Supreme Court of India
Madanlal Phulchand Jain vs State Of Maharashtra And Ors on 9 April, 1992
Equivalent citations: 1992 AIR 1254, 1992 SCR (2) 479
Author: Ahmadi
Bench: Ahmadi, A.M. (J)

PETITIONER:
MADANLAL PHULCHAND JAIN

Vs.

RESPONDENT:
STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT09/04/1992

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
SAHAI, R.M. (J)

CITATION:
1992 AIR 1254 1992 SCR (2) 479
1992 SCC (2) 717 JT 1992 (2) 530
1992 SCALE (1)799

ACT:
Maharashtra Agricultural Land (Ceiling on Holding) Act, 1961
Section 45(2)-Hindu-Inheriting land as nephew-Natural father having become uncle in adoption-Such land-Whether separate or ancestral-Computation of surplus land.
Hindu Law
Joint family-Blending of separate property-Proof of-Necessity of evidence for.

HEADNOTE:
The appellant was taken in adoption in the family of his uncle. On adoption, he got about 28 acres of agricultural land from the adoptive family. He also inherited land admeasuring 19 acres and 19-1/2 gunthas from his natural father, who died leaving behind no other heir.
The Commissioner, exercising power under Section 45(2) of the Maharashtra Agricultural Land (Ceiling on Holding) Act, 1961, came to the conclusion that the land inherited by the appellant was a separate property and could not be characterised as ancestral property. The Commissioner, further took the view that since the land inherited by the appellant could not be described an ancestral property, the

appellant's major son's share could not be deducted therefrom, and hence and surplus had to be worked out without making any such deduction.

These views were confirmed by the High Court in a Writ Petition brought under Article 227 of the Constitution. The contention that the inherited property blended with the ancestral property and hence it had acquired the character of an ancestral property was rejected.

Aggrieved, the appellant appealed to this Court which granted special leave confining it to the question of blending.

Dismissing the appeal, this Court,

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HELD :1. A Hindu can have interest in ancestral property as well as acquire his separate or self-acquired property. If he acquires by inheritance separate property a birth of a son or adoption of a son will not deprive him of the power he has to dispose of his separate property by gift or will. [481H]

2. Excluding the property inherited from a maternal grandfather the only property which can be characterised as ancestral property is the property inherited by a person from his father, father's father, or father's father's father. That means property inherited by a person from any other relation becomes his separate property and his male issue does not take any interest therein by birth. [482B]

In the instant case, the property which the appellant inherited from his uncle (nature father) was his separate property in which his major son could not claim any share whatsoever. [482D]

3. Under the Mitakshara Law each son upon his birth takes an interest equal to that of his father in ancestral property, both movable and immovable. This right is independent of his father. [482E]

In the instant case, if the appellant is able to establish blending of his separate property with ancestral property, the plea of deduction of 1/5th share of his son on notional partition may perhaps be well founded. It must, therefore be shown that the appellant had thrown his separate property in the common stock with the intention of abondoning his separate claim thereon. [482F]

4. Evidence must be led to show a clear intention to give up his separate right and allow the separate property to be treated as an ancestral property and be enjoyed by the coparceners. Such an intention has to be proved by tendering evidence, since no such inference can be drawn even from the fact that he had permitted his family members to us it along with him nor can it be proved from the mere fact that the income of the separate property was used for supporting his son or from the fact that he had failed to maintain separate accounts of the yield of both sets of properties. [482F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2627 of 1982.

From the Judgment and Order dated 14.8.1980 of the Bombay High Court in Special Civil Application No. 9074 of 1977.

V.N. Ganpule and V.B. Joshi for the Appellant. S.M. Jadhav and A.S. Bhasme for the Respondents. The Judgment of the Court was delivered by AHMADI, J. The appellant was taken in adoption in the family of his uncle. On adoption he got agricultural land admeasuring about 28 acres from the adoptive family. His natural father died leaving behind no other heir. Thereupon land admeasuring 19 acres and 19-1/2 gunthas was inherited by the appellant as nephew (since his natural father became his uncle on his adoption). The Commissioner, Bombay Division, in exercise of power under section 45(2) of the Maharasthra Agricultural Lands (Ceiling on Holdings) Act, 1961 came to the conclusion that the land inherited by the appellant was a separate property and could not be characterised an ancestral property. This view of the Commissioner came to be confirmed by the High Court in a Writ petition brought under Article 227 of the Constitution. The High Court also rejected the contention that the inherited property got blended with the ancestral property and hence it had acquired the character of an ancestral property. The appellant's contention was that the 1/5th share of his major son in the ancestral property had to be determined on a notional partition and deducted from his holding for the purpose of determining the surplus area under the aforesaid Act. The Commissioner as well as the High Court took the view that since the land inherited by the appellant could not be described as ancestral property, the appellant's major son's share could not be deducted therefrom and hence the surplus had to be worked out without making any such deduction. The High Court also rejected the theory of blending and hence this appeal.

While granting special leave this Court ordered that it shall be confined to the question of blending. We have, therefore, to consider the limited question whether there was blending and the land inherited by the appellant formed part of the ancestral property. It is well settled that a Hindu can have interest in ancestral property as well as acquire his separate or self-acquired property. If he acquires by inheritance separate property a birth of a son or adoption of a son will not deprive him of the power he has to dispose of his separate property by gift or will. That means that Hindu can own separate property besides having a share in ancestral property. Therefore, when the appellant inherited the land left by his uncle (natural father) that property came to him as a separate property and he had an absolute and unfettered right to dispose of that property in the manner he liked. It is equally well settled that excluding the property inherited from a maternal grandfather the only property which can be characterised as ancestral property is the property inherited by a person from his father, father's father, or father's father. That means property inherited by a person from any other relation becomes his separate property and his male issue does not take any interest therein by birth. Thus property inherited by a person from collaterals such as a brother, uncle, ect., cannot be said to be ancestral property and his son cannot claim a shre therein as if it were ancestral property. There can, therefore, be no doubt that the property which the appellant inherited from his uncle (natural father) was his separate property in which his major son could not claim any share

whatsoever.

But the appellant contends that his separate property got blended with his ancestral property and thereby acquired the character of ancestral property in which his major son became entitled to 1/5th share on notional partition. It is true that under the Mitakshara Law each son upon his birth takes an interest equal to that of his father in ancestral property, both movable and immoveable. This right is independent of his father. Therefore, if the appellant is able to establish blending of his separate property with ancestral property, the plea of deduction of 1/5th share of his son on notional partition may perhaps be well founded. It must, therefore, be shown that he had thrown his separate property into the common stock with the intention of abandoning his separate claim theron. Evidence must be led to show a clear intention on his part to give up his separate rights and allow the separate property to be treated as an ancestral property and be enjoyed by the coparceners. Such an intention has to be proved by tendering evidence, since no such inference can be drawn even from the fact that he had permitted his family members to use it along with him nor can it be proved from the mere fact that the income of the separate property was used for supporting his son or from the fact that he had failed to maintain separate accounts of the yield of both sets of properties. In the present case no such evidence had been adduced before the authorities below. Counsel for the appellant was unable to invite our attention to the factual material evidencing such merger or blending. Therefore, the submission based on the doctrine of merger cannot come to the rescue of the appellant.

In the result we see no merit in this appeal and dismiss the same with costs.

N.V.K. Appeal dismissed.