

(2012) 11 BOM CK 0100
In the Bombay High Court
Case No : Second Appeal No. 1060 of 2005

Shri Somanath Radhakrishna More (Shimpi) APPELLANT

Vs

Smt. Ujjawala Sudhakar Pawar, Digamber Ramchandra Mahale (shimpi) since deceased through legal heirs: (Rajendra Digamber Mahale and Others), Smt. Bhagirathabai Trimbak Mahale and Pandurang Punja thete RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Hindu Succession Act, 1956 — Section 23, 6

Citation : (2013) 1 ALLMR 604 : (2013) 1 MhLj 709

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : M.M. Sathaye, for the Appellant; Rahul Motkari, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Mridula Bhatkar, J.—This Second Appeal is directed against the judgment and order passed by the First Appellate Court dated 16th December, 2004 thereby confirming the judgment and order of the trial Court dated 18th July, 2000. Respondent No. 1 filed Regular Civil Suit No. 461 of 1995 against the appellant and other respondents for her one half share in the agricultural land and suit house including business through her deceased father in the Joint Family property. Respondent No. 1 (plaintiff) is a daughter of deceased Trimbak Ramchandra Mahale. Ramchandra had three sons, i.e., Radhakrishna, Trimbak and Digamber. According to the plaintiff, Radhakrishna was given in adoption in one Mor family, therefore, he had no interest or right in the Joint Hindu family. Respondent No. 2-Digamber died pending Second Appeal. Hence, his legal heirs are brought on record. Respondent No. 3 is mother of respondent No. 1 (Original plaintiff). She has equal share like her daughter i.e. respondent No. 1. Pandurang Thete, respondent No. 4 has purchased 1H 20R land from the suit field from deceased Digamber and appellant has also purchased 80R from the

suit filed from Digambar. Somnath, the appellant/defendant No. 2 is a son of Radhakrishna. Trimbak died leaving behind his wife-Bhagirathi and a married daughter Ujjawala Sudhakar Pawar. Admittedly, there was no partition in the family. It being the Hindu joint family, Digambar remained sole coparcener after Trimbak. Ujjawal-respondent No. 1, Trimbak daughter demanded partition of the property of the share which would have been given to Trimbak after the partition. The trial court partly allowed the suit and held that the plaintiff-daughter is entitled to 1/4th share in the suit property i.e. Gat No. 665 of village Girnare, measuring 3 H. 50 R and also in the house property, bearing grampanchayat number-11, village Girnare. The trial court has framed issue in respect of adoption of Radhakrishna and it was held in affirmative. Issue No. 3 was that defendant No. 3 being son of adopted son Radhakrishna, has no right interest in the suit property and it was answered in affirmative. Share of the plaintiff is to be carved out as per Section 6 of the Hindu Succession Act, 1956. So at the time of partition, if property would have been partitioned in the lifetime of Trimbak, then the property would have been distributed 1/2 between Trimbak and Digambar. Trimbak left behind Bhagirathi-wife and plaintiff and therefore, 1/2 share of Trimbak was further divided in two portions i.e. between the wife-Bhagirathi and daughter Ujjawala and therefore, the plaintiff is entitled to 1/4th share. Somnath was not given anything as it was held that he is a son of the adopted son, therefore he is not entitled to any right in the property. The appellant challenged the said verdict of the trial Court in Civil Appeal No. 316 of 2000 along with original defendant No. 4-Pandurang Punja Thete. The first Appellate Court upheld the judgment and order of the trial Court and dismissed the appeal.

2. This Second Appeal was admitted on 21st September, 2005 and substantial questions of law were formulated as follows:

(1) Whether the lower appellate Court was justified in holding that Radhakrishna-father of defendant No. 2/present appellant was given in adoption, when admittedly at the relevant time, during 1915 to 1920, Radhakrishna was only son to his parents i.e. Ramchandra and Narmadabai and prior to year 1956, as per the uncodified Hindu Law, only son could be given in adoption?

(2) Whether the lower appellate Court was in error to hold that the bar u/s 23 of the Hindu Succession Act will not apply to the present case because plaintiff/appellant is sole heir of deceased Trimbak, specially when it is plaintiff's own case that no partition has taken place between Trimbak and Digambar (male heirs of family)?

(3) Whether the lower appellate Court was justified in holding that the suit land Gat No. 665 is joint family property of plaintiff's father and defendant No. 1 only?

(4) Whether the lower appellate Court was justified in holding that at the time when the suit land Gat No. 665 was purchased in the year 1944, the father of plaintiff (Trimbak) who was only 23 years old, was earning member on the basis of evidence available, so as to prove nucleus of the joint family?

3. The issue of adoption of Radhakrishna is vital and goes to the root of the matter. The learned counsel for the appellant submitted that the appellant has vehemently challenged the fact of adoption of Radhakrishna from Mahale family to Mor family. He argued that respondent No. 1-plaintiff could not bring any documentary evidence in support of her contention of the adoption of Radhakrishna. She doesn't have personal knowledge and she did not examine any evidence in support of her case. The appellant has produced number of documents supporting his contention that his father Radhakrishna was not given in adoption in true sense and he remained in Mahale family as the eldest son or karta of the family. Considering the status of Radhakrishna as karta in the family, the Courts below ought not to have believed the case of the plaintiff on the point of adoption of Radhakrishna. He pointed out that Radhakrishna was the only son of Ramchandra when adoption has taken place. He submitted that assuming Radhakrishna was given in adoption in the year 1922 approximately, he being the only son, the said adoption is not valid under Hindu Law.

4. Per contra, the learned counsel for the main contestant-respondent No. 1/plaintiff relied on oral evidence of the plaintiff's and the admissions given by the appellant in his cross-examination. He relied on the marshalling of the documentary as well as oral evidence done by the Courts below. He submitted that the original defendant No. 1-Digamber, the uncle of the plaintiff was alive till the Second Appeal was filed. However, Digamber did not lead any evidence on the point of adoption. He did not challenge this fact of adoption and this goes in favour of the plaintiff.

5. The genealogy of Mahale family is not disputed. Ramchandra Mahale has 3 sons viz. Radhakrishna, Trimbak and Digambar. There is no evidence in which year Radhakrishna was adopted by a family of Narayan Mor of Trimbakeshwar. Radhakrishna was the eldest son, Trimbak was the second and Digambar was the youngest one. It was contended that when Radhakrishna was given in adoption by Ramchandra at that time Radhakrishna was his only son and as per Chapter-23 of the Hindu Law, only son cannot be given in adoption. The period of adoption is mentioned generally between 1915 to 1920. No documentary evidence of adoption is available, hence not produced by the plaintiff. In the cross-examination of respondent nos. 2 & 4 it is brought on record that there was a gap of 4 years between Trimbak and Radhakrishna. Trimbak was born in the year 1921 and there was age gap of 4 to 5 years between Trimbak and Radhakrishna. In the cross-examination of respondent nos. 1 & 3 they deposed that when Radhakrishna was 7 to 8 years old, he was given in adoption. The plaintiff could tell a specific year of the birth of her father Trimbak was of 1921, however, she is not sure about the year of the adoption so uncertain long span of 5 years i.e. 1915 to 1920 of the adoption is stated. However, in the cross-examination, she has specifically stated that the age of Radhakrishna was 7 to 8 years, he was adopted. So also about the distance of 4 years between Radhakrishna and Somnath. From these two statements in respect of the age of the Radhakrishna at the time of adoption and secondly the age gap between

Radhakrishna and Trimbak it can be ascertained that when Radhakrishna was given in adoption, Trimbak might have been born. So the submission of the appellant/original defendant No. 3 that when the adoption has taken place Radhakrishna was the only son to Ramchandra Mahale, cannot be accepted. Moreover, the bar on the adoption of only child was not absolute but it was generally followed.

6. The validity of adoption is further contested on the ground that the plaintiff could not prove adoption by tendering any cogent documentary evidence. The trial court and the first appellate court both, have gone into the evidence of the plaintiff as well as main contesting defendant i.e. appellant in detail. In order to find out whether the courts below were perverse in their positive finding of adoption, it is necessary to again look into the relevant evidence of these 2 witnesses. In the cross-examination she admitted that she does not have any document of adoption, she does not have personal knowledge of adoption. She claims that she had this knowledge from her father and the family members. She admitted letters i.e. Exhibits-80 to 87. She admitted that she wrote letters Exhibits-80 and 81. She states that Exhibits-82 to 85 these 4 letters were written by her husband. Exhibits-86 & 87 were written by her father-in-law and these 2 letters were written to her Maiden-home. She admitted that in all these letters Radhakrishna was addressed as "Tatya" and he is the father of original defendant No. 2 Somnath. She also admitted that in all these letters Radhakrishna is addressed as Radhakrishna Ramchandra Mahale. She also admitted that all the letters were addressed to Radhakrishna because he was karta of the family and he used to look after the management of the family. On the basis of these admissions it can be inferred that the plaintiff Radhakrishna considered as karta of the family and he being the eldest brother of Trimbak, the plaintiff, her husband and her in-laws used to seek his permission and addressed him letters accordingly. It is a known custom in the Hindu joint family that in-laws or son-in-law generally address the eldest male member in the maiden home of the daughter-in-law and may not the father of the daughter-in-law. This practice is followed generally to give respect to the eldest persons in the family.

7. From this evidence it can be inferred that Radhakrishna was treated in Mahale family as the eldest son of Ramchandra Mahale and the eldest uncle of the plaintiff and admittedly, he was looking after the management of the family as a karta. In the absence of any other evidence, this evidence would have been sufficient to accept the rival submissions of the appellant/defendants challenging the validity of the adoption; however, there are other material circumstances which are produced by the plaintiff in her examination-in-chief, so also they are appearing in the evidence of Somnath, the appellant.

8. The learned Counsel for the respondents relied on certain documents i.e. Exhibit-99 & Exhibit-100 the extracts of the school registers showing the names of the appellant and his sister. The name of father is shown as Radhakrishna. However surname of both the children was shown as Mor and not as Mahale. These erstwhile entries show that the name of defendant No. 2 was registered in

the school by surname Mor. Mr. Ramesh Keda Gavli, the headmaster P.W-4 had issued the certificates of Somnath Radhakrishna Mor and Shobha Radhakrishna Mor. Though he did not bring the original register, the truthfulness of the certificates cannot be doubted.

9. Radhakrishna died in 1984. Exhibit-73 and Exhibit-112 are death certificates issued by the authority on the death of Radhakrishna. Death certificate was issued on 22.9.1999 during the pendency of the suit. In that certificate surname of Radhakrishna is appearing as Radhakrishna Mahale. The death certificate issued earlier is to be given more weightage than the death certificate which was obtained during the pendency of the suit. The certificate which is obtained during the pendency of the suit is obviously suitable to the evidence of the plaintiff. Exhibit-112 dated 8.7.1986 shows name as Radhakrishna Mahale. Death certificate is an evidence of a death of a person on a particular date. The name of the deceased obviously should appear in the certificate. However, the certificate though it is expected to be authentic, the authenticity of the contents of the death certificate depends on the information given by the person who approaches the authority. How surname of Radhakrishna appeared as Mahale instead of Mor can be explained on the basis of the admissions given by the plaintiff in her cross-examination. She admitted that Radhakrishna was staying with the family. He was looking after the management of the entire family. His status was like karta of the family and therefore, he was known in the society by the surname of Mahale. Admittedly, Mahale is a surname of Radhakrishna's natural father. Before adoption his name was Radhakrishna Mahale. This is how the two different surnames of deceased Radhakrishna in death certificate are appearing. Thus, he was recognized as one of the members of "Mahale" family.

10. Most important document in favour of the plaintiff is a sale deed Exhibit-114 dated 16.6.1995 which was taken place between Digambar and Somnath. This exhibit-114 was admitted document. The appellant/defendant No. 2 admitted in the cross-examination that he has gone through the sale deed and the contents in the sale deed are true and correct. Somnath has purchased some portion of the land from Digambar. It was argued by the learned Counsel for the appellant that after the death of Trimbak, Digambar was the sole coparcener and he sold some portion of the land which is fallen to his share to Somnath by sale deed dated 16.6.1995. However, in the cross-examination though he admitted all the contents of the sale deed, he denied the contents in paragraph-4 of the sale deed that his father was adopted in Mor family. He answered in the cross-examination that he did not realize at the time of execution of the sale deed that this fact is incorrect and he realized this fact at the time of cross-examination. This cannot be believed. Indeed this sale deed hits the core part of the adoption and it negatives the challenge of the defendant to the validity of the adoption. The first appellate court while dealing with this evidence has rightly posed the question that if the defendant was not given in adoption in Mor family then he must be having a share in the suit property and if it was so then what was a need for defendant No. 2 to purchase 80R's of land out of the ancestral suit land by

executing the sale deed from defendant No. 1 Digambar, his uncle? Curiously, the plaintiff filed a suit for partition on 14.6.1995 and the sale deed was executed on 16th June, 1995. Therefore, the contents in the sale deed cannot be read as incorrect and the sale deed is a document which speaks for itself. Therefore, this confirms the case of the plaintiff that Radhakrishna was given in adoption.

11. The learned Counsel Mr. Sathaye on the point of adoption heavily relied on the judgment of the Supreme Court in Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, . In the said case Supreme Court had occasion to deal with the issue of adoption of only son and subsequent conduct of the parties. The Supreme Court held that who claims adoption must discharge the burden that lies upon him by proof of the factum of adoption and its validity. Only son of a brother Chimpirayya was adopted by one Pitchayya. At the time of adoption Chimpirayya was 40 years old and Pitchayya was 25 years old. The Supreme Court observed that therefore, ordinarily he had every prospect of having children of his own; it is therefore, highly improbable unless there are special circumstances, that an only son of an elder brother was taken in adoption by his younger brother; though there is no legal prohibition, it is well known that ordinarily an only son is neither given nor taken in adoption. The supreme court elaborately described the proof on the point of subsequent conduct of the parties in paragraphs-15 & 16 of the judgment. On promissory notes, mortgages, sales of adopted Venkayya was described as adopted son of Pitchayya. However, in the insurance proposal form Venkayya is described as only son of Chimpirayya and adopted son of Pitchayya. In the Will Chimpirayya recited the factum of adoption. However, there was another current of unimpeachable documentary evidence which leads to a contrary inference. In the school Venkayya was adopted as son of Chimpirayya. Venkayya executed promissory note, sale deed and mortgage as son of Chimpirayya. He filed a suit as son of Chimpirayya. He ensured his life as son of Chimpirayya. In the said case it was found that whenever Venkayya exhibited documents he described himself as son of Chimpirayya, that he filed suits as the son of Chimpirayya, operated upon the accounts of third parties as his son, that he purchased properties as his son. So when he gave evidence he declared himself as son of Chimpirayya i.e. of his natural father. Therefore, Supreme Court held that in such state of evidence it was not possible to say that there had been consistent pattern of conduct from which a court should draw the inference that the adoption must have taken place. The facts of case of Raghavamma are clearly distinguishable from the present set of facts. Radhakrishna was not the only son of his father. It is doubtful at the time of adoption whether 2nd son Trimbak was born or not born. In the school, name of defendant No. 2 was registered and his surname was given as Mor and he himself has executed a document i.e. sale deed exhibit-114 and there he himself had mentioned that his father was given in adoption in Mor family. The important distinguishable fact is in the present case Radhakrishna has not challenged his adoption. It is Somnath who is the son of the adopted son challenges adoption of his father. Neither plaintiff nor Somnath had any personal knowledge of the

adoption. Thus this ruling of Raghavamma is not of any help to the defendant. Thus the first appellate court and the trial court have rightly accepted the fact of adoption. A knowledge of a particular old fact or an old incident is always known to the next generation from their parents and elderly members of the family. This oral information is a knowledge and the knowledge becomes authentic if corroborative evidence is tendered by the witnesses. Rule of evidence also supports this proposition of adoption. Thus, substantial question of law No. 1 is held against the appellant.

12. The Second question of law involves right of a married daughter in view of the restriction for partition of the dwelling house u/s 23 of the Hindu Succession Act, 1956. Section 23 of the Hindu Succession Act was omitted by the Hindu Succession (Amendment) Act of 2005 with effect from 9th September, 2005. Though Second Appeal is filed in 2005, the suit was filed in the year 1995, therefore, it is necessary to consider Section 23. Section 23 reads as follows:

23. Special provision respecting dwelling houses.--Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

13. Section 23 provides bar on demand of female heir to claim partition of the dwelling house until the male heirs chose to divide the respective shares therein. Proviso entitles a daughter who is unmarried, destitute or widow to reside in the dwelling-house. The learned counsel for the appellant argued that the plaintiff is a married daughter and has no right to demand partition from Digambar, as Digambar was a sole coparcener after the death of Trimbak.

14. The learned counsel for respondent No. 1 in reply argued that respondent No. 1/plaintiff is demanding her share u/s 6 of the Hindu Succession Act as her father, who was the coparcener, died. He further submitted that the appellant has no right to stay in the dwelling-house, as he being the third party, his residence amounts to alienation of the coparcenary property. Therefore, the first appellate court has taken correct view and has given 1/4th share in the dwelling share to the plaintiff.

15. Though Digambar was defendant No. 1 and sole coparcener, he did not step in the box to dislodge the case of the plaintiff on the point of adoption of Radhakrishna. His evidence would have been treated as the best evidence on the point of adoption and also while deciding issue of partition of the dwelling house. Moreover, Digambar did not challenge findings either of the trial court or the first

appellate court in any Court. He did not question the demand of the partition made by the daughter of his brother and did not refute any averment made and contentions raised by her in respect of partition and also about the status and relation of the appellant in Mahale family.

16. The first appellate court has formulated point No. (iii) in respect of the bar created by Section 23 of the Hindu Succession Act. The finding was given in favour of the plaintiff. The trial court did not frame a specific issue in respect of plaintiff's right to demand partition in view of Section 23 of the Hindu Succession Act. The first appellate Court has discussed ruling of Narashimaha Murthy Vs. Smt. Susheelabai and others, and also case of Fulsing Ramsingh Rajput and another Vs. Durgabai Rajput, :

... I would like to observe that the scheme of the Act is to the effect that as a result of introduction of female heirs the share of deceased intestate stands notionally partitioned from the rest of the male coparceners. Therefore the net result of introduction of female, being a heirs of deceased intestate who expires in joint family is destruction of co-parcenary and severance of status takes place which in the result is a partition in the eye of law and, therefore, the subsequent provisions deal with the rights of heir of the deceased. In this view of the matter Section 23 has been drafted by the Legislature....

17. In Narasimaha Murthy's case, the Supreme Court has discussed about the impartability of the dwelling house. In the present case, the appellant was inducted in an ancestral dwelling house so it was not occupied entirely only by the coparcener and his family members. As the third person had started residing in the dwelling house, it loses its character as a dwelling house u/s 23 of the Hindu Succession Act and therefore that property can be subjected to a partition and it can be demanded by a female heir from a sole male heir. The appellate court relied on the ratio of the ruling of "Fulsing Ramsingh Rajput". In that case, a coparcener died intestate leaving only female heir. The Single Judge of this Court has taken a view that if there is no male heir left behind that particular deceased coparcener, then his surviving female heirs, may be a widow or a daughter, have right to ask for the partition. By way of notional partition, the share of the deceased coparcener was carved out. In Narashimaha Murthy's case the Supreme Court has observed as follows :

13.....The male heir(s) thereby evinces animus possedendi. But the moment the sole heir chooses to let out the dwelling house to a stranger/third party, as a tenant or a licensee, he or they exhibit (s) animus dessidendi and the dwelling house thereby becomes partible. Here the conduct of the male heir(s) is the cause and the entitlement of the female Class-I heir(s) is the effect and the latter's claim for partition gets ripened into right as she/they is/are to sue for partition of the dwelling house, whether or not the proviso comes into play. Here the female heir(s) becomes entitled to not only mere partition of the dwelling house but also her right to residence after partition."

33..... The provision would have to be interpreted in such manner that it carries forward the spirit behind it. The second question would thus have to be answered in favour of the proposition holding that where a Hindu intestate leaves surviving him a single male heir and one or more female heirs specified in Class I of the Schedule, the provisions of section 23 keep attracted to maintain the dwelling-house impartable as in the case of more than one male heir, subject to the right of re-entry and residence of the female heirs so entitled, till such time the single male heir chooses to separate his share; this right of his being personal to him, neither transferable nor heritable.

18. In the present case, Somnath-defendant No. 2 is admittedly residing in the suit house. Defendant No. 2, as held above, is a son of Radhakrishna who was given in adoption in "Mor" family. Fact of adoption of is proved, therefore Radhakrishna's rights in the ancestral property are extinguished. Thus, after death of Trimbak, Digambar remained a sole coparcener of the suit property i.e. dwelling house. The Supreme Court in Narashimaha Murthy held that dwelling house is not partible if the sole coparcener remains and occupies the house along with his family members. True, Radhakrishna was not occupying the premises in capacity of tenant. There is no evidence that he was occupying the house as a lessee or licensee. He was occupying the premises as a family member. However, he had no legal right, though he was accepted by Digambar and Trimbak as a family member. His stay was not objected either by Trimbak or Digambar.

Family is not defined under Hindu Succession Act. Thus, who can be a member of the family is not described by the statute. Therefore, the Court has to determine position of the defendant No. 2 in view of his legal status only. His status as a family member may be acknowledged by the Trimbak and Digambar, however, Somnath is not a coparcener in law. He does not have any legal right in the property of his father's natural father. Due to adoption, Radhakrishna's rights in the property of his natural father were ceased and so of Somnath. He continued to stay there and continued to look-after the family of his brothers and other family members yet his right cannot be rejuvenated.

19. As mentioned earlier, Digambar did not challenge the case of respondent No. 1 and did not adduce any evidence to deny her demand of partition by respondent No. 1/plaintiff. In view of the ratio laid down in Narashimaha Murthy's case and Fulsing Ramsingh Rajput's case, respondent No. 1/plaintiff is right to demand partition of the dwelling-house. Question of law No. 2 is also decided against the appellant.

20. Question of law nos. 3 and 4 are whether the suit land i.e. property 2A was purchased from the nucleus of the joint family property or it was purchased out of stridhan by the mother of defendant No. 1. Mr. Sathye, learned counsel for the appellant relied on the point of existence of adequacy sufficient nucleus to purchase the property Mr. Sathye relied on (i) Baikuntha Nath Paramanik (Dead) by his L.Rs. and Heirs Vs. Sashi Bhusan Pramanik (Dead) by his L.Rs. and Others, ; (ii) K.V. Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer and Others, ;

(iii) Achuthan Nair Vs. Chinnamu Amma and Others, . He submitted that the appellant has tendered evidence that his mother had purchased the suit land out of her "stridhan" and the plaintiff could not prove that the property was purchased from the nucleus of joint family. He argued that burden to prove necleous was on the respondent. However, the courts below have wrongly placed that burden on the appellant.

21. The suit property described in the plaint originally belonged to the family of Ramchandra. However, the financial condition of the family became bad, so Ramchandra was constrained to sell the property. Thereafter, he died and after his death, the property was purchased by registered agreement of sale by Narmada-mother of defendant No. 1-Digambar. It was purchased by Naemada-the wife of deceased Ramchandra in the name of their minor son Digambar. It is a fact that wife of deceased Ramchandra had no separate independent source of income when the suit land was repurchased. In the year 1943-44, when the land was purchased, Trimbak, the father of the plaintiff was 23 years old and was earning. The plaintiff has deposed on oath that her father gave money to repurchase the suit land out of love and affection so the land was purchased in the name of Digamber. It is to be noted that the family did not purchase any other land but the same land which was sold by Ramchandra was re-purchased. If non-earning wife possesses stridhan and the land is the only piece of an agricultural land owned by the family and the family is dependent on that land, then in financial crises generally female member in the family offers her stridhan to save the land. In the present case, if the case of the defendant is that the suit land was repurchased by selling stridhan of Narmada, the question emerges as to why she did not offer her stridhan to her husband when there was financial crises which compelled him to sell his land. Sale of the land is the last option generally resorted by the joint Hindu family and anyhow family members will try to save the land. Therefore, the case of the defendant that it was purchased out of stridhan of his grandmother after death of her husband, cannot be accepted. Moreover, no evidence on the point of stridhan is tendered. On the other hand, evidence of the plaintiff, that her father was 23 years old and he was, after death of her father being the eldest son at the relevant time, gave money to his mother, appears plausible.

22. Therefore the first appellate court and the trial court have rightly accepted the case of the plaintiff and committed no error. Hence, Second Appeal is dismissed. At this stage, learned Counsel for the appellant prays for staying of the order and interim stay granted by this Court be continued. Learned counsel for respondent No. 1 opposes this prayer. However, as there was interim stay, stay is granted for six weeks.