

**(1956) 01 BOM CK 0015**

**Bombay High Court**

**Case No:** A.F.O.D. No. 51 of 1954

Manilal Narsinhadas and Others

APPELLANT

Vs

Bai Sushila

RESPONDENT

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**Date of Decision:** Jan. 31, 1956

**Citation:** AIR 1956 Bom 402

**Hon'ble Judges:** Vyas, J; Chainani, J

**Bench:** Division Bench

**Advocate:** S.M. Shah and K.T. Pathak, for the Appellant; Kantilal, of Kantilal and Co., for the Respondent

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### **Judgement**

Chainani, J.

This Is an appeal by the original defendants. The plaintiff has filed cross-objections. The plaintiff's husband Mafatlal was the son of defendant 1 and brother of defendant 2. Defendant 3 is the son of defendant 2, The plaintiff was married to Mafatlal on 3-1-1951. Unfortunately for her, Mafatlal died in the following year on 17-8-1942. At that time Mafatlal was 24 years old. On 1,-10-1942, the plaintiff left defendant 1's house and went to reside with her mother.

In January 1952, she gave a notice to the de-fendants claiming maintenance. Her claim was repudiated by the defendants. On 15-4-1952, the plaintiff filed the present suit. She alleged in the plaint that, at the time when her husband expired, he was joint along with the defendants 1 and 2, that the family had a joint family business of building contractors and that the defendants had acquired extensive properties from the income of this business.

She claimed Rs. 70/- per month for her maintenance and Rs. 25/- per month for her residence. She also claimed Rs. 10,830/- on account of arrears of maintenance. Subsequently by an amendment of the plaint, the plaintiff asked for partition and separate possession of her share in the joint family properties. That claim was subsequently not pressed.

The suit was resisted by the defendants. They denied that there was any joint family business. It was also contended that defendants 1 and 2 were separate and that the various properties alleged by the plaintiff to be joint family properties were self-acquired properties of the defendants.

The learned trial Judge held that the plaintiff's husband was joint with the defendants at the time of his death, that the business done by the defendants was a joint family business and that the property mentioned in para 14 of the plaint i.e., a bungalow, on which the plaintiff had asked for a charge being placed for the amount decreed in her favour, was joint family property.

The learned Judge did not regard the plaintiff's claim for Rs. 70/- per month as unreasonable, but having regard to the fact that she was working as a teacher on a salary of Rs. 125/- per month, he allowed her maintenance at Rs. 50/-per month. He also asked the defendants to pay her Rs. 16/- per month for residence.

For arrears of maintenance, the learned Judge granted the plaintiff Rs. 3,000/-, which amount she had borrowed for the purpose of maintaining herself. He also placed a charge on the bungalow belonging to the defendants. From this decree, the defendants have come in appeal and the plaintiff has filed cross-objections. It has been urged by Mr. Shah on behalf of the defendants that they are not liable to maintain the plaintiff and the family does not possess any joint family properties.

The case of the defendants as would appear from their evidence, is that defendant 1's father was a railway contractor. Defendant 1 separated from his father in 1920. After doing some business in partnership with his brothers, defendant 1 separated and started a shop which he conducted till 1928. He suffered a loss in that business.

He had several creditors, whose claims he settled at the rate of four annas per rupee. Exhibit 54 is the composition deed executed on 3-10-1928 by defendant 1 on behalf of himself and his two minor sons. In order to pay off his creditors, defendant 1 sold the ancestral properties which had fallen to his share, by two documents. Ex. 56 executed on 10-12-1929 and Ex. 102 executed on 15-4-1932.

The first of these documents was executed by both the defendants 1 and 2. Defendant 1 executed it on behalf of himself and his minor son Mafatlal, the husband of the plaintiff. In 1930-31 defendant 1 took up service. He continued to serve till 1932 when he started his own contractor's business. In 1936, he purchased a plot, on which the bungalow mentioned in the plaint stands, for Rs. 5,800/-.

The bungalow was built in 1939 at a cost of about Rs. 12,000/-. In 1940, defendant 2 separated from defendant 1 and started living separately but in the same bungalow, in 1942, defendant 1 started a separate contractor's business. He took labour contracts of the value of above Rs. 50,000 to Rs. 60,000/-. The value of the work done by him in these contracts was about Rs. 3 lakhs.

The plain tiff's husband passed his B.sc., examination in 1941 and thereafter he kept terms for L.L.B. examination. He was therefore a law student when he died in August 1943. In 1949, defendant 1 and defendant 2 entered into a partnership for doing business of building contractors. Exhibit 115 is the partnership deed which was executed on 10-8-1949. It mentions that the partnership had commenced on 1-4-1949.

2. Defendants 1 and 2 have made several statements, which show that they do not have much regard for truth. For instance, defendant 1 has stated that in 1931-32, he was working on a pay of Rs. 50/- per month, that out of this he had to pay Rs. 15/- for rent and that from the remaining amount of Rs. 35/-. he used to maintain himself, his wife and his three sons, one of whom was married.

He has also stated that his eldest son, defendant 2, was also in service at that time; but that he used to keep his pay with himself separately. This statement is difficult to believe. As the income of defendant 1 was then only about Rs. 50/- per month, it is not likely that his eldest son, who was also in service, did not help his father in maintaining the family, consisting of 6 persons.

3. The defendants' case is that defendant 2 started a separate business in 1942. Defendant 2 was then about 30 years old and it is difficult to believe that from the small salary which he used to receive when he was in service, he was able to save so much as to be able to provide capital for contracts, the value of the work done in which was about Rs. 3 lakhs. Defendant 2 was also asked how much he had invested in this business and he stated that he had no idea about it.

If it was his exclusive business, he certainly would have known about the investment he had made in his business. His inability to give any information on this point, as well as the fact that he was then in all probability not in a position to provide sufficient capital for taking and carrying out large contracts, suggest that the business done by him in 1942 was the Joint family business of both the defendants 1 and 2.

4. Both the defendants have deposed that the building contract business started by defendant 1 in or about 1932 and continued by him till about 1949, when he entered into a partnership with defendant 2 was the separate business of defendant 1. Defendant 1 at first stated in his evidence that the plaintiff's husband had never helped him in this business.

Later on, however, he admitted that the plaintiff's husband sometimes accompanied him to the place of work or of the engineers in charge of it and also did some calculations. He also admitted that the plaintiff's husband used to do the correspondence work under his instructions with the Engineers and others.

Defendant 1 has also admitted that defendant 2 helped him in his contract business not only upto 1940, but upto the time he entered into partnership with him and that

defendant 2 did all the work which defendant 1 entrusted to him with regard to contract business.

Defendant No. 3 has also admitted in his evidence that his father had entrusted to him the work of supervising mason work, taking muster roll and preparing bills and that he did this work from 1956 to 1942. It may here be noted that according to defendant 1 defendant No. 2 assisted him in his business till 1949. Defendant 2 has also admitted that he was doing the English correspondence work of his father's contract business since 1931.

He has also stated that he did not receive any remuneration for the work done by him. Defendant 2 was also asked whether, as deposed to by defendant 1, the plaintiff's husband used to assist defendant 1 in his business. In reply to this question, defendant 2 stated that he did not know about it.

This was clearly an evasive answer as defendant 2 must have known all the facts particularly as both the brothers were then living jointly with their father defendant 1. These admissions made by both the defendants show that both the plaintiff's husband and defendant 2 used to assist their father defendant 1 in his business and that they did not receive any remuneration for the work done by them. The business was, therefore, carried on by the joint labour of defendant 1, defendant 2 and the plaintiff's husband. It was, therefore, a joint family business. See [Haridas Narayandas Bhatia Vs. Devkuvarbai Mulji](#) .

5. On behalf of the defendants Mr. Shah has relied upon the decision of the Allahabad High Court in [Kailashi Vs. Shankar and Another](#) , in which it was held that if a business is started by an adult member of the family separately, the mere fact that his sons who are dependent on him and are being maintained by him give him some help in the carrying on of the business would not necessarily make the business cease to be his own business and make it the joint business of himself and his sons, but that the father and the sons may so conduct themselves that from their conduct it may be apparent that the business, which at its start was a separate business of the father, had become the joint business of the father and the sons by some arrangement between them.

We do not think that this decision would assist the defendants. Defendant 2 has stated that he took up service and started earning from about 1929. Thereafter he was not dependent on his father. He and his wife were both staying with defendant No. 1 and in all probability the family must have been maintained not only from the small salary earned by defendant 1, but from the income of both defendant 1 and his eldest son defendant 2. There is also no dispute that the family was joint when defendant 1 started the contract business in 1932.

The admissions made by him and defendant 2 show that the plaintiff's husband also used to work in this business by carrying on correspondence and also by visiting the places of work. Defendant 2 also used to actively assist his father in this

business. As, therefore both the plaintiff's husband and defendant 2 used to actively help their father in carrying on the business, it must be regarded as the joint business of the family.

6. For the reasons which I have already given, the contract business, which was started by defendant 2 in 1942 must also be held to be the joint family business. The plot under the bungalow was purchased and the bungalow was built upon from the profits earned from the contract business. This also must, therefore, be held to be the Joint family property.

7. The same contract business was being carried on till this suit was filed in 1952 It is the case of the defendants that they entered into a partnership in 1949. As there were only two partners, defendant 1 and defendant 2, each partner would be expected to know how much he had invested in the business.

Defendant 2 was questioned on this point and he stated in reply that he had no idea how much he had invested in the partnership with his father or how much his father had invested in that business. His inability to furnish information on this point would suggest that the same business, which was being previously carried on, was continued in and after 1949, though for purposes of Income Tax or for some other purposes a partnership deed was executed in 1949.

8. The learned Judge was, therefore, right In holding that the plaintiff's husband died as a member of the joint family consisting of the plaintiff's husband, defendant 1 and defendant 2, that the business done by defendant 1 and defendant 2 was joint family business both prior to and after 1942 in which year the plaintiff's husband died, and that the suit bungalow was joint family property.

The plaintiff's husband was, therefore, entitled to a share in the properties acquired from the profits of this business. The plaintiff is consequently entitled to receive maintenance and to a provision being made for her residence by the defendants. It has not been urged in appeal that the amounts awarded to her are excessive. The appeal must consequently fail and is dismissed with costs.

9. With regard to cross-objections, the first point which has been urged is that the amount of Rs. 50/- per month for maintenance awarded by the learned Judge, is very low. The Income Tax assessment orders show that in 1946-47 defendant 1's total income was taken to be Rs. 12,643/-. During the same year, defendant 2's income was taken to be Rs. 3,400/-. The total income of the two defendants was, therefore, about Rs. 16,000/-.

The corresponding figures for 1947-48, 1949-50 and 1950-51 are about Rs. 13,900, Rs. 16,000/-and Rs. 34,000/- respectively. These figures show that the income of the two defendants during recent years has substantially increased. In view of this fact, we think that the plaintiff's claim of Rs. 70/- per month which was rather on the low side, should not have been further reduced.

Accordingly we direct that the plaintiff should receive maintenance at the rate of Rs. 70/- per month from the date of the suit. It may here be mentioned that the income derived, by a widow by her own exertions is not ordinarily regarded as a sufficient reason for reducing the amount of maintenance due to her. See "Bai Jaya v. Gan-patram Kalidas" AIR 1941 Bom 305 (B1) .

10. The plaintiff has also claimed Rs. 25/-per month on account of residence. The learned Judge has reduced this to Rs. 16/- per month, as this was the rent of the room in which the plaintiff was residing at the date of the suit. As the defendants were not making any provision for the maintenance of the plaintiff, she had to live with her mother in the premises rented by her.

There is no reason why the plaintiff should be compelled to live with her mother hereafter. The amount of Rs. 25/- per month claimed for purposes of residence is by no means excessive. Accordingly, we modify the decree passed by the lower Court and direct that the defendants should also pay to the plaintiff Rs. 25/- per month from the date of the suit, on account of rent of premises which she might hire for her residence.

11. Mr. Kantilal on behalf of the plaintiff has also urged that the plaintiff should have been awarded arrears from the date on which she left the defendants' house. As pointed out in [Dattatraya Maruti Shanbhag Vs. Laxman Jattappa Shanbhag](#), . Although a widow can be granted maintenance from the date on which she leaves her husband's house, the court has a wide discretion in the matter in regard to the period and the rate at which the arrears of maintenance should be granted.

The learned Judge has in this case granted the plaintiff Rs. 3,000/- on account of arrears of maintenance, as she had stated that she had incurred debts of this amount. We think that the plaintiff should be awarded a much large amount, having regard to the extensive properties possessed by the defendants. Defendant 1's brother has stated that the value of the bungalow, which we have held to be joint family property, is about Rs. 30,000/- to Rs. 35,000/-.

Defendant 1 also possessed share of the value Of about Rs. 30,000/- and ornaments of the value of about Rs. 10,000/-. Each of the defendants also appears to have a separate car. Having regard to these facts, we think that the plaintiff should be granted Rs. 6,000/- on account of arrears of maintenance.

12. The decree passed by the trial Court will therefore, be modified and the plaintiff will be granted a decree for Rs. 6,000/- with interest at 6 per cent, from the date of the suit until the whole amount is paid to her, on account of arrears of maintenance. The plaintiff will also be entitled to receive from the defendants, maintenance at the rate of Rs. 70/- per month from the date of the suit and Rs. 25/- on account of rent of the premises which she might hire for her residence.

The order passed by the learned Judge placing a charge on the bungalow for the amounts awarded to the plaintiff under this decree is confirmed. The plaintiff will be entitled to receive costs of her cross-objections from the defendants.

13. Order accordingly.