

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Anandrao Ganpatrao and others v. Vasantrao Madhavrao and others, from the High Court of Judicature at Bombay; delivered the 7th February 1907.*

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Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

The suit in these proceedings is for partition of family property, and the main question in dispute is whether the property is joint and ancestral. The suit was instituted on 2nd July 1901, in the High Court at Bombay, by the first Respondent in this Appeal, who will be referred to as the Respondent. The Appellants were Defendants; and, shortly stated, their defence was (1) that the property in dispute was not joint ancestral estate; (2) that the suit was barred by limitation; (3) that the Respondent was prevented from suing by a certain release dated 28th January 1859. The Judge of First Instance, Mr. Justice Tyabji, decided the case in favour of the Appellants, on the ground of limitation. This question has occupied, in the argument before their Lordships, a position of subordinate importance, and the Respondent is entitled to point to the Judgment of Mr. Justice Tyabji as in no way adverse to his main contention that the property was joint and ancestral. An Appeal having been taken, the Appeal Court, on 5th

September 1904, reversed the Decree appealed against and declared the Respondent entitled to one-half of the property as joint ancestral property. The present Appeal is against this Judgment.

The Judgment is voluminous and detailed, and their Lordships do not find it necessary, in affirming this Judgment, to recapitulate the details, as a comparatively limited number of facts are decisive of the question. The two salient features of the case are that this family lived joint, in one house, and that there was a nucleus of joint property. The former of these facts is undisputed, and of the latter the Chief Justice says: "As to the character of the Worli property there has been no dispute before us." The effort of the Appellants in the present Appeal has been to disparage the importance of the Worli property in comparison with the existing estate. This argument, however, is deprived of much of its force by the fact that the comparison is with the enhanced value of the more recent acquisitions, and their Lordships find sufficient evidence that the Worli property was of substantial value, and when it was sold some of the proceeds were used in defraying the cost of rebuilding the new house in which the joint family lived.

This being so, a nucleus exists and the family is joint. The onus is therefore on the party setting up a case of separate estate. Now the case of the Appellants, such as it is, fails to establish any independent or separate source of affluence, and, indeed, is really rested upon certain instruments by which the grantors purported to deal with the property in question as if it were separate estate. As against those documents, there has to be set a series of family books and various contracts and transactions inconsistent with anything but joint property.

But, over and above such items of evidence, the tenor of family life proves the use of the property to have been the same after as before the execution of those instruments.

Their Lordships therefore find in the broad facts of the case an answer alike to the claim of separate property and also to the plea of limitation. There has been no exclusion of the Respondent from use and enjoyment for the period of limitation. In these circumstances it is unnecessary to rehearse or examine what are merely paper assertions not brought home to the knowledge of the persons said to have been affected by them. It must also be borne in mind that, on the assumption, which is now made, that the estate was ancestral, the Respondent took, at his birth in 1884, a right in the estate independent of his father; and by none of the transactions in question, including the release of 1889, has he parted with that right.

The principles governing the case have been rightly applied in the elaborate Judgment of the Chief Justice, and their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed. The Appellants will pay the costs of the Appeal.

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