Chabildas Lallubhai Vs. Ramdas Chabildas and ors.

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Court : Mumbai

Decided On : Jun-14-1909

Reported in : 3Ind.Cas.257

Judge : Beaman, J.

Appellant : Chabildas Lallubhai

Respondent : Ramdas Chabildas and ors.

Judgement :

Beaman, J.

1. This is a suit for a declaration that the properties therein referred to or so many of them as are within this Court's jurisdiction, are the self-acquired properties of the plaintiff. Perhaps the most convenient way of disposing of it -will be to follow the main lines of the written argument put in for the plaintiff by his learned Counsel Mr. Inverarity. That I suppose is the best case which, upon the most deliberate and full consideration, plaintiff's counsel could make out for him : and while, as the sequal will show, it is not the best case the plaintiff has, its method brings out the chief points and contentions of both sides.

2. The plaintiff's case is different against different defendants. It has to be considered (1) against the after-born children of the plaintiff's second wife; (2) against Ramdas and Karsondas (the latter now deceased) and their childern, some of whom were and some of whom were not born at the date of the release in 1889. There is also a separate case in respect of the ornaments, in which Bhanumati is interested, as well as the male issue.

3. The plaintiff in the opening of his agrument contends that while his property may be self-acquired as against Ramdas and Karsondas it may be ancestral in his hands as between himself and the after-born children of his second wife. This I think is an incorrect view of the Hindu law. If the property was really self-acquired it retains that character in the plaintiff's hands, even against the childern of his second wife, unless and until he has intentionally given it the character of joint family (not ancestral) between himself and them. But there is no contention in this suit that the plaintiff has done anything of the kind. The character of the property is in issue in the same way and to the same extent (subject of course to the legal consequences of the release) between Chabildas and all his male issue. Thus while if the whole property is held to be ancestral, the rights of the various defendants might now be widely different: if it is held to be self-acquired. That finding disposes of the case against them all.

4. Next, the plaintiff contends that there is no misjoinder. This is incorrect, as far as

Bhanumati's claim to the ornaments, as heir to her mother, is concerned.

5. She could in no case come in as a party to a suit between the plaintiff and his male issue the object of which is to obtain a declaration that the latter have no interest in his property because it is self-acquired. Bhanumati is married, and would in no circumstances have any claim to this property, whether it be self-acquired or ancestral, though in the absence of sons she might possibly be an heir. But I apprehend that that relation would not be affected by the character of the property, or if in some circumstances it might, certainly not in the circumstances in which this suit is brought. But the plaintiff farther contends that if there has been a misjoinder in this respect it has been waived. The point is relatively unimportant, and I shall not dwell upon it here. It is true that the defendants among them have raised all the questions, to which the plaintiff's learned Counsel has addressed himself, in their counter-claims.

6. I have no doubt that a suit of this kind will lie. Plaintiff has argued with unnecessary elaboration that there is no objection to the suit in its present form. I do not think there is. At present all that the plaintiff could ask for is the declaration; he is in need of no consequential relief. Therefore the suit is within the actual words and clear intention of Section 42 of the Specific Relief Act. It matters little what line English Courts have taken in modern times, so long as Indian Courts keep within their own Statute. And this is a case which does not seem to me to present any ambiguity. Most of the plaintiff's argument on this head appears to me to be confused and superfluous. He contemplates difficulties which are, I think, imaginary.

7. It is unnecessary to go into the early history of the family. For all the essential facts are undisputed. Some ancestral property there was, and after the father's death the sons and mother lived together. The sons earned money and banded it all over to their mother who managed the joint family.

8. Our present investigation starts from the arrangement of 1866. A disproportionate amount of time was occupied in a long and rather wearisome cross-examination about certain earnings, especially those which appear under the head of muccadamage. At the close of the case the plaintiff admitted that up to the arrangement of 1866 all the family funds were joint. But he added that what he got at that arrangement, namely the sum of Rs. 15,000, was not, and never had been, joint. The whole of this part of his argument is confused, and seems to me to miss the point because the elementary principles of the Hindu law have either never been clearly grasped, or have in the course of fashioning the argument been lost sight of. In this respect, the defendant's cross-examination indicated a truer apprehension of principle. But the plaintiff's closing admission rendered it all superfluous. The object of that cross-examination was, as I understood it, to show that much of what the plaintiff did earn and contribute implied the existence of some family capital, without which he could not have gone on : in other words that his earnings were not self-acquired because they were not obtained without detriment to the paternal estate. But it now being admitted that up to 1866 all plaintiff's earnings and contributions to the family took the character of joint family property it is unnecessary to go into all the details elicited in cross-examination. The plaintiff's attempt to distinguish the character of the Rs. 15,000 from the remainder of the Rs. 40,000 which he had contributed to the family exchequer up to 1866, is again due, I think, to an imperfect apprehension of the Hindu law. It is not, I understand, contended that in respect of that particular sum of money, at the time it was earned and paid in, the plaintiff made any distinction. It

was allocated to him as a part of the gross sum he had contributed, and that gross sum was made up of small and repeated earnings, all paid in at different times but in the same circumstances and with no apparent change of intention. So that it would be dearly impossible in the year 1866 to say that Rs. 25,000 of, these moneys were contributed with one intention and Rs. 15,000 with another, thus giving a different impress to the two totals.

9. The first and one of the most important questions in the case then is, what was the character of the Rs. 15,000 which Chabildas got in 1866? Again it seems to me that the written argument entirely misses the real point. It is said that while Chabildas handed in his earnings and had no objection to them being spent for the family as a whole, he never intended to make them joint property. But viewed in the light of well-established rules of Hindu law, this is, in effect, a contradiction. Plaintiff is said to have demanded his earnings back and the Rs. 15,000 was given to him in compromise of his claim. This sum, it is then argued, never lost the character of self-acquired property. An obvious confusion of thought. As soon as it was paid in without reservation to be used for the family as a whole, it acquired the character of joint family property. Whether what subsequently happened divested it of that character and restored to it the character of self-acquired property, which possibly, had it been differently handled, it might have retained throughout, is a point about which the plaintiff is curiously silent. As the argument is put, it is on the face of it unsustainable. Plaintiff's entire contributions were roughly 40,000 rupees. Getting back Rs. 15,000 only would not negative an intention at the time of contribution to allow them to be fused with the rest of the joint family money, and once that was done, they would have the indelible stamp of joint family estate. Bat although the plaintiff never gets hold of the real point, I have just indicated, surely it may be contended (and is in fact the only contention that could possibly succeed) that the Rs. 15,000 was a gift to Chabildas by the family in consideration of the services he had rendered to it and, if so, that on the analogy of a gift by a father it was thenceforward his self-acquired property. Such certainly appears to have been the intention of the family both towards him and Devidas, who was also given a lump sum by the arrangement of 1866. This was not a partition in any sense. The paper speaks of a partnership 'which was then to be dissolved and the only partnership which could be meant, was the joint efforts of the sons to earn and contribute to the joint family funds. From that time the sons appear to have resolved to keep their own earnings to themselves, with the consent of the joint family. And were it not for the rents of the ancestral property there would not I think be much difficulty in the case. For starting with this Rs. 15,000 as a gift and therefore as his self-acquired property, there is an adequate explanation of the means by which Chabildas was enabled to build up his fortune.

10. Unfortunately the ancestral houses which yielded a considerable income were kept joint. Chabildas and his brothers drew their shares of the rents right up to 1889. That is, I think, the only point upon which the plaintiff's case is likely to be wrecked. Jamnabai, the mother, died in October 1870. Up. to that time the joint status of the family appears to have been maintained, although Chabildas was earning considerable sums of money for himself, which were no longer being paid into the joint family coffers. In January 1870, for example, he bought the Nal Bazaar property which may be regarded as the origin and foundation of all his present large landed possessions. The plaintiff's argument on this, and really on the whole case, is founded on a proposition, which is, I think, wholly unknown to the Hindu law, and opposed to its real spirit. Observe how the plaintiff deals with this Nal Bazaar property. It cost

Rs. 42,000. Of the Rs. 15,000 which plaintiff got by the arrangements of 1866, two thousand had been paid back on account of old family debts. Mr. Inverarity then says, that taking the remainder, Rs. 13,000, to have been ancestral money, this Nal Bazaar property becomes partly ancestral and partly self-acquired, in the proportion of thirteen to twenty-nine-forty-two thousandths. Similarly throughout the whole case he rests on the proposition that if the plaintiff can show that he spent on the family at least as much as ho derived from the ancestral property, all surplus is to be regarded as his self-acquisition. That is a very simple way of disposing of the difficulties in this case. I may say at once that if the proposition is vaild the plaintiff must succeed. Because there can, I think, be no doubt that he spent on his family a good deal more, than he got out of the rents of the ancestral property, and the Rs. 13,000 combined.. l am prepared, however, to hold in the circumstances of the case, having regard to the terms of the arrangement of 1866, that the Rs, 15,000 was not ancestral money, (though I do so with some hesitation). And it will later appear that that is the ground and the sole ground of my decision. But taking the plaintiff's case as, put by his learned Counsel, I feel considerable doubt whether the basic proposition of Mr. Inverarity's whole argument is valid. It has some support. I am referred to an unrepsrted decision of a Divisional Bench of this Court, Sargent, C.J., and Farran, J., delivered in April 1894. Considering that this is a new-point and a point of great general importance, considering that the learned Judges did not have their decision imported, I am led to doubt whether they were over confident of its correctness, or wished to make it an authoritative exposition of the law. When we look into the decision, it will be seen at once to be of a hesitating and tentative character. And it is I think certain that their Lordships did not mean it to be extended beyond the facts of the particular case. The facts were that a Hindu had bought a valuable property with, say, two lacs of ancestral, and say, seventy thousand rupees of self-acquired properly. Observe that the character of these sums was taken for granted. All that the Court decided was that investing the two sums together in one property did not divest them of their separate characters, and, therefore, that the property remained partly ancestral and partly self-acquired. Even so restricted, I may be permitted to doubt, with the greatest respect to the eminent Judges responsible for the decision, whether any Hindu lawyer would readily assent to it. But in the use which Mr. Inverarity wishes to make of it he utterly ignores very important distinctions. Suppose, as Mr. Inveiarity supposes for the sake of his argument, that in 1866 Chabildas started with Rs. 13,000 ancestral money and nothing else in the world. By 1870 ho is in possession of Rs. 42,000 which he invests in a property. How can any one say how he came by the remaining Rs. 29,000 or whether he would have been able to make that sum irrespective of the Rs. 13,000? If the Rs. 13,000 was the root of all his fortune, then the fortune retains the character of the root, and the whole of it would likewise be ancestral, unless it could be shown that it was gained without detriment to the Rs. 13,000, that is to say, without employing that in any way as a moans to the increase. That is a proposition which is almost impossible to establish. It is easy to show that a man with, say, a fixed income of 1,000 a year, has earned 50,000, while he has spent exactly 1,000 a year in supporting himself and his family. But does it follow that unless he had had that assured means of living he would ever have made the additional 50,000 or anything at all? It is the veriest truism that thousands of men go to their graves in poverty for want of a sufficient sum of money to keep them during the barren years of a career. Given the bread it is commonly easy for any competent man to earn the butter in abundance. That is the point upon which the Hindu law, as I understand it, has always concentrated its attention. If a member of a family derives from-family funds the means of subsistence, and thus a jumping off ground, so to speak, without which he never would or could have made his way to affluence, and by

that means has acquired a fortune, the Hindu law regards the fortune as the natural result of the original family fund, out of which it has grown, and ascribes to it the character of that fund. This point would naturally be overlooked by English lawyers. It is wholly foreign to the system of law with which they have become familiarized; it is also extremely repugnant to the western spirit of individualism, no where more marked than in commerce. It is, therefore, not surprising to find English Barrister Judges, and English Barristers of the greatest eminence, arguing cases of this kind upon English, and not upon Indian, principles. It is possible that the English law is more sensible in such matters but that is beside the question. We are not concerned with the policy or the expediency of the Hindu law. We are not concerned with what we should like it to be, or with what, in our opinion, it ought to be, but simply with what it is.

11. It is virtually impossible to extract any consistent rule from the decisions of the Courts on this point. Broadly of course, they agree that where there is ancestral property, the true germ of what is subsequently acquired, the acquisition takes the character of the germ. But where the germ never fructifies, where it may be no more than an ancestral cottage never converted, then the mere fact that it afforded shelter to the members of the family would not be enough to impress upon their subsequent independent earnings the character of joint family. Conversely (and these cases might have helped the plaintiff had he come across them) it has been held, that where the ancestral property yielded an excess over expenditure out of which excess further purchases were made, those purchases were to be regarded as ancestral; Sudanund Mohapatiur v. Soorjoo Monee Dayee 11 W.R. 436; Tottempuddi Venkatratnam v. Tottempuddi Seshamma 27 M. 234. No one would dispute that proposition; but implied in it is precisely what the plaintiff is now relying on, namely that if he can show that there was no surplus of ancestral money, his subsequent purchases must be regarded as his self-acquisitions. Whether that proposition is as indisputable as its converse, whether it is true, may well be doubted, when we look closely into the theory of the Hindu law-givers. That theory may be simply illustrated in this way. Supposing a cistern is to be filled. Suppose it to have two taps, one discharging white water at the rate of twenty gallons an hour, the other discharging red water at the rate of one gallon an hour. When the cistern is full, all the water will be tinged red. A mathematical calculation could easily disclose how much red water, and how much white water had been poured into the cistern; but no calculation in the world would enable anyone to say of any particular cup-full this came from the one tap or from the other. And that I believe correctly expresses the Hindu laywer's view of the admixture of ancestral with self-acquired moneys. It is wholly opposed to the English laywer's view of the separability of mixed funds. And if any proof were needed of the difficulty our English Barristers find in grasping the fundamental principles of the Hindu law, (simple though they are in themselves), it would be supplied by the fact that it is thought worth while and useful to quote such a case as In re Hallet (1879) 13 Ch. D. 696 as throwing any light upon the doctrine of joint ancestral family funds. It ought to be obvious to any one who has been at the pains to make himself acquainted with the rudiments of the Hindu law on such subjects, that there is nothing in the whole range of English law really analogous to the Hindu law of the joint family estate. That is referable to different principles from any known to the English law; and the unfortunate accident that both sets of ideas have come to be expressed in one language so that terms which have quite distinct connotations for English and Hindu law, must be used indiscriminately, leads to endless confusion of thought among English lawyers, and to conflicting and irreconcilable decisions in our Courts.

12. If I have correctly illustrated the true theory of the Hindu law, it will at once be seen that no such principles as were approved in In re Hallet (1879) 13 Ch. D. 696 can be of the slightest use. We may have the means of ascertaining by an arithmetical calculation how much money came in from one source, and how much from another, but if the money did not come in contemporaneously from the beginning, if it was not kept entirely distinct, no such calculation could help us. Let me illustrate my meaning again. Assuming that the Rs. 15,000 were ancestral moneys, the plaintiff made a very lucrative contract with the Government at the time of the Abyssininn war in 1867. Supposing he made Rs. 50,000 out of that transaction, the question is, could he have entered into it at all without the support of the Rs. 15,000? And if not, it is perfectly clear that upon the theory of the Hindu law, the whole fifty thousand would have to be regarded as ancestral moneys, I do not say that Chabildas did make Rs. 50,000, or that he could not have taken the contract without the support of the Rs. 13,000. But the hypothetical case suffices to show that the method which Mr. Tnverarity wants the Court to follow does not meet all the requirements of the Hindu theory of joint ancestral, and self-acquired moneys. For convenience and simplicity I have assumed in these illustrations, exploding Mr. Inverarity's arguments in which the same assumption is made, that the Rs. 15,000 were ancestral. But I do not hold that they were. I am inclined, as I have said, to the view, that that money may safely be regarded as Chabildas's self-acquisition. So that quite apart from the income of the ancestral houses, he had plenty to go on with and by means of his freight brokerage and Abyssinian war contracts, doubtless he had ample moneys of his own to buy the properties from time to time. On this view of the case, the way I hope having been to some extent cleared by the statement of principles, and the rejection of false and misleading analogies, I come to the real difficulty. What is the effect upon the whole of Chabildas's fortune to-day of such support as he derived from 1866 to 1889 from the rents of the ancestral properties? In passing I may note and dismiss an argument peculiar to the Nal Bazaar property.

13. It is contended that Government evicted Chabildus from this property after he had bought it, and subsequently granted him a new lease of it. And this being a re-grant, even if the original purchase had been effected with ancestral moneys, the property finally came to Chabildas as his self-acquired property. Sri Mahant Govind Rao v. Sita Ram Kesho 21 A. 53 : 25 I.A. 125 It is enough to say of that that the authority cited is not parallel, or the principle involved in any respect the same. I do not think that this argument was meant seriously. In any case it is now quite beside the point. All I have to consider is whether in all the circumstances of this case, there has been such a mixing of ancestral with self-acquired moneys, as to give to the whole the character of the former. In this connection it is to be noted that while a very slight infusion of ancestral will make the whole ancestral, no amount of infusion of self-acquired property will suffice to divest, what was once ancestraj, of that character. In many of the cases, this rather obvious distinction seems to be overlooked. Judges talk of Hindus adding self-acquired property with the intention of making the whole purchase a self-acquisition; as though any intention of that kind could be effectual. And this fallacious way of reasoning is all part of the failure to go to, and grasp, first principles. Let the ancestral moneys be always regarded as the root. Then if the root develops into a tree, as it will, unless what is self-acquired is kept rigorously apart from the first, the tree is traceable to the root, and the root is not traceable to the tree. If a Hindu having ancestral moneys spend them all on the support of his family, and, working independently, makes large extrinsic gains, which he keeps wholly distinct, it would probably be both fair and in accordance with real Hindu law to allow him to treat the latter as his self-acquisitions. But if he mixes his

gains with his ancestral moneys, he cannot afterwards, I apprehend, be allowed to separate them by a mere account. Thus we will suppose that a Hindu has Rs. 500 a month ancestral moneys and earns Rs. 50 a day which he brings home day by day, and spends on the family necessities, reimbursing himself at the end of the month out of the rents or moneys. There will now be a constant fusion between the two sources of supply, as in my illustration of the cistern filled from the two taps. At the end of ten years, arithmetic will tell us that he has spent Rs. 60,000 on the family expenses (at the rate of Rs. 500 a month) and that he has earned Rs. 1,80,000 at the rate of Rs. 1,500 a month, but I doubt whether the principle of the Hindu law would authorize that simple method of separation, and subsequent ascription of the character of self-acquired to the Rs. 1,80,000, and ancestral to the Rs. 60,000. It might be said that if the man had had no ancestral money at all he would still have been worth Rs. 1,20,000 of his own. But that does not follow. Subtracting the assured income might from the first have crippled the man's earning power, caused him to lay by for the future, prevented his speculations, and modified the result in numerous ways. But while it may be urged that such considerations are fanciful, they seem to me necessarily to flow from the basic principle which is not fanciful at all, what I may call the infective power of joint ancestral funds. If I am right in saying that the general rule is that as soon as these are mixed promiscuously, with other moneys, and no separate accounts kept the former colour the latter, then however repugnant enforcing such a principle may be to our western notions of individualism, and the right of every man to the fruit of his own labour, the Courts ought I think consistently to enforce it.

14. It may be noted here that up to the death of Jamnabai, in 1870, she recovered all the rents of the ancestral properties, and applied them to the needs of the joint family. Thus it would be more correct to say that Chabildas only recovered his share of these rents, personally, after the death of his mother. But as a member of the joint family indirectly he recovered them from 1866. The family were then all living together. Exhibit N is a statement put in by Chabildas showing what he recovered from the ancestral properties from 1869 to 1889. He also says that he has made out an account of what he recovered from the same properties from 1866 which looks as though he meant that he did receive the rents from 1866 indirectly. In 1877 he bought the Nepean Sea Road property.

15. But these details are not really very material. The point is that at any rate since the death of Jamnabai, Chabildas was receiving his share of the rents of the ancestral properties. If we exclude the period between 1866 and 1870, then we must admit that Chabildas bought the Nal Bazaar property at any rate out of his own money. And unless the proceeds of that were infected along with all the rest of his earnings by being subsequently mixed with the rents of the ancestral houses, all that could be positively ascribed to that property, as increments etc. would be also his own self-acquisition. But as to that it is enough to say that the corpus of that property is now represented by portions, of the Salsette villages which are not within this Court's jurisdiction. It is immaterial, therefore, to pursue that topic further. The properties now chiefly in dispute are the Nepean Sea Road property, bought on 24th August 187.7 for Rs. 61,000. The Duncan Road property bought on 7th December 1882 for Rs. 7,200. Bhandare Street property bought on 13th February 1883 for Rs. 8,000. Bhandare Street property No. 4 bought on 5th July 1883 for Rs. 7,000. (The Salsette property outside the jurisdiction). Maharani Ice Company Factory bought on 11th January 1895 for Rs. 46,000. Jagjivan Kika Street property bought on 25th August 1881 for Rs. 7,500. The general argument about all these properties is that they are

bought out of moneys at Mackintosh's or the Bank, and, therefore, not out of the moneys coming in from the ancestral houses which were all credited and expended in the household books.

16. Before examining the books Mr. Inverarity lays down propositions of law as follows:

1. It is not the law that when two distinct funds are mixed together they cannot be separated.

Upon that I will only observe that the ambiguity lies in the use of the word distinct.

2. It is not the law that when you have a mixed fund, payments out of it are to be debited to the earliest credits in accordance with the rule in Clayton's case 1. Mer. 572.

On which I have to observe that this has nothing to do with present enquiry.

3. It is not the law that when two funds are mixed the whole fund belongs to the individual, who has an interest in one fund and not in the other, and who has not mixed them.

Of course if that is so, waiving the involved and obscure form in which it is expressed, the case would be very easy to decide.

4. A mixed fund can always be separated into its component parts, and the proper allocation of expenditure made to the separate component parts, as long as the means of doing so are available.

This is Halletts case (1879) 13 Ch. D. 696 And I have already commented upon what I conceive to be the irrelevance both of the case and the rule.

5. The foregoing proposition is correct even when the accounts have been originally kept so as not to allocate the expenditure, that is the mixed fund is credited on the one side and the expenditure is debited on the other.

17. Doubtless if these propositions negative and affirmative are correct the plaintiff would have no trouble in proving his case. Because all that is in controversy is assumed in one or the other of the propositions. I am not prepared to admit that singly or collectively they are correct, or even approximately correct.

18. Three authorities are cited, (1) In re Hallett (1879) 13 Ch. D. 696 which is neither parallel nor analogous, and is completely useless. (2) The decision, of Sargent, C. J., and Farran, J., which as I have said must be strictly confined to its own facts. (3) In re Oativay (1903) 2 Ch. 856 : 72 L.J. Ch. 575 : 88 L.T. 622 which is excellent law in England but is in no sense an informing authority on Hindu law.

19. On the other hand there is Lal Bahadur v. Kanhaiya Lal 34 I.A. 65 : 29 A. 244 : 11 C.W.N. 417 : 5 C.L.J. 340 : 4 A.L.J. 227 : 2 M. L.T. 147 : 17 M.L.J. 228 Bom. L.R. 597 Plaintiff objects that this case lays down no principle, and is, therefore, no authority outside its own facts. The same might be said of a great many cases on the Hindu law which are accepted as authorities. But at any rate this case does recognize the

principle I repeatedly insist upon, that where there is an indiscriminate blending of ancestral with self-acquired properties, what is purchased out of the aggregate result is ancestral. It is true that the position there was complicated by the fact that not only did the father indiscriminately blend his own self-acquisitions with ancestral moneys, but his sons were earning money too, and this was all thrown into the common fund. In such circumstances I apprehend there could be no serious doubt but that the whole fund would receive the character of joint ancestral family property. Here, however, it is not pretended that Ramdas or Karsondas were at this time earning anything or that at any subsequent period they made any contributions to the funds in Chabildas's hands. Here the difficulty is restricted to 'the blending by Chabildas of the exiguous rents which he was receiving from his ancestral houses, with the very large sums he was earning for himself. Now let us see what the accounts show. Plaintiff's account with the Bank begins in 1872 when he had only the Nal Bazaar property. Up to 1870 his mother was receiving the rents of the houses. It does not appear that after 1872 Chabildas paid any of the rents he recovered from the ancestral or other properties (except occasionally when the rent of his Nepean Sea Road house was paid him by cheque) into the Bank.

20. His books begin in April 1877 which was about the time that he bought the Nepean Sea Road property. Between 1870-1877 the only income that Chabildas had (except what he made as a freight broker), was derived from the Nal Bazaar property and the ancestral houses. The rents from the ancestral property for the years 1870-1877 amount in all to Rs. 7,102 odd. They vary greatly in different years, but at no time exceeded Rs. 200 a month. (See A. 95.) There are no means of ascertaining the household expenditure before. 1877, but in that year it can be computed to have been about Rs. 640 a month. Plaintiff makes a calculation which appears to me fair enough to show what the Nal Bazaar property yielded during this period. The figure is Rs. 30,919, which with the ancestral rents comes to Rs. 38,028, or less than his calculated expenditure on household expenses during the same period. Follows then the conclusion, as the plaintiff contends, that the Nepean Sea Road property could not have been bought out of ancestral funds. I attach not the slightest importance to Ramdas's evidence about the way in which Chabildas used to take the rents to the office etc.

21. With the purchase of the Nepean Sea Road property a new period may be said to start. Henceforward we have Chabildas's accounts, and apparently all the moneys that came in from the ancestral properties, from the rents of the Nal Bazaar property, and later from the Nepean Sea Road and other properties can be satisfactorily traced. If the Nepean Sea Road property is not ancestral, it will follow that no part of Chabildas's money in the Bank was (directly) ancestral either. Beoause all that he got from his ancestral rents is shown in his house books, and more was spent then he recovered. I am assuming here that the plaintiff is entitled to keep the sources of his mixed fund separate. Whether he can or not, is yet to be enquired into, with special reference to the rather peculiar circumstances of this particular case. Obviously if he can keep the ancestral rents apart, then he could not have bought the Nepean Sea Road property out of them, because they only amounted to Rs. 7,000 odd. And as I have said, since he bought the Nal Bazaar property before his mother's death, and while she was taking all the ancestral rents for the use of the family, he must be taken to have bought that out of his Rs. 15,000 and what accretions there were to it. I have said that was, in my opinion, his own money. Unless then all that can be tainted with the character of joint ancestral from the mere fact that Chabildas was between 1866 and 1870 living with his mother and brothers and so enjoying the benefit of being

kept at the expense of the family income, it follows that he bought the Nal Bazaar property out of his own self-acquisitions, and all the rents he got from it would likewise be his self-acquisitions. Again, then, unless these rents are blent with the rents amounting in all to about Rs. 7,000 which he recovered from the ancestral properties between 1870-1877 it would follow that they and his other outside earnings must have constituted the fund out of which he bought the Nepean Sea Road property. And then that too would be his own self-acquired property.

22. I think I may here give an indication why, while I have so strongly repudiated the introduction of English authority like Hallett's case (3), I am pursuing a line which seems to accept its principle, and in fact separating the component parts of what is clearly a mixed fund. The needs of an expanding commercial community evidently make it desirable that in cases like this, this should be done, and possibly it may be rightly done without violating the principle of the Hindu law. I suggest a distinction, not a merely fanciful, but a real distinction, between cases of which, to use the old figure, the ancestral element in the mixed fund is the root, and cases in which it is merely a later accretion; or, to change the metaphor, where it is not the source but merely a tributary of the main stream. Such a distinction did not occur to the plaintiff who was satisfied with the extremely imperfect analogies presented by the English cases. But unless I can find a better ground of principle upon which to rest an exception to the general rule, I certainly should not derive any assistance from such cases. Changing the metaphor, calling the ancestral element a tributary to the main stream, and no longer its source throws light on the real reason why the Hindu law might in the former treat the aggregate differently from the manner in which it would treat it in the latter case. Metaphors of that kind cannot be exact, and the ingenious objector would surely say that once the tributary had effected a junction with the main stream its waters would be as indistinguishable below the point of junction, as the waters of the source from the beginning had been indistinguishable from the whole body of the river. Conceded. There the metaphor is defective. But if we return to the root of the tree, and distinguish that, as imparting its life to the whole, from a later grafted branch, we may get a clearer idea of what I have in mind. For it does appear to me that there might be a real distinction between what is a fixed recurring contribution coming in to a man, who before it ever came in at all had made a much larger income of his own, and what was the foundation and beginning of his whole fortune. Thus if in fact Chabildas had got well on the way to wealth and independence before 1870 when for the first time he began to receive the comparatively insignificant rents of the ancestral properties; if his Nal Bazaar house and his Nepean Sea Road house where purchased with moneys which he had earned quite independently of those rents, the former indeed before he had recovered a penny of them, then I think it is possible, that as long as the amount of those rents is clearly ascertainable and can be exhausted with absolute certainty, leaving the bulk of the fortune untouched, that some such principle as the plaintiff has been vaguely groping after, may very well come into view. Mark, if the origin of Chabildas's independent fortune had been ancestral property, I do not see how he could have escaped the operation of what I understand to be the well-settled and clear principle of the Hindu law. I am suggesting that where that is not so, where after a man has already made much money, he comes in for a small addition of a fixed and ascertainable character, which is ancestral, and where he can account for the expenditure of it over and over again in maintaining his family, it may lose its infecting character, and deprive his sons of the right to insist that it has coloured all the rest of their father's undoubtedly self-acquired property. I advance this proposition with diffidence, because I am not aware that in any of the numerous cases, any attempt has been made to draw such a

distinction. And the text book writers really afford little assistance. For the most part they string cases together without any adequate attempt to systematize them and extract coherent principles from them. I admit that in the region of Hindu law that would be difficult. But unless we are able to get at clear workable principles of general applicability, our administration of this branch of the law will be constantly exposed to violent and startling innovations.

23. In the present case we have abundant and completely satisfactory materials. We know exactly how Chabildas started. We know that, while he was a member of the joint family, he was its mainstay. We know that he contributed about Rs. 40,000 to its expenses. We know that in 1866, when he and his brothers said they would thenceforth keep their earnings to themselves, he recovered back Rs. 15,000. I take that to have been in the nature of a gift in recognition of the great services he had done. So far I hope I am on sound and intelligible ground. I may be wrong but at least I am clear. And I am not introducing, any new and judge-made complication. The Hindu law always recognized gifts by a father, and though no doubt those would be gifts of his self-acquired property yet I doubt whether, in a case of this kind Hindu lawyers would not extend their sanction to such a gift (virtually of the surplus of his own money) back to Chabildas by consent of all the members of the joint family. After getting this money (which if we are in search of analogies, not too exact, we might liken to the Mohtap share frequently allowed to the eldest son, or to the member of the family who has specially exerted himself to enrich it) we know that Chabildas did not get any of the rents of the ancestral property till 1870, by which time he must have been worth well over half a lac. And when he did get them thenceforward they amounted up to 1877 only to Its. 7,000 or so. Between 1877 and 1888, when these rents were transferred to Ramdas and Karsondas under the release, they amounted in all to about Rs. 42,000 or an average of some Rs. 300 a month. During that time Chabildas was spending about Rs. 1,000 a month on his household expenses. Thus, unless we are to adopt the strictest view of the Hindu law and say that because when the rents began to come in 1870 Chabildas did not keep them entirely distinct from all the rest of his earnings, they infected not only all that followed but all that had gone before, it will be clear that., in common sense, what was left with Chabildas at the date of the release was really his own self-acquired property. That this was so in fact, no one can doubt for a moment. No one can doubt, however much in love he may be with a consistent and neat theory, that if Chabildas had never recovered a penny of these rents he would have owned all the properties he owns to-day, and that he would not have sensibly felt the deprivation of the Rs. 300 a month.

24. If, however, I am wrong in the view I take of the character of the Rs. 15,000 which Chabildas obtained in 1866 the error would vitiate the whole of my reasoning. If that were ancestral property, and I am by no means confident what view a better Hindu lawyer than I might take of it, then I think it would be impossible to attempt to separate the fortune which Chabildas built up on that foundation, from the foundation. I think then that the whole would have to be treated as ancestral.

25. Now as to the release. It is really unnecessary to decide that point, in view of the conclusion I come to, that, in all the circumstances of this case, the properties in Chabildas's hands are and have all along been his self-acquired properties. But in case that conclusion may be wrong, I will say a word or two about the release of 1889. I may at once dismiss the absurd contention that it was procured by undue influence or fraud. Indeed I do not understand that the latter is alleged. Both Ramdas and Karsondas were grown up; both were Barristers and B. As. of Cambridge; hardly

the kind of men to be imposed upon by a shrewd but illiterate old fellow like Chabildas. They made a shockingly bad bargain. But they did it with their eyes open. When I say they made a shockingly bad bargain I mean, of course, that it would have been so, had the rest of Chabildas's property been ancestral, as they now contend, and, as for all I know, it may yet be held to be. Still this was an open question. It was a doubtful claim as the result has shown. And on the whole they may have been prudent to settle it in the way they did. At any rate they got a very substantial certainty. The property which they took under the release was the whole of the ancestral property. It was valuable real estate. For all they knew their father might have speculated and lost all the rest of his money. Speculation is an uncertain game. Unless then the arrangement was so unconscionable that no Court would enforce it is within the ordinary category of a family arrangement. And the Courts always lean strongly in favour of upholding bona fide and reasonably fair family arrangements. Observe too that it has been acted upon for twenty years. Ramdas and Karsondas got the rents. They have been earning money for themselves, not a penny of which have they paid to their father. It is rather late in the day now to tarn round and say that they were imposed upon and defrauded. I do not, think there was any imposition. I think they thought themselves rather clever to have, got such good terms. At any rate effect, if the arrangement is to be supported and I apprehend that it will be supported, is to cut off them and their children from any further participation in Chabildas's property, whether what remains of it is ancestral or self-acquired. In such arrangements sons are bound by their fathers' deed. In Wasantrao Madhorao v. Anandrao Ganpatrao 6 Bom. L.R. 925 it was held that a release by the father did not operate to exclude his son alive at the time. But I think, with the greatest deference to the learned Judges who decided that case, that its decision must be limited to the facts. On general principles I venture to think that a family arrangement of the kind I am here called upon to consider if entered into by the father, would most assuredly bind the sons alive at the time and after-born; and there is nothing in Wasantrao's case which leads me to doubt the general soundness of that conclusion. I have no hesitation whatever in holding that the contemporaneous oral agreement, on which Ramdas and Karsondas rely, is not proved. I am sure there was no such agreement. Very likely Chabildas intimated that he intended in any case to leave them all his property when he died. Very likely he then really did intend to do so. But there is absolutely no proof worth the name of any actual agreement to that effect, and those who have set it up practically abandoned it before the case ended. It, therefore, becomes unnecessary to consider whether assuming there had been such an oral agreement it could have been proved or enforced.

26. There remains only the claim for the ornaments. This as far as Bhanumati is concerned is little suit all by itself. She says that the ornaments belonged to her mother Vijcorebai, and as her stridhan would come to her, Bhanumati, as heir. The sons also claim as heirs of the deceased Vijcorebai. True there are letters in which Chabildas expresses his readiness to hand over the jewels to his sons and daughter, if only they will settle between themselves who is entitled to them. And that admission goes a long way against Chabildas. On the other hand there is the release of 1890 executed by Bhanumati and her husband in respect of these stridhan ornaments, A. 41. It also appears that she and her husband got a pretty valuable house at the very time, probably as consideration for relinquishing their rights to the jewels. As to whether they really were or were not the stridhan of Vijcorebai, it is now comparatively immaterial to enquire. The evidence is, I think, in favour of an affirmative answer to that question, though it is not altogether satisfactory. Still were there nothing to be done but to find on that issue, I should find that the ornaments

were the stridhan of Vijcorebai. Then I take it they would pass to Bhanumati. But as Bhanumati has sold them, for that is what it comes to, to Chabildas they 'become his self-acquired property, just as any other jewels he might have bought.

27. The result is that the plaintiff succeeds. He is entitled to the declaration sought in respect of so much of the property as is within the jurisdiction. He is entitled as against Bhanumati to the ornaments. And the declaration that they are his self-acquiresperty follows as a matter of course.

28. [After giving his findings on the issues, His Lordship proceeded:]

I apportion the costs of this suit as follows for the following reasons:

29. The plaintiff to have his costs from all those defendants who took up a contentious attitude, that is, from Ram Das, his sons, Karsondas and Bhanumati, the costs of the last named to be limited to the claim for ornaments. But the costs of Dwarka Das for and up to the hearing of (4th March 1909) and to-day (14th of June), the date of Judgment, to be paid by plaintiff on the ground that the plaintiff joined him unnecessarily.

30. The minor children of Karsondas and their guardian are liable for the plaintiff's costs and such other costs as are hereby ordered to be borne by parties, who took up contentious attitude, to the extent of Karsondas's estate, as his representatives.

31. In their personal capacity, they are on the same footing as the after-born children of the plaintiff by his second wife. Both these sets of defendants submitted to the Court in all respects, and took up no contentious attitude. The proper order, then, for their costs, is that they be paid by these defendants, that is to say, Ram Das and his children and the estate of Karsondas who adopted a contentious attitude. Their costs to be calculated on the footing that they took up no contentious attitude.

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