(1910) 02 AHC CK 0007

Allahabad High Court

Case No: None

Durga Dutt Joshi		APPELLANT
	Vs	
Ganesh Dutt Joshi and Another		RESPONDENT

Date of Decision: Feb. 5, 1910

Citation: 5 Ind. Cas. 400

Hon'ble Judges: John Stanley, C.J; Banerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal arises out of a suit for partition and the facts shortly are these. Ganesh Dutt, one of the plaintiffs, is the son of one Pandit Baldeo dutt Joshi, deceased; and the other plaintiff, Kashi dutt, is his son. The defendant, Durga dutt, is the brother of Ganesh dutt. Baldeo dutt died about 26 years ago, leaving his wife and two sons him surviving. Ganesh dutt was at this time about 25 years of age, while Durga dutt was a lad of about 7 years. Ganesh dutt devoted himself to the study of astrology, and with a view to uninterrupted study he in the life-time of his father withdrew to and lived in seclution in a garden house of the Maharaja of Dumraon, leaving his mother, his wife and his brother, in the ancestral house of the family. After his father''s death, he lived for several years in the same garden house but some years ago he built a new house and has been living in that house apart from the other members of the family ever since. Ganesh dutt became a distinguished astrologer and attracted the attention of noteable Indian gentlemen, amongst others, Their Highnesses the Maharajas of Benares and Vizianagram and the Raja of Sarguja and others. For his services to his clients as an astrologer, he received considerable sums of money which were invested in various ways. The ancestral property of the family has never been partitioned, and the suit out of which this appeal has arisen was instituted by Ganesh dutt and his son for partition of that property. The property so sought to be partitioned included a sum of Rs.

5,530 deposited by Baldeo dutt in the kothi of Babu Sita Ram Kesho Ram and also a sum of Rs. 940 in deposit in the same kothi, alleged to represent money deposited by Ganesh dutt on account of income of the village of Kodupur. The defendant in his written statement alleged that the money deposited in the kothi of Babu Sita Ram Kesho Ram did not belong to Baldeo dutt but formed part of the estate of his mother, and that she, before her death, made an oral Will and thereby gave the money in question to the defendant''s wife and gave ornaments, equal in value, to the sum so deposited to the wife of Ganesh dutt. He further alleged that Ganesh dutt and he were not separate in food but that on the contrary up to the month of Bhadon, Sambat 1964, he and the plaintiff remained joint: and the business carried on by them was carried on as a joint family business, Ganesh dutt doing all the work as Manager of the family. He claimed that the moneys received by Ganesh dutt as a return for his services as astrologer and the property acquired with such moneys, foimett joint family property and should be brought into hotch pot in the partition sought to be effected. In a schedule to the written statement a large quantity of property is specified which the defendant alleges formed part of the joint family property.

2. The Court below held that the sum deposited in the kothi of Babu Sita Ram Kesho Ram was ancestral property and that the defendant''s allegation that it was his mother''s stridhan was without founduttion. It also held that no Will was made by the defendant''s mother as alleged, and that the allegation that the defendant''s mother gave the money in deposit to the defendant''s wife and jewellery to Ganesh dutt''s wife was a made-up story. It also held that the old ancestral house and the profits of the alluvion lands, deposited with Sita Ram and Kesho Ram, were partible as joint family property; As to the properties claimed by the defendant to be ancestral, the Court below held that, as to some of them, they never existed, and as to those that existed they were acquired after the death of Baldeo dutt by the plaintiff, Ganesh dutt, alone. As to-this last mentioned property, the Court found that it was acquired by Ganesh dutt by his own intellectual exertions and as the reward of his services as an astrologer. It held that it was fully established beyond possibility of contradiction that Ganesh dutt did not have in his possession any of the ancestral properties, nor their income, nor the profits of them. That the principal of the money deposited with Sita Ram Kesho Ram was still on deposit and the interest was from time to time taken and appropriated by the defendant and his mother and plaintiff never touched it. The Court below further found that as to three houses, which the defendant claimed to be joint family property, they were acquired by Ganesh dutt after the death of his father and that he paid the consideration for them out of his own earnings and that the defendant had no right to claim any share in those houses. A decree for partition was accordingly given for the property found to be joint ancestral property.

3. The defendant has preferred this appeal and the main grounds of appeal relied upon before us are that the family was a joint family up to Bhadon, Sambat 1964,

and that all acquisitions made by Ganesh dutt formed part of the joint family property, that there was a nucleus of family property, and with its aid, it should be held, the disputed properties representing the earnings of Ganesh dutt were acquired.

4. The learned Advocate for the appellant has laid before us the evidence bearing upon the disputed facts in the case and we have listened to his arguments with attention. The conclusion at which we have arrived is that the learned Subordinate Judge rightly decided the questions of fact raised in the issues. As to the alleged oral Will of the widow of Baldeo dutt, the defendant has wholly failed to prove it. There is likewise no evidence to satisfy us that the widow of Baldeo dutt gave any jewellery to the plaintiff''s wife. We are also satisfied as to the correctness of the findings in regard to the items of property which in the opinion of the learned Subordinate Judge, were not shown to be in existence.

5. It only remains to consider the arguments which have been advanced in regard to the property which has been found to be the separate and self-acquired property of the plaintiff and, therefore, not liable to partition. The appellant''s allegation is that all acquisitions of Ganesh dutt made whilst the family remained joint, formed joint property of all the members of the family, and as such is partible. As to the manner in which these acquisitions were made we think that the testimony of the plaintiff is altogether reliable. He deposed that at the time of his father''s death he was 27 years of age, whilst his brother Durga dutt was only 6 years old, that he had been living jointly with his father up to the time of his death ; and that his father used to supply him with food and clothing but that as he worked as an astrologer he used to live apart in the Dumraonwala garden, so that no body might interfere with his work; that he deposited in the kothi of Babu Sita Ram Kesho Ram whatever he earned and did not give the same to his father; that his father gave him his education and that whatever knowledge he had, was acquired from his father, that the agreement between him and his father was that he should not take any share in his father''s income and should not give any of his income to his father; that his mother and Durga dutt continued to live in the old ancestral house, and that his father at the time of his death had Rs. 5,530 in deposit in his name in the kothi of Babu Sita Ram; and that he, the witness, had about Rs. 6,000 deposited in his own name in the same kothi; that after his father''s death his mother and Durga dutt were maintained out of the money of Baldeo dutt deposited in the Kothi of Babu Sita Ram and that he, the plaintiff, did not support his mother or Durga dutt, or furnish them with funds; that he purchased a house at an auction sale about 24 years ago and subsequently rebuilt it, and after the building was completed he lived in it; that his father supported his wife as long as he lived, that after his death she went to her patent''s house in the Alwar State until the house which he had purchased was ready for her use, and that since then she has been living with him in that house. He further stated that any property which was left by his father was in the possession of the defendant. Then he deposed to the building of a house

described. as No. 73 with his own money and also to the purchase of a house bearing the No. 72 in the name of his son, and another house bearing the No. 107 in his own name, He also stated that he had in deposit with the Bank of Bengal a sum of Rs. 7,000 also a sum of Rs. 6,000on deposit with Babu Norendra Bahadur, and a sum of Rs. 2,000 lent to one Babu Chunnu Lal; that these and other moneys to which he refers, the details of which it is unnecessary to give, exclusively belonged to him and represented his earnings. The defendant never, he said, gave him any help in his work as astrologer, nor did he help him in any way in connection with the houses which he built, and the land which was granted to him by the Maharaja of Benares, was granted to him personally. It is apparent from the evidence that the plaintiff acquired the confidence of the public as an astrologer and by his unaided efforts was able to amass a considerable sum of money representing his exclusive earnings. It is also clear that this money was obtained without detriment to the family property. The plaintiff, as he says, no doubt, obtained his elementary education in astrology from his father but no money of the family was expended in that education.

6. On the question as to what are self-acquisitions, Manu lays down the general rule that "what a brother has acquired by labour or skill, without using the patrimony, he shall not give up without his assent, for it was gained by his own exertion" (Manu, 9, Clauses 206 to 209). In the Mitakshara the following rule is laid down: "whatever else is acquired by the co-parcener himself without detriment to the father''s estate, as a present from a friend, or a gift at nuptials, does not appertain to the heirs" (Chap. I Section 4, Clause 118). This rule is explained by Yajnavalkya to mean that the phrase "anything acquired by himself without detriment to the father''s estate" must be everywhere understood and it is thus connected with each member of the sentence, namely "what is obtained from a friend without detriment to the paternal estate; what is received in marriage without waste of the patrimony; what is redeemed of the hereditary estate without expenditure of ancestral property; what is gained by science without use of the father''s goods." The learned advocate for the appellant relied upon the definition given by Catyayana of wealth which is not participable, gained by learning thus: "Wealth gained through science which was acquired from a stranger while receiving a foreign maintenance is termed acquisition through learning," and has contended that inasmuch as the plaintiff Ganesh dutt did not acquire his knowledge of astrology from a stranger while receiving a foreign maintenance but from his father, his earnings as an astrologer could not be regarded as acquired without detriment to his father''s estate. He also contended that the learning which the plaintiff received from his father had a money value, and that this fact must be taken into account. We are not prepared to hold that the definition of "wealth which is not participable" given by Catyayana is exhaustive. It appears to us to be illustrative merely. Mr. Ghose in his work on the principles of Hindu Law, dealing with the rules laid down by Manu, Narada, Vishnu, Catyayana, and Yajnavalkaya, also mentions the definition of Catyayana and passes this

comment upon it: "He defined gains of science" as what is gained by one educated whilst supported by a stranger.'' He probably meant to emphasise the rule of Narada but he says nothing about it. He only says that in the case of a person trained in arms by his father or brothers, the gains of his valour are divisible among the family according to Virhespati. In the test of Catyayana, on the subject, we find him quoting authority for his positions. Unfortunately we do not possess the texts which were probably before him. Later on he says "From the above it is tolerably clear that the rule of Manu as modified by Narada agreeing as it does with that of Vishnu as Gautama and Yajnavalkya is the law governing self-acquisitions including gains of learning and that it is a simple rule consonant with reasoning and natural justice." (II Edn. pp. 520, 521, 522). At the age of 14 the plaintiff left his father''s house and from the evidence we gather that any education which he received from his father was such elementary education as a boy of tender years could imbibe. In regard to advanced education in the science of astrology he was a self-taught man. In the case of Lachmin Knar v. Debi Prasad 20 A. 435, the facts were these: three brothers Ram Narain, Sheo Narain and Jai Narain, whose ancestral home was at Bilar in the Cawnpore district, went out into the world* and obtained employment in the Commissariat Department and in the course of time each acquired considerable wealth. They were not shown to have had any assistance from the joint family funds except in their support in early years and rudimentary education. It was not shown that any money was raised on the ancestral house to start any of them in life. They did not work jointly and no one of them was shown to have had any concern with the savings and accumulations of the other brothers. The question before the Court was whether the savings and accumulations of one of the brothers formed joint family property, and it was contended in support of the affirmative that Sheo Narain was educated when a boy at the family expense, and that, therefore, his subsequent earnings and accumulations should be treated as joint family property. Burkitt and Dillon, JJ., repelled this contention and referred to the observations of their Lordships of the Privy Council in Pauliem Valoo Chetty v. Pauliem Sooryah Chetty in the course of which a similar contention was stated to be "a somewhat startling proposition of law." They held that the fruits of an ordinary-elementary education, could not be regarded as the gains of science, acquired at the expense of ancestral wealth.

7. In view of the fact that no portion of the joint family property, be it principal or interest, was spent upon the plaintiff''s education and that he lived separate and apart from the family and acquired his skill in astrology by his own unaided efforts, we are of opinion that his earnings cannot properly be regarded as belonging to the joint family. The joint estate suffered no detriment by the education given to the plaintiff by his father, and it would, we think, be unduly extending the rule laid down by Hindu Law-givers, if we were to hold that the earnings of the plaintiff as an astrologer under the circumstances of this case, are partible amongst the members of the family. We think that the view of the Court below upon this question is correct

and we dismiss the appeal with costs including fees in this Court on the higher scale.