

**Kesarbai and Others Vs. Narayan**

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**Court :** Madhya Pradesh

**Decided On :** Mar-22-2001

**Reported in :** 2001(3)MPHT484; 2001(2)MPLJ338

**Judge :** Mr. S.P. Khare, J.

**Acts :** Hindu Law; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100

**Appeal No. :** Second Appeal No. 185/83

**Appellant :** Kesarbai and Others

**Respondent :** Narayan

**Disposition :** Appeal dismissed

**Judgement :**

ORDER

**S.P. Khare, J.**

1. This is second appeal under Section 100, Civil Procedure Code. The following substantial questions of law were formulate by order dated 5-8-83 at the time of admission of this appeal.

1. Whether the finding arrived at by the First Appellate Court that there had been no previous oral partition between the parties is contrary to the evidence produced

in the case ?

2. Whether the First Appellate Court erred in law in finding that the property described in para 1 of the plaint, was the Joint Family Property

The facts relevant for decision of the questions referred to above are that plaintiff Narayan and defendant Hajari were real brothers. They had Khata numbers 139 and 141 in village Udankhedi. The lands included in these two khata were joint family property of both the brothers. Defendant Hajari was the elder brother. He acquired 1.411 hectares of land consisting of five khata numbers as described in para 1 of the plaint. There is concurrent finding of the Trial Court and the First Appellate Court that the land described in para 1 of the plaint which are the lands in dispute in the present case were acquired out of the income of the ancestral property. Defendant Hajari had no separate source of income. Therefore, both the Courts have rightly held that the suit lands were acquired out of the joint family nucleus. According to Mulla's Hindu Law 16th Edn. page 249, property acquired out of income of ancestral property is also ancestral property. It has been held by this Court in Ramkrishna v. Vithalrao (1978 MPLJ 500) that, 'Once it was established that the family possessed sufficient agricultural holding which from its nature and relative value, could form nucleus from which the property in question could be acquired, the burden shifted to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the funds of joint family'.

2. There is no definite evidence that there had been a partition between Narayan and Hajari at the time of lands in dispute were purchased by Hajari in auction. Therefore, the two brothers must be held to have continued as constituting the coparcenary. The finding arrived at by the First Appellate Court that there had been no previous oral partition between the parties is correct. So also the decision of the First Appellate Court on the point that the lands in dispute were the joint Hindu family property of both the brothers is correct.

3. This appeal dismissed.

4. Second Appeal dismissed.

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