in consonance with the other evidence and can be accepted as the correct entry.

39. As aforesaid, the entry showing that he joined the said firm on 1.11.1951 is made 20 years thereafter. It bears no relation with any other entries in the said extract. A later entry made on 26.10.1971 within 10 days of the aforesaid entry shows the partner of the said firm Vasanji Bhalchand having died on 29.8.1970 and a new partner, his wife Velbai Vasanji Bhalchand having been admitted as a new partner on the next day being 30.8.1970. It is seen that the entry of the death of one partner and the admission of another partner, though made in 1970, was only entered in the record of Registrar of Firms on 17.10.1971 when the entry was made relating to Premji having joined the firm 20 years ago. Besides in 1951, Premji could not have been paid any consideration upon sale of the agricultural land at village Bara and the cultivator, Bhanushali, could not have been the owner of the land as the Act came into being only in 1958. It was only after that that the statutory sale could be effected.

40. The other extract of the Registrar of Firms with regard to the same partnership firm shows Premji having joined that firm on 20.10.1960 and having retired on 20.2.1963. This entry was made on 25.3.1963. These entries must be appreciated alongside the entries certified by the Registrar of Firms relating to the firm of M/s. Premji Odhavji & Company. The firm of M/s. Premji Odhavji & Company commenced its business from 26.3.1963 with Premji and 4 other partners who were outsiders. The entry of their joining firm of M/s. Premji Odhavji & Company on 26.3.1963 has been made on 28.4.1965. The partnership deed of the firm of M/s. Premji Odhavji & Company is dated 8.4.1963.

41. Hence it can be seen that Premji joined M/s. Shivdas Haridas & Company on 20.10.1960. He retired from that firm on 20.2.1963. The entry of his retirement was made on 25.3.1963. On the very next day i.e. 26.3.1963 he started another business with 4 other partners. He entered into the partnership deed with them on 8.4.1963. The firm of M/s. Premji Odhavji & Company was registered on 10.8.1963. This chronology coupled with the enactment of 1958 confirms Premji's initially joining the firm in 1960 and not 1951. The entry of 1951 is a solitary entry inconsistent with the other entries of the same firm in the other

extract issued by the Registrar of Firms. The entry showing the joining firm of M/s. Shivdas Haridas & Company in 1951 accordingly cannot be accepted. The entry showing his joining the firm of Shivdas Haridas & Company on 20.10.1960 must be accepted as correct.-

42. The firm of M/s. Premji Odhavji & Company consisting of Premji and 4 other outsider partners continued as such until 26.10.1965. On 26.10.1965, one partner retired and Defendant No. 3, the eldest son of Premji, was admitted as partner of the firm of M/s. Premji Odhavji & Company. This entry has been made on 3.3.1966. The partnership deed was executed in this behalf on 26.10.1965 which is part of Exhibit-F (collectively) in evidence.

43. Thereafter another partner of the firm retired on 10.11.1969. Premji admitted Defendant No. 4, his second eldest son as partner on 10.11.1969. This entry is made on 12.2.1970. The partnership deed dated 15.12.1969 has been executed in this behalf which is also part of Exhibit-F (collectively) in evidence.

44. Thereafter the remaining two partners of the said firm retired on 2.5.1973. The entry of retirement of these 2 partners on 2.5.1973 is made on 7.9.1973. Premji admitted his youngest son Dilip (who is the Plaintiff's father) as partner on 12.2.1975. Pertinently and surprisingly, this entry does not find a place in the extract of the Registrar of Firms. It must be remembered that Defendant No. 2 married the Plaintiff's mother in 1983. The Plaintiff was born in 1984. Premji died in 1991. The Plaintiff's mother sued for divorce in 1993. Consent decree of divorce was passed in 1996. Defendant No. 2 would be required in law to maintain the Plaintiff's mother as well as the Plaintiff. He would be required to pay the Plaintiff's mother alimony and the Plaintiff maintenance. Absence of the entry relating to the admission of Defendant No. 2 as partner under the partnership deed dated 19.11.1977 produced by the Defendants themselves as Exhibit-11 in the Written Statement is material and striking. It distinctly reflects the intent and act of the Defendants, more specially Defendant No. 2, in fabricating evidence relating to his business and profits therein for suppressing the same from his wife and child to prevent them from claiming therein legitimate right of alimony and maintenance as also the share of the Plaintiff therein as his co-parcener. However, the fact of admission of Defendant No. 2 as partner is incorporated in the partnership deed dated 14.6.1976, which is part of Exhibit-H (collectively) in evidence. Defendant No. 2 is shown to have signed the Income Tax returns of M/s. Premji Odhavji & Company of the year 2002-03 as partner of that firm, part of Exhibit-G (collectively) in evidence.

45. It can be seen that between 1965 and 1975, Premji retired his earlier 4 partners and admitted his 3 sons as partners of the firm of M/s. Premji Odhavji & Company. Premji and Defendant Nos. 2, 3 and 4 continued as such partners thereafter in the firm of M/s. Premji Odhavji & Company until the death of Premji. Copy of the extract of M/s. Premji Odhavji & Company has been annexed as Exhibit-6 to the Written Statement of the Defendants with the only entry relating to Defendant No. 2 not being extracted. However, the Defendants have

not produced the certified copy of this extract in evidence. The Plaintiff has produced the certified extract of all the aforesaid 3 firms being M/s. Premji Odhavji & Company, Dilipkumar & Company and Dholi Brothers which are marked Exhibit-C (collectively) in evidence.

46. These extracts are to be considered with the partnership deeds of the various firms executed from time to time and relied upon by the Defendants in their Written Statement, copies which are in turn relied upon by the Plaintiff and admitted in evidence by consent of the parties. A reading of these documents shows the further chronology relating to the business of these firms.

47. The firm of M/s. Dilipkumar & Company was constituted by Defendant Nos. 1, 2, 3 and 8 under the partnership deed dated 19.11.1977, part of Exhibit-H (collectively), which came to be registered in 1978 with the Registrar of Firms. Premji admittedly died in 1991. On 19.10.1992, Defendant Nos. 5, 10 and 15 were admitted as partners in M/s. Dilipkumar & Company. On 31.3.2004, the firm of Dilipkumar & Company showed Defendant Nos. 1, 2, 5, 6, 8, 9, 10 and 13 as partners. What is significant is that Defendant No. 3 is not shown any longer as a partner of Dilipkumar & Company. In his place and stead his children, Defendant Nos. 5 and 6 and his wife, Defendant No. 8, are admitted as partners. Defendant No. 8, the wife of Defendant No. 3, has been a partner since the inception. Defendant No. 4 has never been a partner in Dilipmukar & Company. However, his sons Defendant Nos. 9 and 10 have been admitted as partners in 2004. Further the other son of Defendant No. 2 has also been admitted as partner of Dilipkumar & Company in 2004. Dilipkumar & Company was dissolved in 2005.

48. The tax returns of Dilipkumar & Company, which have been signed by Defendant No. 2, show inter alia partners' capital account reflecting Defendant Nos. 1, 2, 5, 6, 8, 9, 10, 13 and one Nita Kantilal Somayya as partners. These returns are signed by Defendant No. 2 as partner of the firm and are part of Exhibit-J (collectively) in evidence.

49. The firm of M/s. Dholi Brothers was started in 1979 with Defendant Nos. 1, 2 and 3 as partners. Defendant No. 5, the son of Defendant No. 3, was admitted as partner on 29.3.1994 as per the partnership deed dated 29.3.1994, part of Exhibit-J (collectively) in evidence. In 2001, Defendant No. 9 was admitted as partner under the partnership deed dated 20.11.2001, part of Exhibit-J (collectively) in evidence.

50. Hence it is seen that upon coming to Mumbai with whatever little that he got from his cultivator, Plaintiff's grandfather carried on his business as aforesaid in partnership initially with outsiders and later with his family members until his death. He was a grain merchant and a commission agent. He required little capital and great talent to succeed in his business. He is shown to be having a distinct business acumen. The number of partnership deeds, retirement deeds etc., executed by him and the number of persons, initially outsiders (when his

children were of tender age) and later his wife and children (so soon as they would have come of age to be settled in life) who were made his partners, shows his leadership initiative. No amount is too little for an illustrious businessman as the Plaintiff's grandfather to succeed in life.

51. This has been claimed by the Plaintiff and substantiated by the Defendants themselves by production of documents of various partnerships which are annexed to the written statement and take on record by Counsel of the parties as Exhibits in evidence. Strangely the Plaintiff himself has relied upon the documents produced by the Defendants in this case. The Defendants have produced the documents as would substantiate the case of the Plaintiff in this case.

52. What can be culled out from these documents as aforesaid is the great strides made by the Plaintiff's grandfather in business over a small seed which helped him to grow the full length. The Plaintiff's father and uncles received their father's running business on a platter. They in turn are shown to have put in their bit to make it go further. The admission as partners to the firm of the three sons of the Plaintiff's grandfather as well as the Plaintiff's grandmother, Defendants 1,2,3 & 4 herein, initially into the main business started by the Plaintiff's grandfather followed later by the admission as partners of the wives and children of each of these sons from time to time in the main business and thereafter in two other businesses floated by the three sons herein speak of how the nucleus of the joint family came to be utilised to form a fully blossomed HUF business. These businesses are, therefore, not only "contractual" businesses independently and separately of one another.

53. The documentary evidence has shown the commencement of the business of the Plaintiff's grandfather. The Plaintiff's grandfather therefore, started his business in around 1960. He is shown to have sold out his agricultural lands prior to that date. Because that sale was not under a transfer *intervivos* as contemplated in the Transfer of Property Act, no document of such transfer could be registered and produced by the Plaintiff to show the date of the transfer because the property of which the Plaintiff's grandfather was the mortgagee and was cultivated by another farmer/cultivator could be "sold" only to that farmer as contemplated under the Act upon receipt of the full assessment of 6 years. There can be no transfer registered in respect of such "sale". Consequently, the entry in the Record of Rights showing the rights of the aforesaid Bhanushali as the cultivator thereof, must necessarily imply that the statutory sale by payment of the 6 times assessment took place prior to the entry being made in the Record of Rights. The entry has been made in 1962. The statutory transfer, therefore, took place prior to that date.

54. It is, therefore, unmistakably proved that in around 1960 itself the Plaintiff's grandfather sold the ancestral land standing in the name of his father Velji Ghiga and came to Mumbai to commence his business from the proceeds of the same. There is nothing to show any other date of the transfer or of the commencement

of business. That having been proved, the onus shifts on the Defendants to show any other mode of acquisition of the initial business or the acquisition of the other immovable properties by the Defendants. This the Defendants have failed to do.

55. The aforesaid evidence is sufficient to show two separate aspects:

(1) The nucleus of the HUF of the Plaintiff's grandfather comprising of the agricultural land in village Bara which is shown to be HUF property of the Plaintiff's grandfather

AND

(2) The utilisation of the proceeds of the HUF properties in his business to generate more funds, which in turn have been used for acquisition of further properties which must be then taken to be the properties belonging to the HUF of the Plaintiff's grandfather.

Issue Nos. 1 and 2 are, therefore, answered in the affirmative.

56. Issue No. 3:

It is the Plaintiff's case that from the business proceeds of the firm of his grandfather the Defendants purchased various other movable and immovable properties including ornaments and more specially their business premises and residential premises for Defendants 1,2,3 and 4 which are used by their families.

57. Premji's initial place of business as partner of M/s. Shivdas Haridas & Company was Gaumukh Bhavan, Masjid Bunder, Mumbai-400009, having been entered in the records of Registrar of Firms on 18th April 1961, upon he being a partner from 20.10.1960. He is shown as the principal partner along with 4 other partners, until he retired from that firm on 20.2.1963. The principal place of business of M/s. Premji Odhavji & Company, which he joined on 26.3.1963 is Anna Bhavan, Bharuch Street, Dana Bunder, Mumbai-400009 and 25, Chinch Bunder Road, Mumbai-400009. This has been entered in the records of Registrar of Firms on 28.4.1965 and has continued as such until the Defendants were offered a new premises under the Indenture of Sub-lease executed by Defendant Nos. 1, 2, 3 and 4 as partners of M/s. Premji Odhavji & Company with the Bombay Agricultural Produce Market Committee (APMC). The premises at Dana Bazar and Chinch Bunder were acquired by the Government. The tenants/occupants/lessees of those premises were offered permanent alternate accommodation in the Government land at CIDCO by the aforesaid APMC. It is the case of the Defendants in their Written Statement that they surrendered the earlier premises of the firm upon acquisition of the new premises. The new premises are stated to be acquired by them under two receipts issued by APMC for Rs. 4949.85 each dated 29.5.2001 under Nos. 4000863 and 4000864 in the name of the firm of M/s. Premji Odhavji & Company, which are marked Exhibit-1 (collectively) to the Written Statement. Incidentally these receipts also show the Bank Account number and name of the Defendants' partnership firm of M/s.

Premji Odhavji & Company, to be Account Nos. 256743 and 256744 in State Bank of Saurashtra.

58. It is clear that Premji initially acquired one premises in Gaumukh Bhavan, Masjid Bunder Road, Mumbai-400009 where he carried on his first business of M/s. Shivdas Haridas & Company with an outside partner, he being the principal partner. Later he acquired other premises at 25, Chinch Bunder Road, Mumbai-400009 and Anna Bazar, Bharuch Street, Dana Bunder, Mumbai. The partnership firm of M/s. Premji Odhavji & Company, the certified extracts of which show both these places of business, surrendered both those premises to the APMC and obtained two other premises as sub-lessees of APMC in CIDCO properties at New Mumbai upon payment of Rs. 4949.85 for each of them from two Bank Accounts of M/s. Premji Odhavji & Company in State Bank of Saurashtra.

59. It will be seen presently that it is from these Bank Accounts that the consideration for the two flats in Nirmal Nagar is paid. The proceeds and the profits of M/s. Premji Odhavji & Company are, therefore, used for the acquisition of the new business premises of the firm as well as the residential premises of the parties who are all family members.

60. The Defendants themselves have produced the documents showing the acquisition of the residential premises upon their case that they have been purchased by the Defendants individually as their own self acquired properties from their own funds which are received by them in their separate business which were not HUF businesses. The documents indeed show acquisition by a single member of the family. The Defendants have not shown the separate income from which the acquisitions are made. The Defendants have not also shown the source of any such income. It is only the Defendants case that their income from the businesses which are the partnership firms claimed by the Plaintiffs as HUF businesses are not HUF businesses because the expression "HUF" is not shown against the names of those businesses and because their income tax returns are not filed as members of the HUF. The Defendants have however not produced their individual tax returns. It would be for the Defendants to show this aspect which is a fact known specially to them. Consequently, the onus which lies upon the Defendants u/s 106 of the Evidence Act to show their separate income and the acquisition of their separate properties once the Plaintiff shows the nucleus of the HUF properties and the commencement of the business by the members of the family of the HUF, is not discharged by the Defendants.

61. As aforesaid the documentation in respect of the three residential premises are Exhibits-3, 4 and 5 to the written statement of the Defendants. These are in turn produced by the Plaintiff as Exhibits-F (colly), H (colly), J, M, N, O, P and Q in evidence.

62. Even from this evidence produced by the Defendants an intriguing and interesting detail betrays the case of the Defendants.

63. The three residential premises are shown to be acquired by Defendants 1, 3 and 4, Defendant No. 2 being conspicuously absent in such acquisition. It need hardly be mentioned that Defendant No. 2, who has more strenuously resisted the claim of his own son, had a matrimonial dispute with his wife resulting in their divorce. Though being a partner in the firms of Premji Odhavji as well as Dilipkumar & Company, and though having signed the income tax returns on behalf of these firms as its partner in several of the years of which the income tax returns are produced by the Plaintiff, he has steered clear of any acquisition of any immovable property in his name. The dates of acquisition by the other three Defendants, Defendants 1, 3 and 4 of the three residential premises, at least in one of which Defendant No. 2 also resides, and the payment of consideration by each of them including Defendant No. 1, the grandmother of the Plaintiff, deserves a special note.

64. The first residential flat is shown to have been purchased by or in the name of Defendant No. 4 from one Kirit Shah under an agreement dated 24th July 1995 at 8, Kamlesh Building, Mulund(W), Mumbai for a consideration of Rs. 4.5 lacs. Two cheques dated 5th July 1995 drawn on State Bank of India and Canara Bank, Mulund (West) branch and Turbhe New Bombay branch are shown to be paid for purchase of the said flat.

65. The second residential premises purchased is Flat No. 1101 at Nirmal Nagar, Mulund (West) by or in the name of Defendant No. 3 from one Mayank Enterprises for a consideration of Rs. 14.25 lacs under agreement dated 10th June 1998 paid by a cheque drawn on State Bank of Saurashtra dated 29th July 1999. The account of Shamji Odhavji and Company is stated to be in State Bank of Saurashtra, Vashi branch.

66. A further flat being Flat No. 1102 in Nirmalnagar, Mulund (West) is shown to be acquired by Defendant No. 1 for Rs. 13.85 lacs under an agreement dated 30th August 2000 also from Mayank Enterprises. The consideration for this flat is paid by cheque drawn on State Bank of Saurashtra dated 8th July 1997.

67. Hence, two flats in the same building are shown to be purchased by Defendants 1 and 3 by making payment from the same account which is shown to be of Shamji Odhavji and Company as reflected in the two receipts issued by APMC dated 29.5.2001. The purchase in the same building from the same builder shows that the flats were in fact purchased together and consideration was paid together for the purchase from the same source.

68. Though the acquisition of the flat in 8, Kamlesh building at Mulund is not shown specifically to be made directly from the account of the firm, the acquisition by or in the name of Defendant No. 4 of that flat is also 25 years after he became and remained a partner of M/s. Premji Odhavji & Company and later Dholi Brothers, two family firms constituted in succession from the common nucleus as aforesaid.

69. The Plaintiff has claimed his rights in another property being a godown in

Bhiwandi which is not shown to have been purchased by or on behalf of the Defendants and from or through the proceeds of any of the partnership firms.

70. The proceeds of the business started by the Plaintiff's grandfather which flourished under the Plaintiff's father and uncles along with the Plaintiff's grandmother and later the Plaintiff's aunts and cousins were utilised for acquisition of the aforesaid three premises in Nirmal Nagar. Each of these Defendants 1,2, 3 and 4 had been partners with Premji in the partnership firm of Shamji Odhavji and Company well prior to the purchase of these flats, Defendant No. 3 having been admitted to partnership on 26th October 1965, Defendant No. 4 having been admitted to partnership on 15th December 1969 and Defendant No. 2 having been admitted on 12th February 1975. Further they were partners in Dilipkumar and Company since 1978 and in Dholi Brothers since 1979. Consequently, all these properties are proved to be purchased by Defendant Nos. 1, 2, 3 and 4 from the profits of the HUF businesses aforesaid more specially from the profits of Shamji Odhavji & Company and are, therefore, HUF properties in which the Plaintiff is a co-parcener and has a 1/20th share.

71. The ancestral house in village Bara is admitted to be a temple premises. The factum of the house being ancestral property is, therefore, admitted, with the rider that it is used as a temple only. The Plaintiff would have a share in whatever portion of the house that is not used by the public by established custom.

72. The Plaintiff has, however, not led any evidence with regard to any gold ornaments being HUF property or purchased from its proceeds.

73. Hence issue No. 3 is answered in the affirmative in respect of all properties listed in Exhibit-A to the Plaint, except the gold ornaments claimed by the Plaintiff.

74. Issue No. 4:

Upon seeing that these properties have been acquired from the nucleus of the HUF, the Plaintiff has proved that they are HUF properties, the nomenclature of HUF not being used by the Defendants in respect of any of those properties notwithstanding. The Plaintiff is entitled to 1/20th share in the properties as claimed by the Plaintiff. The properties of which the Plaintiff is seen to be the coparcener are required to be partitioned and the Plaintiff is required to be given his share upon such partition in the partnership firm as well as in the aforesaid immovable properties of the HUF.

75. Consequently, a preliminary decree of partition is required to be passed under the provisions of Order XX Rule 18 of the Code of Civil Procedure. The Plaintiff's share has to be ascertained in these firms and immovable properties and be paid to the Plaintiff. For that purpose, the Commissioner for Taking Accounts shall be required to value the business of the family carried on in the names of M/s. Premji Odhavji & Company, Dholi Brothers and Dilipkumar &

Company, including their goodwill. The Commissioner for Taking Accounts shall also be required to value the aforesaid immovable properties mentioned at Sr. Nos. 1, 4, 5 and 6 in the list of assets, Exhibit-A to the Plaint. The Plaintiff is not required to be given any share in any other property not proved by the Plaintiff to be of the HUF, of which he is the coparcener. Hence the following order:

ORDER

(i) The Suit is decreed in terms of prayers (b)(i), (b)(ii) and (b)(iii). It is declared that the Plaintiff is a coparcener of the HUF of his great grandfather and at present consisting of the Plaintiff and Defendant Nos. 2, 3, 4, 5, 6, 7, 9, 11, 12, 13 and 14. The Plaintiff is declared to be entitled to 1/20th share in the properties of the HUF and business of the firms of HUF along with their goodwill being the firms of M/s. Premji Odhavji & Company, Dholi Brothers and Dilipkumar & Company and the properties shown at Serial Nos. 1, 4, 5 and 6 in the list of assets, Exhibit-A to the Plaint.

(ii) The Plaintiff has sued in forma pauperis. The Plaintiff is a Business Management Graduate. He is a Badminton coach. He serves in M/s. Millennium Toyota. He is not an indigent person. The Plaintiff shall pay ad valorem Court fees setting out the valuation of each of the properties including the properties not proved by the Plaintiff to be HUF properties, but claimed by the Plaintiff to ascertain his 1/20th share therein for such payment.

(iii) Upon such payment of Court fees for his 1/20th share therein, the Commissioner for Taking Accounts shall value the business of the family carried on in the names of M/s. Premji Odhavji & Company, Dholi Brothers and Dilipkumar & Company, including their goodwill. The Commissioner for Taking Accounts shall also value the aforesaid immovable properties mentioned at Sr. Nos. 1, 4, 5 and 6 in the list of assets, Exhibit-A to the Plaint.

(iv) The Commissioner for Taking Accounts shall submit his report of valuation of the aforesaid properties to this Court within 4 months of the application being made to the Commissioner for Taking Accounts upon payment of the requisite Court fees by the Plaintiff.

(v) The Defendants shall pay costs of this Suit, fixed at Rs. 25,000/- to the Plaintiff.