

(1927) 02 BOM CK 0005
In the Bombay High Court

Lingangowda

APPELLANT

Vs

Basangowda

RESPONDENT

Date of Decision : 03-02-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1927) 29 BOMLR 848 : (1927) ILR (Bom) 450

Hon'ble Judges : Phillimore, J;Darling, J;Carson, J;Ameer Ali, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Phillimore, J.—Their Lordships have listened carefully to the arguments of counsel for the appellants, but they are of opinion that on the first point, which, decided in the way in which they propose to decide it, determines the appeal, the judgment of the High Court was right. Their Lordships adopt their reasons. It was necessary for a decision in the previous suit that the Judge should consider what was the position in the family of the fourth and fifth defendants, now the present respondents, and he came to a very clear decision on the evidence, that not only were they members of the joint family, but that they were in possession of some of the joint family property. It seems, therefore, to be beyond doubt that the question has been decided in previous litigation between the parties. That is the material part of the decision of the High Court, except with regard to one point which was urged by counsel for the appellant, and to which their Lordships have given further consideration. The judgment says : "It has now been urged as it was urged in the lower Court that the present plaintiffs, who are the sons of the plaintiff in that suit, are not bound by the decision." Counsel for the appellants says truly that nobody is ever precluded from raising a point of law, except where there are some other considerations which would make it unfair that he should raise it. But when he seeks to argue it now, the answer is, that this was not a pure point of law. It depended very largely upon the facts. In the case of an Hindu family where all have rights, it is impossible to allow each member of the family to litigate the same point over and over again, and each infant to wait

till he becomes of age, and then bring an action, or bring an action by his guardian before; and in each of these cases, therefore, the Court looks to the explanation 6 of Section 11 of the CPC to see whether or not the leading member of the family has been acting either on behalf of minors in their interest, or if they are majors with the assent of the majors. In this case there is no question of majors. It seems clear that the plaintiff in the previous suit was acting on behalf of himself and his minor children to try to exclude a collateral branch from a share of the family property. If he had succeeded the judgment would have inured for the benefit of the children, and as he has failed, they must take the consequences. Their Lordships had occasion to comment upon and apply this explanation 6, in the case of *Mata Prasad v. Nageshar Sahai* (1925) L.R. 52 IndAp 398: 28 Bom. L.R. 1110.

2. In their Lordships view this appeal fails, and they will humbly advise His Majesty that it must be dismissed with costs.