

(2009) 06 AP CK 0007

In the Andhra Pradesh High Court

Case No : A.S. No. 42 of 1990 and A.S.M.P. No's. 2247 and 2269 of 2007 and 295, 300 and 305 of 2009

Lalitha Pershad (died) per LRs

APPELLANT

Vs

Shyamsunderlal (died) per LRs

RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 8(1), 9
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100, 151
Criminal Procedure Code, 1973 (CrPC) — Section 145, 149
Evidence Act, 1872 — Section 41, 76

Citation : (2009) 5 ALD 345 : (2009) 5 ALT 67

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : V.L.N.G.K. Murthy, for the Appellant; B.V. Subbaiah, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.

Introduction

1. This appeal by plaintiffs is against Judgment and decree in O.S. No. 285 of 1983, dated 31.03.1989 on the file of the Court of the Principal Subordinate Judge, Ranga Reddy District. The journey of the suit started in 1959. Moving from original Court to appellate Court and then from original Court to another, the case so far spent about fifty years in judicial system. There is no hope that this journey would stop with this Judgment. Nevertheless, learned Counsel for both sides argued with admirable effort leaving no point untouched. Plaintiffs' suit is for declaration and for consequent correction of revenue entries, which was dismissed holding that the plaintiffs' branch and defendants' branch are entitled to property. Case and counter case is stated infra by referring to parties

as they are arrayed in the suit.

From 1959 to 1989

2. Plaintiff Lalitha Pershad filed suit being O.S. No. 51/1/1959 on 17.09.1959 on the file of the Court of the Munsif Magistrate (West), Hyderabad, seeking rectification of revenue records against first cousin Shyamsunderlal. The suit was dismissed on 13.02.1961. Appeal being A.S. No. 117 of 1961 by unsuccessful plaintiffs was dismissed with a direction to seek amendment of the plaint for declaration of the title. Questioning the same, a further appeal being S.A. No. 161 of 1963 was filed before this Court and Judgment of the first appellate Court was affirmed. In consequence thereto, plaint was amended seeking declaration of title. Suit was again considered on the question of value as a preliminary issue. Ultimately, renumbered suit being O.S. No. 566 of 1979 on the file of the Court of the II Additional Chief Judge, City Civil Court, which was transferred to the Court of District Judge and marked as O.S. No. 201 of 1983. Yet again, matter went before Court of Principal Subordinate Judge and ultimately renumbered and tried as O.S. No. 285 of 1983. Thus, this case was pending from 1959 till 31.03.1989 before lower Court(s).

Pleadings

3. In 1324-25 Fasli, Gopilal, father of Lalitha Pershad had obtained patta in respect of land admeasuring Acs.100.18 guntas in survey Nos. 1 and 3 to 8 situated at Langerguda village in West Hyderabad District. He raised mango garden and cultivated till his death. After death of father, Lalitha Pershad is in exclusive possession of suit schedule land and improved the lands by planting some more trees. He himself paid land revenue till 1959. The defendant, who has no concern with the land, however, in collusion with village officers, got his name entered in Khasra Pahani for the year 1954-55 as joint pattadar in columns 13,14 and 18 although the patta was not joint patta and it was never in the name of defendant or his father. Due to wrong entries in Khasra Pahani for the year 1954-55, defendant became Khatadar in the subsequent village records and based on such wrong entries, the defendant is claiming half share. He is also interfering with plaintiff's possession. If the village records are allowed to remain, the plaintiff would suffer prejudice, and therefore, the plaintiff prayed for declaration, that he is owner of suit schedule lands and that defendant's name in Khasra Pahani 1954-55 and other revenue records and subsequent years be struck off.

4. The defendant Shyamsunderlal filed written statement with the following pleas. Lalitha Pershad, the plaintiff, was never in exclusive possession of suit schedule lands. Gopilal and Ganpathlal are sons of Ramdayal and suit lands are joint family properties and were enjoyed by them jointly. Both of them are co-owners having joint possession and enjoyment. They paid land revenue jointly till 1959, as evidenced by entries in accounts of bank and also revenue records managed by Patwaris. Gopilal and Ganpathlal had no-ancestral properties. The

latter was reputed advocate in erstwhile Hyderabad State. He was standing Counsel for Maharaja Shivraj Dharamwant Bahadur, Nawabs and Jagirdars. He acquired large extents of properties including suit lands. Gopilal was working as clerk in Seth Nathram shop getting a meager salary. Being elder member of joint family, Gopilal started money lending and jewellery shop and other joint businesses in the name and style of M/s.Lalitha Pershad and Shyamsunderlal, out of earnings of his younger brother. As the family became large, both brothers started living separately though they held properties and business jointly. They made attempts to divide properties with separate possession but there was no partition. The suit lands known as "Ganapathi Bagh" or "Vakil Saheb Ka Bagh" is in joint possession and enjoyment of plaintiffs and defendants.

5. After death of Gopilal, Ganpathlal was managing the entire family affairs, and suit lands were transferred in his name by Tahsildar, Ameerpet. After death of Ganpathlal in April, 1948, name of Shyamsunderlal was entered in Pahanis from 1950 onwards and he alone was exclusively managing suit properties. He became seriously ill in 1956. Therefore, Lalitha Pershad took over management. The Khasra Pahanis were prepared in 1954-55 as per ground realities showing Lalitha Pershad and Shyamsunderlal as joint possessors and enjoyers of suit property. During preparation of record of rights, Lalitha Pershad and his sons attempted to interfere with the enjoyment of defendant's share and attempted to trespass into the land leading to filing of criminal cases. In addition to initiating proceedings u/s 145 of Code of Criminal Procedure, plaintiff filed a suit with mala fide intention.

6. Plaintiff Lalitha Pershad filed rejoinder. He alleged that Maharaja Shivraj granted patta to Gopilal keeping in view of service rendered by him. Suit schedule property is thus self-acquired property of Gopilal, who was adopted by Badri Pershad, elder paternal uncle of adoptee. The defendant has therefore no right over the suit schedule property. The patta was in the name of Gopilal and Sethwar entries of 1334 Fasli also stood in his name. The patta was never joint patta. Therefore, the entries in Khasra Pahanis 1954-55 showing the defendant as Khatadar are erroneous and illegal. In any event, by reason of adoption of Gopilal by Badri Pershad, there is severance of family and the exclusive patta granted to him cannot be considered as joint patta.

7. The pleadings which were filed whenever the matter was transferred from one Court to another, necessitated framing of the following issues.

1. Whether late Lalitha Pershad (the deceased original plaintiff) had been exclusive possession and enjoyment of the entire extent of the suit land as contended by the plaintiffs?

2. Whether the entries in the record of rights and pahanis are incorrect and are therefore liable to be rectified as prayed for by the plaintiffs?

3. Whether the suit is not maintainable without exhausting the steps provided under the Record of Rights Act?

4. Whether the suit is barred by limitation?
5. Whether the Court fee paid is not correct?
6. Whether the plaintiffs are entitled for the declaration prayed for? And
7. To what relief?
8. During pendency of suit, original plaintiff Lalitha Pershad died and his sons and daughters came on record as plaintiffs. Fifth plaintiff gave evidence as P.W.1 besides examining P.W.2 and marking Exs.A-1 to A-39. Shyamsunderlal, the original defendant gave evidence as D.W.2. An elderly member known to parties came as D.W.1 in addition to D.W.3. Documents, Exs.B-1 to B-99 were marked. During pendency of this appeal, Shyamsunderlal died and his children came on record as respondent Nos. 2 to 5. Considering evidence on record, learned trial Judge held that suit lands are in joint possession of the plaintiffs and defendants, and that they were never in exclusive possession of late Lalitha Pershad. Accordingly, the suit was dismissed.

Applications for receiving additional evidence

9. Learned Counsel for plaintiffs and learned Counsel for defendants made elaborate submissions concerning two points/questions for consideration, namely, question of exclusive title of Gopilal and question of adoption of Gopilal by Badri Pershad. A reference would be made to these at appropriate place. Before taking up these two questions for consideration, it is necessary to notice five applications filed under Order XLI Rule 27 read with Section 151 of Code of Civil Procedure, 1908 (CPC) for receiving and marking additional documentary evidence. In all these applications, rival parties contend that the documents which are now sought to be brought on record as additional evidence are very much essential for enabling the Court to pronounce Judgment on contentious questions of fact and law. The details of the applications are as follows.

A.S.M.P. Nos. 2247 of 2007 and 295 of 2009

10. A.S.M.P. No. 2247 of 2007 is filed by third respondent in appeal (who is one of the sons and legal representatives of deceased original defendant Shyamsunderlal). In this application, it is prayed to mark deposition of late Lalitha Pershad in O.S. No. 36 of 1958 before the Court of Additional Chief Judge, City Civil Court, Secunderabad, as additional evidence. Affidavit accompanying application states that when suit was pending before trial Court, the defendants filed an application for summoning deposition of Lalitha Pershad, that it is available on record and by oversight the same could not be marked although it is relevant to fact in issue. In opposition, counter affidavit is filed by fifth plaintiff. It is stated that contents of said deposition in O.S. No. 36 of 1958 have to be understood with reference to Judgment in the said case and that in said mortgage suit, Lalitha Pershad deposed that suit schedule property is joint family property only with a view to save the same and that same does not amount to an admission. Appellants also pray that in the event of this Court ordering

application to receive additional evidence, the Judgment in O.S. No. 36 of-1958 annexed to the counter may also be received as additional evidence. Subsequently to that effect, plaintiffs filed formal application being A.S.M.P. No. 295 of 2009 praying this Court to receive certified copy of Judgment in O.S. No. 36 of 1958 as evidence.

11. In the counter filed by the plaintiffs, there is no serious opposition to receive the deposition of Lalitha Pershad and also there is no serious opposition by defendants to receive the copy of Judgment as additional evidence. Even otherwise, plaintiffs admit to the fact that Lalitha Pershad gave evidence in O.S. No. 36 of 1958 deposing that suit schedule property is joint family property and that same was also considered by said Court in its Judgment, dated 03.10.1961. Therefore, this Court is of considered opinion that these documents would be very much " relevant for considering the question of exclusive title of Gopilal. Accordingly, these two applications are ordered. Deposition of Lalitha Pershad shall be marked as Ex.B-100 and certified copy of Judgment, dated 03.10.1961 in O.S. No. 36 of 1958 shall be marked as Ex.A-40.

A.S.M.P. No. 2269 of 2007

12. This is also an application filed by plaintiffs under Order XLI Rule 27 read with Section 151 of CPC praying this Court to receive and mark (i) book allegedly written by Gopilal and Ganpathlal in 1912 along with true translation of relevant pages; (ii) statement of evidence of these two persons in case No. 1544/1355 Fasli on the file of the Court of I Additional Chief Judge, City Civil Court, Hyderabad; (iii) Sale certificate issued by District Judge, Secunderabad, in O.S. No. 52 of 1929, dated 24.07.1933 in favour of Gopilal; and (iv) book titled "Agarwal Jathi Ka Itihas" (history of Agarwal Samaj) to receive as additional evidence. The application is supported by affidavit of sixth plaintiff. It is alleged that fifth plaintiff, who is a law graduate was looking after the litigation, that he was residing in Delhi and that though I.A. (SR) No. 3702 of 1987 was filed on 30.09.1987 before the lower Court for receiving four documents referred to hereinabove, the fifth plaintiff could not brief their Counsel, that said interlocutory application was returned with objections and could not be complied with and therefore, they were not marked as evidence. According to plaintiffs, these documents are relevant for considering issue of adoption as well as exclusive title of Gopilal. Defendants have not filed any counter affidavit. Nevertheless, their Counsel submits that book allegedly written by two brothers and the book titled "Agarwal Jathi Ka Itihas" are not public documents and therefore, they cannot be marked at the appellate stage unless proper proof is offered by plaintiffs. This Court finds considerable force in such submission. When Gopilal and Ganpathlal allegedly wrote book in 1912 while they were probably in their 30s or late 20s, this Court fails to understand what would be importance to be attached to said writings. Secondly, there is no evidence on record to show that during their lifetime book written by them ever saw light nor it was thought of or referred to during long history of litigation or pendency of

suit from 1959 till 1989. This reasoning also applies to reject book titled "Agarwal Jathi Ka Itihas" as being additional evidence. These two documents unless proved cannot carry weight u/s 76 of the Indian Evidence Act, 1872. Insofar as statement of evidence of both brothers before the Court of I Additional Chief Judge, City Civil Court, Hyderabad, and sale certificate issued by District Judge in Case No. 1544/1335 Fasli are concerned, these are certainly public documents forming part of public record and therefore, they can be received as additional evidence. These are marked as Exs.A-41 and A-42. The application, to the extent as above, is ordered.

A.S.M.P.Nos.300 and 305 of 2009

13. First of these two applications is filed by defendants to receive and mark certified copy of proceedings of Land Reforms Tribunal, Hyderabad, under Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Land Reforms Act, for brevity) in case No. 783/W/75 filed by Shyamsunderlal, Lalitha Pershad and another. A.S.M.P. No. 305 of 2009 is filed by plaintiffs to receive and mark the related declaration of Lalitha Pershad u/s 8(1) of the Land Reforms Act pursuant to which the proceedings were issued on 08.12.1976. Going by the contents of affidavits accompanied by two applications, it appears both the parties feel that these documents are relevant to facts in issue. This Court, therefore, is inclined to receive and mark them as additional evidence. Accordingly, document filed along with defendant's application is marked as Ex.B-101 and the document filed along with plaintiffs' application is marked as Ex.A-43.

14. Thus, for brief reasons in the above paragraphs as well as the reasons to follow at appropriate place, this Court is inclined to order these applications to the extent indicated hereinabove and the documents received and marked are as follows.

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No.	A.S.M.P.	No.	Filed by	Description of	Marked as document Exhibit
-----					1.
2247	of 2007	Defendants	Deposition of	Ex. B-100 Lalitha Pershad in O.S. No.	
36			of		1958
-----					2.
295	of 2009	Plaintiffs	Certified copy of	Ex.A-40 Judgment, dated 03.10.1961 in	
O.S.		No.		36of	1958
-----					3.
2269	of 2007	Plaintiffs	Statement of	Ex.A-41 evidence of Gopilal and Ganpathlal	
-----					4.
do-	Plaintiffs	Sale certificate issued	Ex.A-42 by District Judge, Secunderabad in		
O.S.	No.	52	of	1929, dated	24.07.1933
-----					5.
300	of 2009	Defendants	Certified copy of	Ex.B-101 proceedings of Land	
Reforms		Tribunal,	Hyderabad,	in case	No.783/W/75

Question of adoption

15. Lalitha Pershad instituted suit on 17.09.1959. At that stage, case was that his father Gopilal obtained patta for suit schedule land and therefore, revenue entries showing Shyamsunderlal as co-owner need rectification. As noticed supra, case moved in hierarchy of Courts and when the matter was remanded, Lalitha Pershad converted it into declaration suit. At that stage also there was no such plea of adoption of Gopilal. It is only in rejoinder filed in 1970 that he came forward with such plea and hence whatever he acquired is his own property. This fact of the matter is very important for considering rival submissions, which are as follows. According to learned Counsel for plaintiffs, Ramdayal and Badri Pershad and two others were brothers. The latter, who was issueless, was elder to former by eighteen years. Therefore, Badri Pershad adopted Gopilal for religious and temporal purposes, that by reason of such adoption, Gopilal ceased to have any connection with the family of Ramdayal. As adopted son, he was transplanted in adoptive family. He relies on evidence of D.W.1 and Exs.A-10, A-37 and A-38, Exs.B-4, B-3 and B-5 and also the book written by Gopilal and Ganpathlal in 1912 as well as Agarwal Jathi Ka Itihas, which are filed along with A.S.M.P.No.2269 of 2007.

16. Before examining evidence and question of proof of adoption of Gopilal, Hindu law principles need to be considered. A co-parcenary at the relevant time consists only male members whereas a joint family is an enlarged body with those members of family without any co-parcenary right or interest. In a way, every joint family consisting of members with co-parcenary right or interest, but not vice versa. An undivided Hindu family is always joint, whether or not family possesses property. The presumption is that Hindu family is joint in estate, mess, worship unless the contrary is proved. If the property having acquired by succession or by being treated as such by all the members of the family, every member of the joint family would have share in the joint family property Mayne's Hindu Law and Usage, 2008 (16th Edn.,) Paras 278 and 282. But, prior to 1956, an adopted son stands excluded from claiming any right in coparcenary or joint family property.

17. Before Hindu Adoptions and Maintenance Act, 1956 came into force, a person adopted by another person belonging to another family loses identity as member of natural family. He/she gets transplanted in the adoptive family, gets status of the son, acquires right to the property in the adoptive family and is divested of his property in the natural family Mayne's Hindu Law and Usage, 2008 (16th Edn.,) Para 206. The relationship of adopted son with natural family is severed for all purposes and all properties of such adopted person, which he inherits or acquires after adoption would not be treated as natural family's joint properties.

Probably for this reason, plaintiffs set up plea of Gopilal's adoption. If adoption is proved, there would not be joint family of Gopilal and Ganpathlal nor suit schedule property can be considered as joint family property.

18. Learned Counsel for defendants contends that in the absence of any foundation laid regarding adoption and in the absence of proof of adoption as a matter of fact by cogent evidence, Gopilal's adoption as alleged cannot be inferred. He also points out that the cause of action for the plaintiff's suit arose on 08.09.1959 when Lalitha Pershad found wrong entries in the Khasra Pahani and entire case was based on allegation that Maharaja Shivraj granted exclusive patta to Gopilal. According to learned Counsel, therefore, plea of adoption is an afterthought not supported by any evidence.

How adoption is to be proved? In Mulla's Hindu Law (fifteenth edn.), Section 512 reads as below.

512. Burden of proof and evidence.- The fact of adoption must be proved in the same way as any other fact. There are no special rules of evidence to establish an adoption. But the evidence in support an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption. That onus is particularly heavy where the adoption is made a long time after the date of the alleged authority to adopt. But when there is a lapse of a very long period between the adoption and its being questioned, every allowance for the absence of evidence to prove such fact must be favourably entertained. It stands to reason that after a very long terms of years, and a variety of transactions of open life and conduct upon the footing that the adoption was a valid act, the burden must rest heavily upon him who challenges its validity.

19. The principles of law in this regard are well settled. Adoption has to be pleaded specifically with reference to the adopted parents, time and year of adoption - atleast some of them must be proved as a matter of fact by cogent and convincing evidence. The fact that in respect of ancient adoptions, there would not be any direct evidence does not lessen initial burden of person setting up adoption. Every adoption must be proved by proving the fact of giving and taking adopted child and Dattahomam.

20. In Lakshman Singh Kothari Vs. Smt. Rup Kanwar, , Supreme Court stated the law as under.

The law may be briefly stated thus: Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the

ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party.

(emphasis supplied)

21. In *Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another*, , Supreme Court laid down that person who seeks to displace natural succession to property by alleging adoption must discharge the burden that lies upon him by proof of factum of adoption and its validity. It was also held that unless and until there exists consistent pattern of conduct from which Court could draw an inference that adoption might have taken place, stray instances of describing a person as adopted son would not be sufficient proof of adoption (Paras 12, 14 and 16 of *Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another*,).

22. In *L. Debi Prasad (Dead) by Lrs. Vs. Tribeni Devi and Others*, , the rule of burden of proof of adoption has been explained as follows.

That is also the view expressed in Mayne's Hindu Law wherein it is observed that the giving and receiving are absolutely necessary to the validity of an adoption; they are the operative part of the ceremony, being that part of it which transfers the boy from one family to another; but the Hindu Law does not require that there shall be any particular form so far as giving and acceptance are concerned; for a valid adoption all that the law requires is that the natural father shall be asked by the adoptive parent to give his son in adoption, and that the boy shall be handed over and taken for this purpose.

...But as observed by the Judicial Committee of the Privy Council in *Rajendrao Nath Holdar v. Jogendro Nath Banerjee* (1870-72) 14 Moo Ind App. 67 (PC); that although the person who pleads that he had been adopted is bound to prove his title as adopted son, as a fact yet from the long period during which he had been received as an adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained, and that the case was analogous to that in which the legitimacy of a person in possession had been acquiesced in for a considerable time, and afterwards impeached by a party, who had a right to question the legitimacy, where the defendant, in order to defend his status, is allowed to invoke against the claimant every presumption which arises from long recognition of his legitimacy by members of his family; that in the case of a Hindu, long recognition as an adopted son, raised even a stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family.

23. In *Voleti Venkatarama Rao Vs. Kesapragada Bhaskara Rao and Others*, , it

was held that "long lapse of time and recognition as adopted son would give rise to strongest presumption in favour of validity of adoption especially when all parties to the adoption give evidence in its favour". In case of ancient adoption, it will be very difficult to get evidence of rituals including the factum of giving and taking of adoptee. How Courts should deal with such situations? Dealing with this aspect, Supreme Court in *L. Debi Prasad* (supra), laid down as under.

In the case of all ancient transactions, it is but natural that positive oral evidence will be lacking. Passage of time gradually wipes out such evidence. Human affairs often have to be judged on the basis of probabilities. Rendering of justice will become impossible if a particular mode of proof is insisted upon under all circumstances. In judging whether an adoption pleaded has been satisfactorily proved or not, we have to bear in mind the lapse of time between the date of the alleged adoption and the date on which the concerned party is required to adduce proof. In the case of an adoption said to have taken place years before the same is questioned, the most important evidence is likely to be that the alleged adoptive father held out the person claiming to have been adopted as his son; the latter treated the former as his father and their relations and friends treated them as father and son. There is no predetermined way of proving any fact. A fact is said to have been proved where after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

(emphasis supplied)

24. It is accepted that Gopilal died in 1942 and his brother died in 1948. Till then there were no disputes between first generation members of the family. It is also in evidence that except for a few years before the death of Gopilal in 1942, both the brothers were living together with children and probably birth of several children to Lilitha Pershad and Shyamsunderlal necessitated a separate house in Hanuman Tekdi area. During lifetime of Gopilal, the question of adoption was never set up nor was seriously taken note of. Even in suit on this aspect, none of relatives of Ramdayal or Badri Pershad are examined to speak about adoption. The evidence of P.W.1, who is fifth plaintiff, is not at all useful as is evidence of Shyamsunderlal as D.W.2. The plaintiffs, however, rely on deposition of D.W.1 - an octogenarian, admittedly related to both parties. In cross-examination, he stated that Gopilal went in adoption to Badri Pershad. He also deposed that both of them were residing in same house. This evidence is not useful at all to prove so-called ancient adoption. When Badri Pershad, who was in Rajasthan adopted Gopilal, why Gopilal continued to reside at Hyderabad is understandable. Even if it is assumed that Badri Pershad and Ramdayal were joint family members and even after adoption, Gopilal continued to stay with Ramdayal family, it would belie the theory of adoption. Here a brief reference may be made to the book written and published by both brothers as well as "*Agarwal Jathi Ka Itihas*", which are sought to be filed as additional documents. As per the book written by

both the brothers, Badri Pershad accepted Gopilal as adopted son. It does not however refer to any adoption ceremony or other details. Mere accepting as adopted son would not satisfy standard of proof of adoption under Hindu law. Secondly, no witness speaks about the plaintiffs' case in rejoinder. The evidence of P.W.1 on this aspect containing casual remarks without any corroboration cannot be proof of ancient adoption.

25. According to learned Counsel for plaintiffs, Badri Pershad was born in 1831 and Ramdayal in 1849. Gopilal was born in 1876 and Ganpathlal in 1879. He also submits that Badri Pershad died in 1893 and Ramdayal died in 1891. From these, the following would emerge. Badri Pershad was elder to Ramdayal by 18 years and by the time Gopilal was born in 1876, Badri Pershad was about 45 years. If Gopilal was adopted by Badri Pershad before the birth of Ganpathlal, it would be illogical because no person would give his only son in adoption to an elder brother. If Gopilal was adopted after the birth of Ganpathlal in 1879, Badri Pershad would have been about 48 years and it will be highly improbable that he would have adopted a male child at that age. The theory of adoption put up by plaintiffs in the rejoinder 12 years after filing original plaint is thus bridled with enigmatic.

26. Adoption related documents to which reference has been made by both Counsel can be considered in two groups. Exs.B-4, B-3 and B-5 and Exs.A-10, A-37 and A-38 form one group. Exs.B-6 and B-8 form another group. As rightly pointed out by both Counsel as presently seen some of these documents described Gopilal as son of Badri Pershad and some of them show him as son of Ramdayal. Learned Counsel for the plaintiffs would urge that at least in one document there is admission by Ganpathlal regarding adoption of his brother by uncle and therefore, no further evidence is required to prove adoption. Per contra, defendants' Counsel submits that the documents would not clinchingly prove even on probabilities, the factum of adoption and an admission in a different context is not binding.

27. Ex.B-8, which is dated 20th Jamadi 2,1313 Hizri, is a joint statement by brothers wherein both of them described themselves as the sons of Ramdayal and accepted liability for half of the debt to Lala Beer Bhandasji. Ex.B-6, Income Tax receipt of Gopilal for the year 1916-1917 describing him as son of Ramdayal. Ex.B-3, dated 18.01.1932 is a representation of Gopilal to the then Hon'ble Finance Minister, in which he calls himself as son of Ramdayal, C/o Rai Ganpathlal. It may be noticed that the earliest of these three documents is Ex.B-6 and the next one is Ex.B-3, which is written by Gopilal describing himself as son of Ramdayal. These documents would certainly belie contention of the plaintiffs that Gopilal was treated as adopted son of Badri Pershad by one and all. When Gopilal himself considered as son of Ramdayal, it is not possible to accept adoption.

28. Exs.A-10, Ex.A-37 and Ex.A-38 are relied strongly to support contention that Ganpathlal himself admitted Gopilal as adopted son of Badri Pershad. Ex.A-10 is

a statement of Ganpathlal before Court of Chief Judge, City Civil Court, Hyderabad in O.P. No. 20 of 1953 Fasli. The said O.P., was filed by Lalitha Pershad for succession certificate in respect of shares held by Gopilal in Reserve Bank of India and Usman Shahi Mills. In this, Ganpathlal stated that Gopilal had gone to elder paternal uncle Badri Pershad in adoption, that he died, that Lalitha Pershad being his only son is alone entitled and that he has no objection. Ex.A-37 and Ex.A-38 are succession certificates in which Ex.A-10 statement was given. This reveals that Ganpathlal also deposed that they are members of joint family. Learned Counsel for defendants submits that the admission made in a different context cannot be used as an admission in another context when there was no adjudication. This Court is compelled to countenance submission of learned Counsel in view of *Mst. Rukhmabai Vs. Lala Laxminarayan and Others*, and *Raghavamma* (supra).

29. In *Rukhmabai* (supra), it was held that though prima facie a document expresses intention to do certain things, it is open to a party to prove that the said document was sham or nominal, and not intended to be acted upon but was conceived and executed for ulterior purpose. It was also further observed.

We shall now briefly notice the admissions alleged to have been made by one or other members of the family accepting the partition. In this context, the observations of the Judicial Committee in AIR 1936 264 (Privy Council) , are apt and they read:

It sometimes happens that persons make statements which serve their purpose, or proceed upon ignorance of the true position; and it is not their statements, but their relations with the estate, which should be taken into consideration in determining the issue.

The issue in that case, as it is in the present case, was whether one of the members of a joint Hindu family separated himself from the others by renouncing his interest in the joint family property.

30. In *Raghavamma* (supra), the question was whether certain documents describing a person as an adopted child of another would clinchingly prove adoption. Answering the query in the negative, Supreme Court observed, (para 16 of AIR)

So far as the documentary evidence goes, the position is as follows. Till 1911 there was no document recording the fact that Venkayya was the adopted son of Pitchayya and that after 1911 there had been contradictory recitals in the documents. Broadly speaking whenever Venkayya executed a document he described himself as the son of Chimpirayya, and whenever third parties executed documents, he was described as adopted son of Pitchayya. He filed suits, sometimes as the son of Chimpirayya and sometimes as the adopted son of Pitchayya. His name was entered in the accounts relating to Paruchur, but not in the accounts relating to Upputur; he gave evidence declaring himself as the son of Chimpirayya and also insured his life as such; he operated on the

accounts of third parties as the son of Chimpirayya; while in the will executed by Chimpirayya he was described as the adopted son of pitchayya, on the death of Venkayya the appellant herself, who under the will was entitled to continue in possession and management, handed over the entire management to the first respondent indicating thereby that the will was not really intended to take effect. In this state of evidence, it is not possible to say that there had been a consistent pattern of conduct from which a Court should draw the inference that the adoption must have taken place.

31. The mention of Gopilal as adopted son of Badri Pershad and the statement of Ganapathlal in Ex.A-10 are stray instances and must be understood to have been made in situational context. As seen from Exs.A-37 and A-38, Ganpathlal sticks to the fact that it is a joint family but still says Lalitha Pershad being son of Gopilal is alone entitled for the shares of two companies mentioned therein. It is quite probable that to avoid any enquiries as to the right of Lalitha Pershad to succeed to shares, Ganpathlal who was admittedly an advocate might have thought to describe Gopilal as son of Badri Pershad and the same does not amount to binding admission.

32. It is no doubt true that the plaintiffs plead adoption of Gopilal to Badri Pershad long time ago. It is also true that to prove ancient adoption, direct evidence is not necessary but there should be circumstances to warrant the existences of adoption. As rightly contended by learned Counsel for defendants, plaintiffs did not examine any of relatives of Ramdayal, Badri Pershad or from other families known to speak about adoption of Gopilal. No relevant document has been exhibited to prove their case. If adoption is true, at least in Ex.B-3, representation made on 18.01.1932, Gopilal would have described himself as son of Badri Pershad. It was not so. This itself would improbably theory of adoption. Therefore, this Court holds that plaintiffs have failed to prove alleged adoption of Gopilal to Badri Pershad. In absence of any evidence contra, the presumption is attracted and Gopilal and Ganpathlal constituted a joint family. What all properties they hold are to be succeeded to equally by their progeny.

Question of title

33. Whether Gopilal acquired exclusive title to suit schedule land? The plaintiffs contend that by reason of his adoption to his elder paternal uncle, Gopilal's title to suit schedule land is exclusive and therefore, the same does not form part of joint family property nor it is co-parcenary. Alternatively they contend that even if adoption is not proved, Maharaja Shivraj granted patta to their father alone and therefore, defendants cannot claim suit schedule land. The submission of defendants is as follows. Admittedly, Gopilal and Ganpathlal were living in the same house at Charkaman. Therefore, grant made by Maharaja Shivraj is assignment in favour of joint family and not exclusive to elder brother. Suit schedule land also, therefore, must be treated as co-parcenary property. Grant of land is an acquisition by family, which was treated as joint family property. There is clinching evidence to show that both the brothers always purchased properties

in joint names and all other persons known to the family considered them as members of joint family. Reliance is placed by learned Counsel on *Amirdham Vs. Valliammai and Others*, , *Pragada Krishnamurthi Vs. Pragada Seetama and Others*, , AIR 1945 128 (Privy Council) , *Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others*, , *M.D. Dhanwatey Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara*, and *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another*, .

34. At this stage, legal principles - both statutory and precedential; pertinent to this matter may be considered. Mayne's "Hindu Law and Usage" (16th Edn.,) explains as follows.

298. Property jointly acquired.- Secondly, property may be joint property without having been ancestral. Where the members of a joint family acquire property by or with the assistance of joint funds or by their joint labour or in their joint business or property of the persons who have acquired it, whether it is an increment to ancestral property, or whether it has arisen without any nucleus of descended property. And it makes no difference that the form of the conveyance to them would make them tenants in common and not joint tenants, or that the conveyance is in favour of one of the members of the family only.... It is now settled that when the members of a joint family, by their joint labour or in their joint business, acquire property, that property, in the absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issue would necessarily acquire a right by birth in such property.... If a single individual acquired a fortune by his own exertions, without any assistance from ancestral property, his male issue would certainly take no interest in it. If several brothers did the same, the property would, in the absence of any indication of an intention to the contrary, be owned by them as joint family property, and in that case their male issue would necessarily acquire a right in it by birth; for, under the Mitakshara system there can be no joint family property in respect of which the male issue of the joint owners do not take a share by birth. If there is satisfactory evidence of an intention to treat the property not as joint family property, but as joint property only, i.e., as the joint self-acquisition of the acquirers, it will be given effect to. But the presumption is in favour of its being regarded as joint family property.

(emphasis supplied)

35. In *Amirdham* (supra), Justice Venkataramana Rao (as he then was) considered question as to whether members of joint family get right to property of any member acquired though there was no ancestral nucleus. It was laid down that, "when members of joint family (brothers etc) lived in commonality and acquired properties together by the joint exertions, in the absence of any contra indication, such property would be joint family property and members acquire right by birth".

36. In *Krishnamurthi* (supra), the same learned Judge was dealing with a second

appeal arising out of partition suit. Therein, plaintiffs sought partition of the property on ground that they are joint family properties and for setting aside certain alienations made by his father. He pleaded that his grandfather, his father and two others constituted members of undivided family, that after death of grandfather, plaintiff's father and his brother lived jointly possessing properties but defendant No. 9 alienated certain items of property, not binding on plaintiff. The suit was defended by contesting party inter alia on the ground that maternal grandfather of defendant No. 9, Ramachandrudu, gifted the properties to them that they were separate properties, and therefore, plaintiff could not acquire any right by birth. The learned Subordinate Judge though disbelieved gift came to the conclusion that after death of maternal grandfather, property was inherited by defendant No. 4 and that plaintiff had no right in any properties in respect of items 7 and 8. However, he came to the conclusion that alienations made in favour of defendant No. 6 is binding on plaintiff and that alienations in favour of defendant Nos. 7 and 8 are not binding on plaintiff as they were held in joint family properties. Learned appellate District Judge held that suit property was not ancestral property and that plaintiff did not acquire right by birth nor he can impeach alienations. The plaintiff then approached High Court u/s 100 of Code of Civil Procedure, 1908. The question was whether the properties gifted by maternal grandfather to defendant No. 9 could be treated as joint family property or not. Reiterating the principle that the existence of ancestral nucleus is not condition precedent for constituting joint family and that properties acquired by members by joint effort or other means enjoyed as joint family properties can be presumed as such. The relevant observations are as follows.

In order to constitute joint family property it is not necessary to have any ancestral nucleus. As observed by Beaman, J., in *Karson Das Dharamsey v. Gangabai* (1908) 32 Bom 479 : 10 Bom L.R. 184 (at p. 492):

Because it is true that there can be no joint ancestral family property without a previous nucleus of joint family property, it is not true that there cannot be joint family property without a pre-existing nucleus.

It is open to the members of a joint family to acquire property either by joint labour or by any other means and enjoy the same as joint family property. So far as this Court is concerned, it is well established that if members of a joint family acquire property together by joint labour, in the absence of an indication to the contrary it will be presumed to be joint family property in which the male issue of the acquirers would acquire a right by birth. The same principle must in my opinion be acquired to the case of any property acquired jointly by the members of a joint family. Once the character of property as joint family property is established, no matter how acquired, it follows that the male issue of the acquirers will get a right by birth.

37. Privy Council in *Inder Kuer* (supra), reiterated the principle thus, "the state of every Hindu family is presumed to be joint, joint in food, worship and estate but the strength of presumption necessarily varies in each case, the presumption of

Union is stronger in the case of brothers than in the case of cousins and the farther he goes from the founder of the family, the presumption becomes weaker and weaker". It may be mentioned that the dicta in *Inder Kuer* (supra) has been followed by Supreme Court in *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, , *Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another*, , *Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee* since deceased and after him his legal representatives and Others, , *Ramchandra Rambux Vs. Champabai and Others*, , *Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another*, , *Madhukar D. Shende Vs. Tarabai Aba Shedage*, and *Ramabai Padmakar Patil (D) through LRs. and Others Vs. Rukminibai Vishnu Vekhande and Others*, .

38. In *Mallesappa Bandeppa Desai* (supra), a Division Bench of Supreme Court while dealing with onus of proof when joint family manager's children claims it to be self-acquired property and deny doctrine of blending. It was held that:

We do not know what the income of the said properties was; obviously it could not be of any significant order; but in our opinion there is no doubt that where a manager claims that any immovable property has been acquired by him with his own separate funds and not with the help of the joint family funds of which he was in possession and charge, it is for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separate fund. The onus, of proof must in such a case be placed on the manager and not on his coparceners.

(emphasis supplied)

39. In *Dhanwatey* (supra), the general doctrine of Hindu Law in relation to properties acquired by karta or coparcener with the aid and assistance of joint family assets was explained thus: (para 4 of AIR).

The general doctrine of Hindu Law is that property acquired by a karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. To put it differently, it is an essential feature of self-acquired property that it should have been acquired without assistance or aid of the joint family property. The test of self-acquisition by the karta or coparcener is that it should be without detriment to the ancestral estate. It is therefore clear that before an acquisition can be claimed to be a separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property.

40. As noticed by apex Court in *Dhanwatey* (supra), the above principle was reiterated in earlier Judgments in *The Commissioner of Income Tax, West Bengal Vs. Kalu Babu Lal Chand*, and *Mathura Prasad Vs. Commissioner of Income Tax, Uttar Pradesh*, .

41. In view of the authorities referred to hereinabove, it requires to be examined whether *Gopilal* and *Ganpathlal* constituted an undivided Hindu joint family,

whether joint family had owned and possessed properties and joint business, and whether suit schedule property was also treated and formed part of joint family property even though Maharaja Shivraj allegedly granted patta to Gopilal. This Court has already held on point No. 1 that the factum of Gopilal's adoption to Badri Pershad is not proved to the satisfaction of the Court. From the age of discretion, both brothers stayed in the Charkaman house. They had common kitchen, common worship and though initially (as evidence shows) there was no joint family nucleus, properties were required and developed and all of them were enjoyed by brothers jointly. When their children - Lalitha Pershad and Shyamsunderlal came of age and their families grew, joint family then purchased Hanuman Tekdi house and Gopilal's branch shifted there. Ganpathlal continued at Charkaman presumably for the reason that right from beginning he was having his lawyer's office there. Till 1942, the year of death of Gopilal, and thereafter till 1948 when Ganpathlal died there were no disputes whatsoever. Family was joint and the properties held by them were joint. Indeed, as the evidence on record shows brothers acquired properties in joint names of Lalitha Pershad and Shyamsunderlal and presumably funds for the purchase came from joint family earnings and not from contributions exclusively by Gopilal or exclusively from Ganpathlal. There is also no evidence on record to show that during their lifetime, brothers had ever partitioned properties. There is also no evidence on record to show that after their death Lalitha Pershad (original plaintiff) and Shyamsunderlal (original defendant) had ever partitioned the properties. Thus, it can be concluded that family was joint and the properties were joint including suit schedule properties. The evidence in support of these inferences is considered infra.

Whether Gopilal and Ganpathlal constituted joint family

42. P.W.1 and D.W.2 are party witnesses and D.W.1 is the third party witness who statedly is in the know of things about family. P.W.1 is plaintiff No. 5. He is son of Lalitha Pershad who died during pendency of suit in 1975. By the time he gave evidence in 1981, he was aged 45 years. That means when Gopilal died in 1942, he was hardly six years old. Though he may not be aware of other family affairs, his evidence would be certainly relevant regarding status of the family. He deposed in the chief examination that Gopilal and Ganpathlal were not members of joint family at the time of adoption of the former to Badri Pershad. He thus admits that at least till the alleged adoption, family was joint. As this Court disbelieved the adoption, it goes without saying that family continued to be joint family. In cross-examination, it was suggested to him that when Shyamsunderlal wanted to take over management of joint family, trouble started. He, however, admitted in the cross-examination that Khata (accounts) of the family was managed jointly and that the revenue tax was also paid jointly. The overall impression one gets by reading P.W.1 is that he is cautious not to speak about the defendant's case and except denying joint family status of the family, he did not depose in any acceptable manner about actual status of members of the family living under one roof. In addition to this, he feigned

ignorance when he said that he has no idea about the properties of Gopilal and Ganpathlal. He also admitted that the land at Gagan Pahad was purchased by his grandfather but revenue was paid jointly by Gopilal, Shyamsunderlal and Lalitha Pershad.

43. Deceased defendant No. 1, as D.W.2 deposed that both brothers were joint residing at Charkaman house and that besides being employed with Seth Nathram, Gopilal was also doing money lending business with money earned by Ganpathlal and that they were residing as joint family. He also spoke about the jewellery business in the name and style of Lalitha Pershad and Shyamsunderlal and the properties are purchased jointly by both the brothers. All family members were living at Charkaman house and the suit schedule land was given by Maharaja Shivraj in recognition of services of Ganpathlal but patta was granted to Gopilal. It is also in his evidence that suit schedule land was developed by both the brothers by raising plantation trees by utilizing funds of younger brother. He also spoke about Bogh ceremony/thread ceremony of sons of Lalitha Pershad and Shyamsunderlal performed by both the brothers as members of joint family. According to him, the entire family stayed at Hanuman Tekdi house for two-and-half years (after its purchase), whereafter Ganpathlal branch went to Charkaman again. He alone was cultivating the land after death of Gopilal. But in 1954-55, he fell sick and after recovery, he went to the lands, but Lalitha Pershad did not allow him to resume management.

44. Shankerlal aged about eighty years is known to both brothers. He gave evidence as D.W.1 deposing that all the properties were purchased by family with the income of Ganpathlal and that both brothers were living as joint family. He also deposed that Gopilal was karta of family and that jewellery business at Abids at Hyderabad was also joint business. D.W.1, an independent witness and if some allowance is given to the age and memory of D.W.1, there are no valid reasons to disbelieve him. The oral evidence, thus, shows that Gopilal and Ganpathlal constituted a joint family and there was no partition. The oral evidence is also supported by the documentary evidence - Exs.A-35, A-36, B-80, B-1, B-2, B-4, B-5, B-8, B-75, B-91 to B-94, B-11 and B-12. In addition to these, judicial proceedings as evidenced by Exs.B-89, B-90, B-96, B-97, B-98 and B-81 are also available.

45. Ex.A-35 is Judgment of the Committee of Estate in the capacity of Nazime Jamabandi, passed in 1344F (1934) and Ex.A-36 is appellate order passed by Revenue Secretariat in 1346F (1936) respectively. A reading of these two documents would show that Langerguda village was a deserted village near Shamshabad. Till 1322F (1912) village was leased out to Mr.Ziauddin. After expiry of lease, in 1323F (1913) late Raja Saheb leased out village to Gopilal. The village among others had Acs.85.21 guntas of Kancha land, Acs.4.31 guntas of wet land and Acs.9.38 guntas of dry land. On an application by Gopilal, grantor imposed a cess of Rs. 200 per year (at Rs. 2/- per acre) for kancha land and mango garden. The settlement was implemented in 1324F (1914). Grantee

submitted an application in 1334F (1924) requesting for downward revision of assessment. The settlement Department re-fixed the assessment at Rs. 53.12.0 annas. This was recommended to the Committee of Estate. They found that there was a well in the land known as "Nimma Bouli", that the assessment of the Kancha land was Rs. 275/- per year, that suit land assessment was Rs. 94/- per year, and therefore, the order of Settlement Department cannot be accepted. Thus, the assessment of Rs. 200/- was restored vide Ex.A-35 order. Assessee then filed appeal before Revenue Secretariat through his brother Ganpathlal. The appellate authority reversed order of the Committee of Estate observing that imposing of dry assessment would be justified. These two documents are pressed by plaintiffs to contend that suit schedule property belongs to Gopilal only and that it does not form part of joint family assets.

46. Ex.B-80 is an extract from Deccan Law Reports (volume 31 of 1350F). It is the Judgment in A.S. No. 837 of 1349F (1939) between Lalitha Pershad and Ors. v. Nawab Rasool Yar Jung Bahadur. It appears Lalitha Pershad and Shyamsunderlal filed suit for recovery of money before First Nazim, City Civil Court, against said Nawab in 1348F (1938) contending that they are proprietors of shop "Lalitha Pershad and Shyamsunderlal", that defendant therein executed promissory note in their favour for Rs. 7,973/-. The trial Judge dismissed the suit holding that unless suit is filed by Karta of joint family, it is not maintainable. Aggrieved by trial Court Judgment, A.S. No. 847 of 1939 was filed, which was also dismissed in 1349F (1939) holding that suit is not maintainable. In the course of Judgment, learned appellate Judges in Ex.B-80 recorded the following findings: (i) Gopilal and Ganpathlal constituted joint family; (ii) Lalitha Pershad and Shyamsunderlal are members of said joint family; (iii) the business of Lalitha Pershad and Shyamsunder is a joint family business; (iv) Gopilal is member of the joint family; (v) the suit which is not filed by the Manager/Head of the family is not maintainable as the same is not filed by manager on behalf of all members of family. The observations and findings in Ex.B-80 would certainly operate as res judicata. Learned Counsel for plaintiffs, however, submits that Ex.B-80 does not operate as res judicata and that it is not admissible in evidence. According to him, the findings recorded in a Judgment where the parties are co-plaintiffs do not operate as res judicata unless there is conflict of interest. He relied on an authority, which is discussed in next paragraph.

47. In Iftikhar Ahmed and Others Vs. Syed Meharban Ali and Others, , Supreme Court ruled as under.

Now it is settled by a large number of decisions that for a judgment to operate as res judicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants; (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit; and (3) that the Court actually decided the question.

In AIR 1950 17 (Privy Council) , Lord Simonds said:

It may be added that the doctrine may apply even though the party, against whom it is sought to enforce it, did not in the previous suit think fit to enter an appearance and contest the question. But to this the qualification must be added that, if such a party is to be bound by a previous judgment, it must be proved clearly that he had or must be deemed to have had notice that the relevant question was in issue and would have to be decided.

We see no reason why a previous decision should not operate as *res judicata* between co-plaintiffs if all these conditions are *mutatis mutandis* satisfied. In considering any question of *res judicata* we have to bear in mind the statement of the Board in *Sheoparsan Singh v. Ramnandan Prasad Narayan Singh* (28) AIR 1916 PC 78 that the rule of *res judicata* "while founded on ancient precedent is dictated by a wisdom which is for all time" and that the application of the rule by the Courts "should be influenced by no technical considerations of form, put by matter of substance within the limits allowed by law."

The *raison d'être* of the rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest: and to allow persons who had deliberately chose a position to reprobate it and to blow hot now when they were blowing cold before would be completely to ignore the whole foundation of the rule", see *Ram Bhaj v. Ahmed Said Akhtar Khan* AIR 1938 Lah 571.

(emphasis supplied)

48. The authority cited by learned Counsel for plaintiffs indeed supports the view that doctrine of *res judical* can even operate between co-plaintiffs. Ex.B-80 would show that when Lalitha Pershad and Shyamsunderlal filed suit for recovery of money, the suit was dismissed holding that their immediate predecessors constituted Hindu Joint family under management of Gopilal and therefore, suit filed by members of joint family is not maintainable. This itself would clinchingly show that joint family status of members remained intact and there was no severance of the status.

49. Exs.B-1 and B-2 are two letters by Gopilal and Ganpathlal. A reading of these two documents would show that both the brothers enjoyed all the properties including suit schedule property as joint family assets and at no point of time, suit schedule land was treated as exclusive property of elder. In Ex.B-2, Gopilal even admits that he intended to transfer the entire suit schedule garden to Ganpathlal, that he was not inclined to accept transfer of garden, which was pending and that he desired that garden should be divided between two. If suit schedule land was not considered as joint family property, there was no necessity for Gopilal to write to his younger brother for partition of properties. Though a half hearted attempt is made by plaintiffs to disown Exs.B-1 and B-2, this Court is not impressed with the submission. Exs.B-1 and B.2 date back to 1941 and if signature of Gopilai was doubted, it is for the plaintiffs to take steps to disown Exs.B-1 and B-2. Having not done so, at this stage, they cannot be permitted to

raise a plea that Exs.B-1 and B-2 are not genuine documents.

50. Ex.B-4 is a letter/acceptance deed accompanying an application to Tahsildar mentioning that he has transferred property to his younger brother Ganpathlal, son Lalitha Pershad and nephew Shyamsunderlal for consideration and that property includes patta land at Langarguda (suit schedule property). Based on Ex.B-4, Tahsildar Amirpet Jagir issued proceedings Ex.B-5 transferring suit schedule lands to Ganpathlal and also directing subordinate revenue officials to make necessary changes in revenue entries. Though the translation of Ex.B-4 uses the word "I have gifted", in effect it is an application of Gopilal to Tahsildar to transfer suit schedule land to Ganpathlal. This is clear from the translated copy of Ex.B-5. Ex.B-8 is an acknowledgement by both the brothers accepting liability to discharge the debt of Ramdayal to M/s.Lala Bhagwandasji and Lala Kamta Pershadji and Lala Durga Pershadji, sons of late Bowraji. Thus, Exs.B-1, B-2, B-4, B-5 and B-8, would show that after death of Ramdayal, his two sons lived as joint family, had joint business and financial dealings as joint family and all the third parties who entered into contracts or incurred debts treated both brothers as members of joint family. At no point of time, both brothers considered themselves as belonging to nucleus families.

51. Exs.B-75, B-91, B-93 and B-94 are registered sale deeds and Ex.B.92 is a mortgage deed in favour of Gopilal. They would also throw light on nature of possession by family. Ex.B-75 of 1346F (1936) is a sale deed executed by Butchi Reddy and Venkata Reddy in favour of Gopilal and Shyamsunderlal. They are described as pattadars of land at Langarguda. In the documents/schedule, the southern boundary is mentioned as land belonging to vendees. Ex.B-92 is mortgage deed executed by one Mohd.Ilyas in favour of Lalitha Pershad for a period of five years with possession. Ex.B-93 (1316F = 1906) is a sale deed by Abdulla Bin Mohammed, in favour of Muralidhar Das and Lalitha Pershad (minor sons of Gopilal) in respect of immovable property consisting of charkaman house with other structures. Ex.B-91 is also a sale deed (1325F = 1915) executed by Mohd.Ishaq in favour of Lalitha Pershad. Though the documents were obtained in individual names of members of joint family, the pattern is very clear. Some of the assets were acquired in the name of Lalitha Pershad, some in the name of Shyamsunderlal and some other in the names of Gopilal or either of them.

52. It is interesting to note that no document is available on record that at any point of time, any property was obtained or purchased or received as mortgage property in the name of Ganpathlal. In all probability, Ganpathlal who is admittedly a lawyer of some reputation was serving mostly elite clients, from families of nobles, royals and jagirdars. That may be one reason why he felt shy of obtaining any property in his name. He ran lawyer's office at Charkaman house and earned money and see that money is invested by elder brother Gopilal, who was only "decision maker" in the family.

53. Exs.B-11 and B.12 make this conclusion more clear. Ex.B-11 is the list of persons, who gave gifts including money at the Bogh ceremony of Ram Autar

and Premchand, grandsons of Gopilal and Ganpathlal Saheb respectively (sons of Lalitha Pershad and Shyamsunderlal respectively) on Pow Sudi 6, Sammat, 1993 (Sammat year among Agarwals is 57 years ahead of Anno Domini). Ex.B-12 is the invitation by both brothers for the thread ceremony of Girdhari Pershad and Ganga Pershad, sons of Lalitha Pershad to be held on 9,h June 1938 (1348F). This would show that both the brothers were living together, they were performing ceremonies connected with children together and all rights and responsibilities were shared together.

54. In addition to documents showing personal relations, relations with third parties, relations with others in fiduciary capacity, we have also certain judicial proceedings that support defendants' case. This Court has already made a reference to Ex.B-80 which is extract from Deccan Law Reports showing that suit filed by Lalitha Pershad and Shyamsunderlal was dismissed only on the ground that being members of the joint family of Gopilal and Ganpathlal, they could not have maintained suit in their individual capacity. Exs.B-89 and B-90 are judicial proceedings and Exs.B-81 and B-96 to B-98 are affidavits filed by different parties before public/judicial authorities. These are considered in the ensuing paragraphs.

55. Ex.B-89 is the copy of the order, dated 08.04.1976, passed by the Court of II Metropolitan Magistrate, Hyderabad, in M.C. No. 62 of 1975. It is case u/s 149 of CrPC. When there was a dispute between children of Shyamsunderlal (defendants herein) and Lalitha Pershad and his children in connection with repair of water pump kept at the well, the Sub Inspector of Police filed a report u/s 149 of CrPC before the Revenue Divisional Officer, Hyderabad. He passed a preliminary order on 29.12.1969. Thereafter, the case was sent to the Court of II Metropolitan Magistrate and was marked as M.C. No. 62 of 1975. The dispute was with reference to the suit schedule land. The children of Gopilal contended that he was adopted by Badri Pershad and therefore, he has exclusive right to the property. Defendants contended that Ganpathlal developed garden and he had equal share in the property. After enquiry into the matter, learned Metropolitan Magistrate recorded a finding that the disputed property belongs to joint family comprising of Gopilal and Ganpathlal and that the former was karta of joint family. It was also observed by learned Magistrate that in 1941 both the brothers wanted partition of joint family properties and in the Will executed in 1351F, Gopilal clearly mentioned that the disputed lands should be transferred to his younger brother. Here, it may be mentioned that learned Magistrate was obviously referring to Exs.B-1 and B-2 which are the letters exchanged between brothers in 1941 or thereabout. Learned Magistrate in Ex.B-89 also mentioned that in revenue records from 1955 onwards, the name of the Lalitha Pershad and Shyamsunderlal were shown as joint pattadars and joint cultivators of the land. Having regard to these facts, learned Magistrate came to conclusion that disputed property is joint family property and accordingly dropped proceedings.

56. Ex.B-90 is the copy of the order of the Court of Metropolitan Additional

Sessions Judge, Hyderabad, in Criminal Revision Petition No. 29 of 1977, dated 10.08.1977. In this, Ex.B-89, was confirmed recording a finding that property is joint family property. It is well settled that the finding recorded by criminal Court in the proceedings u/s 149 of CrPC are not binding on the civil Court but when Exs-89 and 90 referred to earlier litigation and also referred to entire relationship between two brothers through whom the parties are claiming, findings by judicial authorities cannot be ignored. As per Section 41 of the Evidence Act, they are relevant and binding on parties.

57. Ex.B-96 is a copy of the affidavit of one Pothaganti Venkaiah. Exs.B-97 and 98 are two other such affidavits of Bansilal and Mustafakhan respectively. These affidavits were filed before the Court of Munsif Magistrate in M.C. No. 42 of 1970. The sum and substance of these affidavits is that the suit schedule lands are joint family properties, that all brothers jointly dug well that they were cultivating land jointly and that they have been living joint family members. Ex.B-81 is the petition of Lalitha Pershad filed before Jagirdar Debt Settlement Board, wherein he clearly admitted that suit schedule lands are joint family properties. From these documents, as rightly contended by learned Counsel for defendants, not only Lalitha Pershad but even tenants (like deponents of Exs.B-96 and B.97) and other parties considered suit schedule property as joint family property and never it was treated as exclusive property of Gopilal.

58. Exs.A-43 and B-101 (filed by defendants as additional evidence) are also relevant in this regard. Ex.A-43 is the declaration filed by Lalitha Pershad before the LRT, and Ex.B-101 is the certified copy of the order of LRT. In Ex.A-43, declaration, Lalitha Pershad had shown one-eighth share in Langerguda lands (suit schedule lands) and other lands admeasuring Acs.131.16 guntas. This was filed on his behalf and on his wife constituting one family unit. Obviously, he was under the impression that his seven sons would be entitled to one-eighth share each. This declaration being C.C. No. 641/W/75 was considered by LRT along with C.C. No. 783/W/75 and C.C. No. 1209/W/75 (filed by Shyamsunderlal) and another C.C. No. 782/W/75 filed by Gourishanker Sanghi, third respondent herein. In the order, dated 08.12.1976 (Ex.B-101), LRT recorded the following findings.

The two family units headed by Shri Shyam Sunderlal and Shri Gopilal Lalta Pershad, are entitled to half share each in 0.5216 Standard Holding of Gaganpahad Vg. and 2.1986 Standard Holding of Langerguda Village, which works out to 0.2609 Standard Holding and 1.0993 St.Holding respectively.

In the half share relates to Shri Shyam Sunderlal, his major son Shri Gouri Shanker Sanghi, is entitled to 1/2 share.

Similarly in the remaining half share Shri Gopilal Lalta Pershad and his major brothers are entitled to equal shares. Hence, Shri Gopilal Lalta Pershad, has got 1/7th share.

It is therefore determined u/s 9 of the Act, that the above declarants hold land

less than the ceiling area on the notified date i.e., 1-1-1975, as detailed below:

----- C.C.				
No.	Name of the Actual area hold in St. Holding	Area	Declarant	entitled in St. Holding

1.	783/W/75 Shri Shyam	0.1304	in Gaganpahad	Sunder lal
2.	1209/W/75 Shri Shyam	0.5497	in Langerguda	Sunder lal ----- 0.6801 1.0000
3.	782/W/75 Shri Gouri	0.6801	1.0000	Shanker Singh
4.	641/W/75 Shri Gopilal	0.373	in Gaganpahad	Lalta Pershad 0.1570 in Langerguda (1/7th share) ----- 0.1943 1.0000

(emphasis supplied)				

59. Though Ex.B-101 would not leave any doubt that the Branch of Shyamsunderlal and branch of Lalitha Pershad by equal share in suit schedule property, learned Counsel for plaintiff contends that Ex.B-101 should be understood in the light of Ex.A-43 declaration and that no finality can be attached to the orders of Land Reforms Tribunal. This submission cannot be accepted. When Lalitha Pershad branch claimed entire suit schedule property, which was also shown to be in their holding of Shyamsunderlal, LRT recorded a finding after adjudication that it is joint family property. It is certainly binding on the parties. Indeed, Ex.B-101, dated 08.12.1976 also strengthens veracity of contents of Exs.B-1, B-2, B-4, B-5 and B-8, which suggest that there was a partition between Gopilal and Ganpathlal as found by criminal Courts in Exs.B-89 and B-90 referred to earlier. The finding of LRT that with regard to the status of the family and the nature of holding of property by the family is binding on parties.

60. In Digambar Adhar Patil Vs. Devram Girdhar Patil (died) and another, , Supreme Court considered the effect of proceedings under Land Reforms legislation and the proceedings under the Tenancy Act. The appellant therein was a tenant claiming rights under Bombay Tenancy and Agricultural Lands Act, 1948. His application u/s 32-G of the said Act for determination of the price to be paid to land owners for purchase of leased land was rejected by Tenancy Tribunal which was reversed by Bombay High Court. Before Supreme Court, there was a claim on behalf of minor son of tenant and claim of tenant's brother, with whom tenant had partition. Reliance was placed on the statement made by land owner before the Tenancy Tribunal. Supreme Court accepted oral evidence of land owner before the Tenancy Tribunal as conclusive and held that if the land which fell to the share of the brother of tenant is excluded, the latter would be within the ceiling area and that he would be entitled to purchase land from owners. While confirming the Judgment of Bombay High Court, Supreme Court observed as below.

The tribunals below did not advert to the entries in the Record of Rights or to the factum of partition, while the High Court has taken this factor into consideration, which in our considered view had rightly been taken into account. The entries in the Record of Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence given by the respondent and his brother to prove the factum of partition. Even in the evidence of Ram Chander, he clearly stated that there was a partition but he could not give the date and year in which the partition was effected nor was the deed of the partition produced. Under the Hindu law, it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof. Under those circumstances, when the factum of partition was evidenced by entries in the Record of Rights, which was maintained in official course of business, the correctness thereof was not questioned; it corroborates the oral evidence given by the brother and lends assurance to accept it.

(emphasis supplied)

61. In *Mashetty Venkatesham and Others Vs. Joint Collector and Others*, this Court applied the ratio in *Palaniappa Chettiar v. Arunasalam Chettiar* 1962 AC 294 and held as under.

As noticed, the deceased-first petitioner claimed the property to be joint family property and did not demour when 1/4th share was computed to his share in land ceiling proceedings. His legal heirs cannot now be permitted to take a different stand before the authorities under ROR Act. The first respondent, therefore, came to the correct conclusions and there is no infirmity or misdirection in placing reliance on the certified copy of the order passed by the LRT.

62. In this case also, Ex.B-101 has become final, the plea of Lalitha Pershad that he and his sons are entitled to oneeighth share each in suit schedule property is accepted by LRT. The fact that it was not accepted and also the fact that revenue entries contained the names of Gopilal and Shyamsunderlal as well as Lalitha Pershad would probablise that there was formal transfer of half share by Gopilal in favour of Ganpathlal, which was recorded by Tahsildar in Ex.B-5, which is the document of 1947. In addition to this, Exs.B-14, 28 and 29 pertaining to 1951 and 1952 show the names of Gopilal and Shyamsunderlal. Exs.A-22, 23, 25, 26, 27, 28 and 29, and Exs.B-13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28 and 29 show the names of Lalitha Pershad and Shyamsunderlal probablising the case of defendants, that all the properties were always treated as joint family properties and the names of the both the second generation brothers were entered in the revenue records. Therefore, the case of plaintiffs that it was exclusively allotted to Gopilal by Maharaja Shivraj is clearly improbable.

Whether patta was granted exclusively to Gopilal?

63. There is no clear evidence as to the avocation or calling of Gopilal and as to how he was to earn living. But, there is a clear evidence to show that Ganpathlal was an advocate appearing for elite including nobles and royals. The evidence of D.W.1 and D.W.2 and documentary evidence describing Ganpathlal as an advocate clinches this aspect. When calling of Gopilal himself was not clear, is it possible that as an ordinary man he could have approached Maharaja seeking lease of Langerguda lands? Is it possible that on a request made by him Maharaja could have granted patta exclusively to him? Whether Maharaja was aware that by the time of granting of patta, Gopilal was adopted by Badri Pershad as alleged, and what are the possibilities of Maharaj granting an exclusive patta of suit schedule lands to Gopilal, even if he had known that Gopilal had gone in adoption by Badri Pershad. These are questions for which there are no answers. However, having regard to findings on other two aspects supra, the Court can safely conclude that brothers were known to constitute joint family. In all probability, Ganpathlal was lone earning member at least till Gopilal started jewellery shop after ceasing to be a clerk of a businessman. Therefore, in all probability, Gopilal might have made an application at the instance of Ganpathlal (application Ex.A-1) for grant of permanent patta. As a lawyer appearing for Maharaja, Ganpathlal must have some sway at least to request the grantor to give a freehold to his family in the name of his brother Gopilal presumably for the reason that latter has no wherewithal to lead a decent life. In all probability, Maharaja might have thought that grant of Langerguda lands would be befitting reward to the family for the legal services rendered by Gopilal. The lower Court rejected Exs.A-1 to A-9, the documents in connection with the grant of patta by Maharaja to Gopilal including his application and other revenue proceedings. These documents were rejected by trial Court holding that they were not proved. The finding appears to be correct. This Court has perused Exs.A-1 to A-9. They are not certified copies. Therefore, they are not public documents. The benefit of Section 76 of Evidence Act is available only to certified copies of public documents and plaintiffs who relied on these documents did not examine any official to prove these documents. Mere marking of documents does not amount to proof of documents. This Court, however, hastens to add that even if the documents are considered as proved, having regard to the conduct of parties, who treated the property as joint family property, the case of the plaintiffs that property was exclusive property of Gopilal stands not proved. There is abundant evidence on record to show that all properties earned by Gopilal and/or Ganpathlal were treated as joint family properties and by themselves and by others. There have been few submissions with regard to the possession of land. As noticed supra, there are documents in "A" series and/or "B" series (revenue records) show that Lalitha Pershad or Shyamsunderlal or their successors are in joint possession of property. The sale deeds, mortgage deeds and other documents on record would show that all the properties were always treated as belonging to joint family and it was Gopilal, as head of the family, who was managing the properties. Therefore, findings recorded by trial Court do not warrant any interference.

64. In the result, for the above reasons, the appeal fails and is accordingly dismissed. Various civil miscellaneous applications filed by both parties for bringing additional evidence on record shall stand disposed of in accordance with observations made hereinabove. Having regard to relationship between the parties, this Court is not inclined to make any order as to costs.