

Patcha and ors. Vs. Mohidin

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Court : Chennai

Decided On : Jul-24-1891

Reported in : (1892)ILR15Mad57

Judge : Parker and ;Wilkinson, JJ.

Appellant : Patcha and ors.

Respondent : Mohidin

Judgement :

1. The plaintiff's rights are derived through his mother Lal Bee who died in 1879. The rights of this lady were derived from her father who died about 1840 and from her mother who died in 1872, but she never obtained any distribution of her share. The Judge has held that the property was joint family property from which Lal Bee was never excluded during her life, and from which plaintiff was not excluded till 1882, and that the suit is governed by Article 127, Limitation Act.

2. The Judge finds that the family was a trading family of Mussalmans, upon whom the Muhammadan law set very lightly. It was not alleged, however, that there was any special family custom by which the rules of Hindu law, as to joint family property, would apply. On the contrary, the Judge points out that when in plaintiff's own family he had at first by mistake (under the rules of Muhammadan law) been allowed a share in his paternal grandfather's property, it had afterwards been taken from him when the mistake was pointed out by friends who knew the

Muhammadan law. This case differs therefore from *Khatija v. Ismail* I.L.R. 12 Mad. 380 in which it was held that the class called 'Navayat' (the descendants of Arab immigrants and Hindu Konkanis) had adopted Hindu customs.

3. Nor are the rights which plaintiff seeks to enforce consistent with joint family rights under Hindu law. Under Hindu law the plaintiff's mother could have had no joint rights in her father's estate, nor would her mother have been entitled to anything but maintenance.

4. The decision in *Bavasha v. Masumsha* I.L.R. 14 Bom. 70 was quoted as an authority for the propositions that joint family property includes property left by a deceased Muhammadan and divisible among his heirs until it is divided, and that Article 127 of the Limitation Act applies to a suit for a division of such property. With all respect we cannot agree with the learned Judges in either of these propositions. It seems to us impossible that property which was in no respect joint family property in the Hindu sense up to the date of the deceased's death, should become joint property in the Hindu sense because of his death, and we cannot but think the words 'joint family property' in Article 127 were intended to refer to joint family property in the Hindu sense of the term. We are strengthened in this opinion by the view taken by the Full Bench of the Allahabad High Court in *Amme Raham v. Zia Ahmad* I.L.R. 13 All. 282. The Legislature had no doubt some reason in repealing the word 'Hindu' and substituting the word 'person,' but it may have been done as pointed out by MAHMOOD, J., with the intention of meeting cases in which by special custom Muhammadan families were governed by the Hindu law of succession, or it may have been intended to meet cases where a non-Hindu had become the purchaser of a Hindu's undivided share in joint family property.

5. Taking this view we are of opinion that the property left by Kader Saheb who died in 1840 never became joint family property, but at his death became separate property in which each individual owner became entitled to his or her separate share.

6. The suit is therefore barred. We would reverse the decree of the District Judge and dismiss the suit with costs throughout.

7. The stamp fee due to Government must be recovered from the plaintiff.

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