

**(1930) 03 BOM CK 0009**  
**In the Bombay High Court**  
**Case No : Second Appeal No. 1020 of 1927**

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|-----------------------------|----|------------|
| Rangu Nyahalchand Shet Vani | Vs | APPELLANT  |
| Lakshman Martand Kulkarni   |    | RESPONDENT |

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**Date of Decision :** 28-03-1930

**Acts Referred:**

Transfer of Property Act, 1882 — Section 9

**Citation :** (1930) 32 BOMLR 948

**Hon'ble Judges :** Shingne, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Shingne, J.—The defendant obtained a money decree against One Damu, one of the sons of the plaintiff in this case, and in execution attached what the defendant contended to be the undivided share of Damu in the house in suit. The plaintiff applied to get the attachment removed on the ground that the house was his self-acquired property and that Damu had no interest therein. The application was rejected. The plaintiff thereupon brought the present suit and prayed for a declaration that the house was not liable to be attached and sold. He also contended that though Damu had no interest in the house he had paid him Rs. 1,000 and settled his claim (if any).

2. The defendant contended that the house was joint family property of the plaintiff and his sons. The defendant, moreover, denied knowledge of the settlement alleged by the plaintiff and contended that even if there was a settlement effected as alleged, it could not be proved without a registered document.

3. The Court of first instance held that the house was not the self-acquired property of the plaintiff and that it was not open to the plaintiff to prove by oral evidence the alleged settlement as it amounted to a sale of Damu's share to the plaintiff and his other sons for Rs. 1,000 and so should have been effected in

writing registered. As a result the suit was dismissed.

4. The plaintiff appealed to the District Court. The learned District Judge found that the plaintiff and his brothers had lived together and had acquired three houses without the help of ancestral nucleus and had made a division amongst themselves and the house in suit had fallen to the share of the plaintiff at the partition thus made. The learned Judge also held that the fact that "the plaintiff and his brothers lived together and partitioned the houses raised a presumption that they intended to treat the house as coparcenary property and, therefore, every member born into the family thereafter acquired an interest therein. As a result the learned District Judge found that the plaintiff had failed to prove that the house was his self-acquisition.

5, The partition between the plaintiff and his brothers was conceded on behalf of the defendant but it was urged that from the fact that the three brothers once owned the houses jointly, it did not follow that their sons had interest by birth in the house in suit inasmuch as the houses were acquired without the help of ancestral nucleus.

6. It may also be noted that there is evidence to show that the appellant did some business and it is not alleged or proved by him that his sons did not help him in the business. The natural presumption would be that the sons must have helped the father in the business.

7. Ordinarily speaking, property jointly acquired by the members of a joint family without the aid of joint family funds would be presumed to be joint. But can it be presumed that it is joint family property ? It was held in *Chatturbhoj Meghji v. Dharamsi Naranji and Harjivan Dharamsi* ILR (1884) 9 Bom. 438 that the property jointly acquired without the aid of joint family property was not joint family property and that the male issues of the joint acquirers did not acquire an interest in it by birth, unless it was thrown into the common stock (Vide observations at p. 445 of the volume). But in *Karsondas Dharamsey v. Gangabai* ILR (1908) 32 Bom. 479, 10 Bom. L.R. 184, Beaman J. remarked that there is nothing in practice or theory which excludes the possibility of members of the same family, starting a family fortune holding it as members of a joint family and thereby clothing it with all the legal qualities and incidents of joint family property, chief among which is that every member born into the family after the property has acquired that character and before it has been divested of it by partition, obtains by birth an interest in it. In *Laldas Narandas Vs. Motibai*, it was remarked that for the formation of a coparcenary in Hindu law an ancestral nucleus is not absolutely necessary, provided the persons constituting it stand in the relation of father and son or other relation requisite for a coparcenary system and these persons by living, messing and worshipping together and throwing all the property acquired jointly into one common stock manifest their intention to deal with one another and with outsiders as members of a coparcenary system under the Hindu law. In that case, a father and his sons had acquired property by joint labour and were joint in food and worship and it was held that they

constituted a joint Hindu family even though they had no help of ancestral funds in doing the business and in acquiring the property. In *Haridas Narayaindas v. Devkuvarbai* ILR (1926) 50 Bom. 443, 28 Bom. L.R. 637 one Narayandas started business in Bombay as piece goods merchant and carried it on for many years, He commenced the venture without the aid of any ancestral nucleus and amassed considerable fortune. While he was carrying on the business, a son was born to him. When the son came of age, he was associated with his father in the business. On these facts, Macleod O. J. held that there would be a presumption that Narayandas and his son constituted a joint Hindu family and that all the property constituted a joint family property.

8. The question has been discussed by Mayne, 9th Edition, para, 277, note (o), at the bottom of page 360. He remarks that in view of the cases in *Karsondas v. Gangabai* and other cases, the expression of opinion in *Chatturbhooj v. Dharamsi* (at p. 445) can no longer be correct. The remarks of Bhashyam Ayyangar J. in *Sudarsanam Maistri v. Narasimhulu Maistri* ILR (1901) Mad. 149 also make it clear that property jointly acquired by members of a joint family, though without the assistance of joint family property, must be presumed to be joint family property, unless the acquirers intend\* ed to hold the property as co-owners between themselves in which case it would be their joint property.

9. Hence it is clear that according to the recent decisions, property jointly acquired by members of a joint family without the aid of joint family property will be presumed to be joint family property unless the acquirers intended to hold the property as co-owners between themselves, in which case it would be their joint property. The learned District Judge was, therefore, right in saying that the fact that the plaintiff and his brothers thus lived together and acquired the houses and partitioned them raised a presumption that they intended to treat the houses as coparcenary property and that every male member born into the family acquired an interest therein. Hence the conclusion that the house in suit was not proved to be the self-acquired property of plaintiff is correct.

10. What now remains is the consideration of the remaining point in the case. In this respect, I find that the lower Courts did not appreciate the contention of the plaintiff properly. The point relates to the alternative contention of the plaintiff as to an arrangement between him and his son Damu. On this point the plaintiff states thus: "Moreover though (Damu) had no interest whatsoever in the said property, in the month of Jestha, Samvat 1976, Rs. 1,000 were given to him in cash and his dispute about plaintiff's estate has been settled." In the application marked Exhibit 21, the plaintiffs' pleader amplified the contention. Exhibit 21 stated :-

Acoording to the allegation in the plaint, the plaintiff should be allowed to prove that the details of the family arrangement in which it was settled by the Panchas that as the plaintiff is to pay the family debt which amounted nearly to the extent of Rs. 6,000 and the judgment-debtor was not to pay anything, Rs. 1,000 from the joint property were to be paid to the judgment-debtor as his share and

the house was to fall to the share of the plaintiff. The plaintiff and the judgment-debtor agreed to do so and it was so done. Those other details should be allowed to be proved by oral evidence.

11. The application was given on the day on which evidence was recorded. The application contains the order of the Court passed on it as also an endorsement by the learned Subordinate Judge on the margin. In the marginal endorsement it is stated that this motion for new issue and the new prayer have been submitted at a very late stage and after the evidence was over. The order on the application states that the application was presented after the case was argued. The application is, however, numbered Exhibit 21 and the plaintiff's deposition is Exhibit 22 and an extract of account filed on behalf of the plaintiff is marked as Exhibit 23. Whatever may be the case as to the exact interval of time when the application was given, it is clear that the learned Subordinate Judge had disallowed oral evidence on the point as he was of opinion that the alleged settlement was an act of sale for a consideration of Es. 1,000 and that as it was not evidenced by a writing duly registered, the plaintiff could not be allowed to lead oral evidence of such a transaction.

12. The learned District Judge deals with the point thus :-?

As regards the second issue if the plaintiff had alleged a partition between himself and his son and stated that Rs. 1,000 out of the joint family property were given to his son, Damu, for his share and the house was reserved for himself and his other son for their shares, perhaps I would have hesitated to exclude oral evidence to prove it; but in the plaint the plaintiff expressly states that there was a release by Damu of his interest on receiving Rs. 1,000. Such a release of an interest in Immovable property for more than Rs, 100 requires to be in writing registered.

I am constrained to observe that it is not correct to say that the plaint expressly stated that there was a release by Damu of his interest. I have given above the contents of the plaint on the point. I do not find therein anything about release by Damu. Moreover, Exhibit 21 substantially contains a statement of the story of the same kind that the learned District Judge would have liked to have to enable him to allow oral evidence to be given. I think that in this case the provisions of Section 9 of the Transfer of Property Act were not kept in view. I am of opinion that the alleged arrangement will, if proved, amount to a family settlement. It is evidently not alleged to be by way of sale or exchange. There is no provision of law requiring that partitions or family settlements must be reduced to writing and the writing registered, though, of course, when they are reduced to writing the point of registration may arise.

13. In this view of the case, it was wrong to exclude oral evidence as was done in this case. I, therefore, allow the appeal and reverse the decree of the lower Courts and set aside the order dismissing the suit and send back the case to the Court of first instance to take the oral evidence that may be tendered on the

point of the alleged settlement and decide the case in the light of the above remarks. The finding as to the nature of the property recorded on issue No. 1 in both the lower Courts will stand, The plaintiff confined to the list of witnesses already given by him and the defendant will be entitled only to give evidence by way of rebuttal.

As to costs, I think it will be equitable to allow to the appellant costs of the second appeal. There will be no order as to the costs of the lower appellate Court and the costs in the trial Court incurred up to the time of the decision of the suit, and the costs of the further hearing in the Court of first instance will be in the discretion of the learned Subordinate Judge.