

(2008) 01 AP CK 0058
In the Andhra Pradesh High Court
Case No : SA No. 43 of 1997

Sarasa Appalakonda and Others	Vs	APPELLANT
Pulamarasetti Somunaidu and Another		RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Hindu Succession Act, 1956 — Section 30, 4, 6, 8

Citation : (2008) 3 ALD 742 : (2008) 4 ALT 174

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K Kanaka Raju and K. Subrahmatiyam, for the Appellant; M. Ram Mohan and M.S.K Siibrabmanyam, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri K. Kanaka Raju, the learned Counsel representing the appellants and Sri M. Ram Mohan, the learned Counsel representing the respondents.

2. Sri Kanaka Raju, the learned Counsel representing Sri K. Subralimanyam, the learned Counsel for the appellants had pointed out to the substantial questions of law which had been raised in Ground No. 12 of the grounds of appeal and would maintain that the Court of first instance and also the appellate Court had totally erred in recording findings relating to the nature of the property. The learned Counsel would maintain that when the origin of the property is not from the paternal side and from the other source, the same cannot be treated as ancestral property or joint family property and in this view of the matter, the findings are unsustainable and the second appeal is to be allowed. The learned Counsel placed strong reliance on several decisions to substantiate his submissions.

3. On the contrary, Sri Ram Mohan, the learned Counsel representing the respondents would submit that it may be that the origin of the property at the stage of grandfather had been from other source and not from the paternal side,

but, however, in the light of the facts and circumstances and also in the light of different provisions of the Hindu Succession Act, 1956 which came into force subsequent thereto, by operation of law and since the succession already had opened as far as the father of the plaintiff is concerned, the same to be taken as the family property and the father to be construed as karta of the family and in the light of the same, the findings recorded by the Courts below cannot be found fault. The learned Counsel also had drawn the attention of this Court to certain passages from the standard text books while explaining the meaning of "ancestral property" and also the meaning of "joint family property" and further cited certain decisions.

4. This Court on 28.2.1997 simply recorded "admit". In C.M.P. No. 734 of 1997, it was stated that the interim stay granted on 29.1.1997 is extended until further orders. The following substantial questions of law arise for consideration in the second appeal:

(a) Whether properties succeeded from a female heir can be treated as joint family properties but not as self-acquisitions.

(b) Whether the character of the property got by D.1's paternal grandmother under a registered settlement deed as admittedly self acquisition loses the character as such when in the hands of D. 1 who succeeded his paternal grandmother and father.

(c) Whether the plea of the plaintiff that the 1st defendant was allowed to stay in item No. 2 of the house as licensee is sustainable in the light of the fact that D. 1 succeeded to the said property as heir of late Somulu in whose hands the property was himself acquisition of his wife.

(d) Whether the Courts below are right in holding that the plaint schedule properties are joint family properties and as such the gift deeds dated 17.5.1970 and 16.5.1983 are not valid and binding on plaintiff and D.3.

(e) Whether the Courts below are right in finding that the agreement Ex.A4 dated 12.5.1975 is true, valid and binding on D.2. i.e. the appellant herein.

(f) Whether the Courts below are right in disbelieving the registered sale deed obtained by D. 1 in respect of item No. 1 of the plaint schedule property.

5. The first respondent in the second appeal filed the suit O.S. No. 297 of 1985 on the file of District Munsif, Narsipatnam which was originally filed as O.P. No. 19 of 1983 as indigent person praying for partition of the plaint schedule property into two equal shares, for mesne profits and for costs. Subsequently, the plaintiff paid the Court fee. During the pendency of the suit, the defendant No. 1 died and the suit was amended praying for the relief of delivery of possession, directing defendant No. 2 to deliver item No. 2 of the plaint schedule property to the plaintiff as well as to defendant No. 3 with all fixtures and fittings and restraining defendant No. 4 and servants from interfering with items 1 and 3 and directing the defendants to account for the profits and for the costs of the

suit.

6. It was averred in the plaint as hereunder:

Defendant No. 1 is the husband of defendant No. 3 and plaintiff is their son, defendant No. 2 is the sister of defendant No. 1. Defendant No. 1 forsook defendant No. 1 and started living with another woman. The plaint schedule properties are ancestral joint family properties of the plaintiff and defendant No. 1. Defendant No. 3 is in physical possession of items 1 and 3 under an agreement of sale executed by defendant No. 2 and defendant No. 1 on his behalf and on behalf of his minor son, the plaintiff. She perfected her title to the said property by adverse possession also. While the plaintiff was demanding defendant No. 1 to co-operate in partitioning the schedule properties, he executed a registered settlement deed dated 16.5.1983 settling his half share in item Nos. 1 and 3. They claim that the schedule properties are the properties got by defendant No. 1 through his father's mother and they are his self-acquisitions. Defendant No. 1 has no other source of income except the joint family properties. The settlement deed dated 17.5.1970 settling item 1 of the schedule property is not at all valid especially in respect of the plaintiffs half share and it is not supported by any legal necessity or benefit to the estate. During the pendency of the suit, defendant Nos. 1 and 2 died. The plaintiff and defendant No. 3 being the only legal heirs, there was no necessity to seek for the relief of partition. The relief of permanent prohibitory injunction in respect of items 1 and 3 and delivery of possession in respect of item 2 are prayed for.

7. In the written statement filed by defendant Nos. 1 and 2, the following averments were made:

Defendant Nos. 1 and 2 never executed any agreement of sale in favour of defendant No. 3 and she was not in possession of the property at all. Defendant No. 1 got item 1 of the property from his grandmother and, therefore, it is not the ancestral property. Defendant No. 1 being in exclusive possession of item 1 of the property settled the same in favour of defendant No. 2 about 17 years ago and delivered its possession to her and by way of precaution, the plaintiffs name was referred to therein. The plaintiff and defendant No. 3 were permitted to stay in item 1 of the property on the condition of vacating it as and when demanded by defendant No. 2.

8. The brief averments made in the written statement filed by defendant No. 3 are as hereunder:

Defendant No. 1 on his behalf and on behalf of his minor son along with defendant No. 2 executed an agreement of sale on 12.7.1985 in respect of the plaint schedule properties items 1 and 3, earlier they lent an amount of Rs. 15,000/- and got a registered mortgage deed dated 3.1.1968 executed by defendant No. 1, who asked defendant No. 3 to redeem the same. Therefore, she repaid the mortgage debt and took possession of item No. 3, as also item 1 by repaying the debt to one Appalanarasimham.

9. After the suit was amended, additional written statement was also filed. The following issues and additional issues were settled by the Court of first instance:

Issues:

1. Are the suit properties are self-acquisition of D. 1?
2. To what relief?

Additional issues framed on 19.8.1991:

1. Whether the gift deeds dated 17.5.1970 and 16.5.1983 in plaint schedule items 1 (17.5.1970) and for items 2 and 3 (16.5.1983) for his undivided half shares by D. 1 in favour of D. 2 which are admittedly coparcenary properties true, valid and binding on plaintiff and D. 3?

Additional issue framed on 3.3.1992:

1. Whether the sale agreement pleaded by plaintiff in favour of D. 3 is true, valid and binding on D. 2?
2. To what relief?

10. Before the Court of first instance, P.Ws. 1 to 6, D.Ws. 1 to 5 were examined. Exs.A. 1 to 31 and Exs. B. 1 to 14 were marked. The learned Judge on appreciation of oral and documentary evidence, came to the conclusion that it is clearly established by the plaintiff that the plaint schedule properties are the joint family properties of the plaintiff and defendant No. 1, who died during the pendency of the suit. The plaintiff and defendant No. 3 being the legal representatives of defendant No. 1 are entitled to half share of defendant No. 1 as the plaintiff had claimed originally for partition of his half share in the plaint schedule property and as defendant No. 1 died during the pendency of the suit, his half share was devolved upon the plaintiff and defendant No. 3 and though defendant No. 2 had claimed right over the plaint schedule property by virtue of two gift deeds, Exs.A.27 and 28, these documents are not valid and they are not binding on the plaintiff, thereby, defendant No. 2 has no right whatsoever on these items and accordingly, the suit is decreed as prayed for with costs holding that the plaintiff has got absolute rights over the plaint schedule properties and defendant No. 4 is directed to deliver possession of item No. 2 of the plaint schedule property to the plaintiff within one month and permanent injunction is granted in favour of plaintiff and defendant No. 3 restraining defendant No. 4 from interfering with the possession and enjoyment of the plaintiff and defendant No. 3 had items 1 and 3 of the plaint schedule properties. The mesne profits in relation to item No. 2 to be determined on a separate application. Aggrieved by the same, defendant Nos. 2 and 4 preferred A.S. No. 38 of 1996 on the file of Subordinate Judge, Chodavaram showing the plaintiff as respondent No. 1 and defendant No. 3 in the suit as respondent No. 2.

11. The appellate Court at paragraph 15 framed the following points for determination:

(1) Whether item No. 1 of the plaint schedule properties is the self-acquired property of the deceased first defendant and whether the registered gift deed dated 17.5.1970 executed by the first defendant for himself and on behalf of his minor son the plaintiff herein in favour of the 2nd defendant in respect of the said property in item No. 1 is true, valid and binding on the plaintiff?

(2) Whether the plaint schedule item Nos. 2 and 3 are the self-acquired properties of the deceased defendant No. 1 and whether the settlement deed dated 16.5.1983 executed by the deceased first defendant in favour of the deceased 2nd defendant in respect of half the share in items 2 and 3 is true, valid and binding on the plaintiff?

(3) Whether the unregistered puroni (sale-agreement) alleged to have been executed by the deceased first defendant for himself and also on behalf of his minor son the plaintiff in the suit and by the 2nd defendant in favour of the 3rd defendant in respect of the plaint schedule item Nos. 1 and 3 is true, valid and binding on the plaintiff and the 4th defendant?

(4) Whether the claim of the plaintiff in respect of item No. 1 of the plaint schedule properties is barred by limitation?

(5) Whether the plaintiff is entitled to relief of permanent injunction against the 4th defendant in respect of item Nos. 1 and 3 of the plaint schedule properties?

(6) Whether the judgments of the lower Court is sustainable?

(7) To what relief the appellant/4th defendant is entitled?

12. After recording findings, the appeal was allowed in part to the extent of reversing the judgment and decree in O.S. No. 297 of 1985 so far as the relief of permanent injunction granted in favour of the plaintiff and defendant No. 3 against defendant No. 4 in respect of the plaint schedule item Nos. 1 and 3 are concerned and the suit in O.S. No. 297 of 1985 had been dismissed in part so far as the relief of permanent injunction prayed for in the said suit and judgment and decree of the Court of first instance so far as the relief of recovery of possession of plaint schedule item No. 2 is concerned had been confirmed. In view of the relationship between the parties, the parties were directed to bear their own costs. Aggrieved by the same, the present second appeal had been preferred.

13. The substantial questions of law already had been specified above. For the purpose of convenience, the parties hereinafter shall be referred to as plaintiffs and defendants as shown in O.S. No. 297 of 1985. Though the appeal was partly allowed, as far as the principal question which had been urged in elaboration is concerned, in a way, concurrent findings had been recorded both by the Court of first instance and also the appellate Court. Item No. 1 of the plaint schedule property was purchased by defendant No. 1 even prior to the birth of the plaintiff, but, however, defendant No. 1 has been dealing with item No. 1 of the plaint schedule property as the property belonged to the joint family. Defendant

No. 1 executed a settlement deed in favour of defendant No. 2 under Ex.A-27 equivalent to Exs.B-14 and B-3. In the said gift deed, it was recited that the same had been executed by defendant No. 1 on his behalf, on behalf of his minor son as well. Though item No. 1 of the plaint schedule property was purchased by defendant No. 1, it was stated as joint property of the family of defendant No. 1 and the plaintiff as well. There are two separate gift deeds executed by defendant No. 1 in favour of defendant No. 2, who is his sister. Defendant No. 2 had not filed any separate written statement and she had filed the same written statement i.e., a common written statement was filed by both defendant Nos. 1 and 2. Defendant No. 1 executed a registered settlement deed, Ex.B-14, dated 17.5.1970 in respect of item No. 1 of the property. Though it was mentioned in Ex.B-14 settlement deed that possession of the property was given to defendant No. 2, no acceptable evidence had been let in on behalf of defendant No. 2 to show that she got possession of the property at any point of time. On the contrary, the evidence would go to show that the plaintiff and defendant No. 3 had been in actual possession and enjoyment of item No. 1 of the property. The stand of defendant No. 2 is that she had granted permission to plaintiff and defendant No. 3 to occupy item No. 1 of the plaint schedule property on condition of vacating it as and when demanded by her, but there is no clear evidence relating to the said alleged permission. The evidence of D.Ws. 1 to 3 had been appreciated at length by both the Court of first instance and also the appellate Court in this regard. There is yet other settlement deed executed by defendant No. 1 in favour of defendant No. 2 in respect of half share of defendant No. 1. D.W. 2 was examined to show that he had attested the settlement deed Ex. A28. The execution of the settlement deed is not in serious controversy, since the same is admitted by defendant No. 1. Immediately after execution of the settlement deed, notice was issued by the plaintiff under Ex. A-29, dated 7.7.1983. A reply was sent on 14.7.1983 by defendant Nos. 1 and 2. On appreciation of evidence, clear finding had been recorded that items 2 and 3 are joint family properties of defendant No. 1. No doubt, submissions at length were made by the Counsel on referring to the findings recorded relating to item Nos. 1 2 and 3 whether these properties are to be taken as joint family properties and ancestral properties in the hands of defendant No. 1 or otherwise. However, it is brought to the notice of this Court that though the appeal was allowed in part, the findings of adverse possession had not been challenged at all. The appellate Court, while answering point No. 6, observed that in view of the findings on point Nos. 1 to 5, the lower Court is sustainable only to the extent of granting the relief of recovery of possession of plaint schedule item No. 2 by the plaintiff from defendant No. 4, who stepped into the shoes of the deceased defendant No. 2 as a sole legal heir. Further, the learned Judges specifically observed that as far as the relief of permanent injunction granted in respect of item Nos. 1 and 3 of the plaint schedule properties in favour of the plaintiff and defendant No. 3 restraining defendant No. 4 from interfering with the possession and enjoyment of the plaintiff and defendant No. 3, cannot be sustained. The origin of this property at the stage of grandfather of respondent

No. 1-plaintiff had been traced to be not from the paternal side and this is the crucial question which had been argued in elaboration by the Counsel representing the respective parties. Strong reliance was placed on Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, , wherein the Apex Court at Paragraphs 19, 20, 21 and 22 observed:

19. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

20. In view of the Preamble to the Act i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded u/s 8 to inherit, the latter would by applying the old Hindu Law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu Law. It would be difficult to hold today the property which devolved on a Hindu u/s 8 of the Hindu Succession Act would be HUF property in his hand vis-a-vis his own son: that would amount to creating two classes among the heirs mentioned in Class 1, the male heirs in whose hands it will be joint Hindu family property and visa-vis son and female heirs with respect to? whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Schedule u/s 8 of the Act included widow, mother, daughter of predeceased son etc.

21. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu Law, 15th Edn., dealing with Section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on Hindu Law, 12th Edition, pages 918-919.

22. The express words of Section 8 of The Hindu Succession Act. 1956 cannot be ignored and must prevail. The Preamble to the Act reiterates that the Act is, inter alia, to "amend" the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored.

14. Reliance was also placed on Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Others, wherein at Paragraphs 12, 14, 15 and 18, the Apex Court observed:

12. There is a long catena of decisions holding that a gift by a coparcener of his undivided interest in the coparcenary property is void. It is not necessary to refer to all these decisions. Instead, we may refer to the following statement of law in Mayne's Hindu Law, Eleventh Edition, Article 382:

It is now equally well settled in all the Provinces that a gift or devise by a coparcener in a Mitakshara family of his undivided interest is wholly invalid.... A coparcener cannot make a gift of his undivided interest in the family property, movable or immovable, either to a stranger or to a relative except for purposes warranted by special texts.

14. It is submitted by Mr. P.P. Rao, learned Counsel appearing on behalf of the respondents, that no reason has been given in any of the above decisions why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift. The reason is, however, obvious. It has been already stated that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated.

15. The rigor of this rule against alienation by if has been to some extent relaxed by the by gift Hindu Succession Act, 1956, Section 30 of the Act permits the disposition by way of will of a male Hindu in a Mitakshara coparcenary property. The most significant fact which may be noticed in this connection is that while the Legislature was aware of the strict rule against alienation by way of gift, it only relaxed the rule in favour of disposition by a will the interest of a male Hindu in a Mitakshara coparcenary property. The Legislature did not, therefore, deliberately provide for any gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to another coparcener. Therefore, the personal law of the Hindus, governed by Mitakshara School of Hindu Law, is that a coparcener can dispose of his undivided interest in the coparcenary property by a will, but he cannot make a gift of such interest.

18. The High Court has noticed most of the above decisions and also the legal position that a gift by a coparcener of his undivided interest in the coparcenary property without the consent of the other coparceners is void. The High Court has also noticed the provisions of Sections 6 and 30 of the Hindu Succession Act. The learned Judges of the High Court have, however, placed much "reliance upon its previous Bench decision in *G. Suryakantam v. G Suryanarayanamurthy* AIR 1957 AP 1012. In that case, it has been held that the law is not that a gift of an undivided share is void in the sense that it is a nullity, but only in the sense that it is not binding on the other coparceners. No authority has, however, been cited in support of that proposition of law. On the contrary, there is a long series of decisions since the decision in *Baba v. Thimnia* (1884) ILR 7 Mad. 357 some of which have been referred to above, laying down uniformly that a gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to his relation without the consent of the other coparceners is void.

In the circumstances, it is very difficult to accept the proposition of law laid down in *G. Suryakantam v. G. Suryanarayanamurthy* (supra), that a gift by a coparcener of his undivided interest in the joint family property is not void, but is only not binding on the other coparceners. When a particular state of law has been prevailing for decades in a particular area and the people of that area having adjusted themselves with that law in their daily life, it is not desirable that the Court should upset such law except under compelling circumstances. It is for the Legislature to consider whether it should change such law or not. It may be legitimately presumed that before the passing of the Hindu Succession Act, 1956, the Legislature must have taken into consideration the prohibition against making of gifts by a coparcener of his undivided interest in the coparcenary property, but the Legislature has not, except permitting the coparcener to make a will in respect of his undivided interest by Section 30 of the Hindu Succession Act, altered the law against making of gift by a coparcener of his undivided interest. While considering whether the strict rule against alienation by gift should be interfered with or not, the Court should also take into consideration the legislative inaction in not interfering with the rule against alienation by gift, while enacting the Hindu Succession Act. In the circumstances, we are unable to accept the proposition of law that has been laid down in *G. Suryakantam's* case (supra).

15. Further reliance was placed on *Thimmaiah v. Ninganuna* AIR 2000 SC 3529 wherein the Apex Court at Para 17 observed:

17. The karta is competent or has the power to dispose of coparcenary property only if (a) the disposition is of a reasonable portion of the coparcenary property, and (b) the disposition is for a recognized "pious purpose". The High Court has not come to any conclusion as to whether the gift of items 3 to 6 by Hiri to the respondent No. 2 was within reasonable limits or in fulfilment of an antenuptial promise made on the occasion of the settlement of the terms of the respondent No. 2's marriage. It must be taken, therefore, that the findings of the lower Courts on both counts were accepted. That being so, Hiri could not have donated items 3 to 6 to respondent No. 2 and the deed of gift dated 9.6.1971 was impermissible under Hindu Law. The question is - could such an alienation be made with the consent of the appellant No. 1?

16. In *Vijaya College Trust v. The Kumta Co-operative Arecanut Sales Society Limited* AIR 1995 Kar. 35, the Division Bench of Karnataka High Court while dealing with the concept of ancestral property under Hindu Law observed that the property must have been inherited by a male Hindu from his father, father's father etcetera and the property inherited from female cannot be treated as ancestral and gift of some properties by brother to sister and on her death her sons inheriting it cannot be said to be ancestral property and her sons not having any other property cannot be said that the gifted properties were blended with other properties so as to impress it with character of ancestral properties.

17. Strong reliance was placed on AIR 1937 233 (Privy Council) , wherein their

Lordships of the Privy Council while dealing with the meaning of "ancestral" observed "The word "ancestor" in its ordinary meaning includes an ascendant in the maternal, as well as the paternal line; but the "ancestral" estate, in which, under the Hindu Law, a son acquires jointly with his father and interest by birth, must be confined, as shown by the original text of the Mitakshara, to the property descending to the father from his male ancestor in the male line. Hence the estate, which is inherited by father from his maternal grandfather, cannot be held to be ancestral property in which his son has an interest jointly with him."

18. Reliance was placed on *Laxmappa v. Smt. Balawa Kom Tirkappa Chavdi* 1996 (4) ALT 14 : 1996 (4) ALD (SCSN) 78 wherein at Paragraph 3 it was observed:

3. The law on the subject was taken stock of by the High Court by quoting Para 546 of Mulla's book on Hindu Law, 15th Edition, which provides that a Hindu father is bound to maintain his unmarried daughters, and on the death of the father, they are entitled to be maintained out of his estate. The position of the married daughter is somewhat different. It is acknowledged that if the daughter is unable to obtain maintenance from her husband, or, after his death, from his family, her father, if he has got separate property of his own, is under a moral, though not a legal, obligation to maintain her. The High Court has concluded that it was clear that the father was under an obligation to maintain the plaintiff-respondent. Seemingly, the High Court in doing so was conscious of the declaration made in the gift deed in which she was described as a destitute and unable to maintain herself. In that way, the father may not have had a legal obligation to maintain her but all the same there existed a moral obligation. And if in acknowledgment of that moral obligation the father had transferred property to his daughter then it is an obligation well-fructified. In other words a moral obligation even though not enforceable under the law, would by acknowledgment, bring it to the level of a legal obligation, for it would be perfectly legitimate for the father to treat himself obliged out of love and affection to maintain his destitute daughter, even impinging to a reasonable extent on his ancestral property. It is duly acknowledged in Hindu Law that the karta of the family has in some circumstances, power to alienate ancestral property to meet an obligation of the kind. We would rather construe the said paragraph more liberally in the modern context having regard to the state of law which has been brought about in the succeeding years. Therefore, in our view, the High Court was within its right to come to the conclusion that there was an obligation on the part of the father to maintain his destitute widowed daughter.

19. In AIR 1946 185 (Privy Council) , the aspect of joint family property and separate property inherited from mother's side is separate property and blending thereof and the aspect of testamentary disposition was dealt with. Further reliance was placed on *Singilidevi Veera Venkata Ananthalakshmi and Another Vs. Bhamidipati Seetharamayya (died) and Another* , .

20. It is not in serious controversy that at a particular point of time, this property was got by the grandfather of the plaintiff from source other than the paternal

side and subsequent thereto, the father of the plaintiff, defendant No. 1 got this property and in view of the fact that this property had been treated to be the family property even by the father of, defendant No. 1, the mere fact that at a particular point of time i.e., the grandfather of the plaintiff got this property from the other source may not seriously alter the situation especially in the light of the view expressed by the Supreme Court in Commissioner of Wealth-tax, Kanpur v. Chander Sen (supra), and also in the light of the provisions of the Hindu Succession Act, 1956. At any rate, in the light of the clear findings recorded by both the Courts of first instance and also the appellate Court, in a way, concurrent findings on this aspect, this Court is not inclined to disturb the said findings especially in the light of the fact that the origin of the property from other source had been traced at the stage of the grandfather and there is some acceptable evidence placed before the Court which would go to show that the father treated this property as the family property only.

21. It is needless to say that predominantly, it is a question of fact and hence the findings recorded by the Courts below in this regard being concurrent findings, this Court does not see any compelling reasons to disturb the said findings.

22. Accordingly, the second appeal being devoid of merit, the same shall stand dismissed. However, in view of the peculiar facts of the case, the parties to bear their own costs.