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2024 INSC 283

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. ……... of 2024
(@ Special Leave Petition (C) No. 13989 of 2019)

With

Civil Appeal No. ……... of 2024
(@Special Leave Petition (C) No. 15843 of 2019)

Vitthalrao Marotirao Navkhare … Appellant

Versus

Nanibai (Dead), through LRs, and others … Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. The plaintiff in Spl. C.S. No. 286 of 2005 on the file of the learned Civil Judge (Senior Division), Amravati, is the appellant before us. In one appeal, he assails certain findings recorded by a learned Judge of the Nagpur Bench of the Bombay High Court in the judgment dated 24.11.2018 in Second Appeal No. 38 of 2009, arising therefrom. In the

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other appeal, his challenge is to the order dated 22.03.2019 of the very same learned Judge of the Bombay High Court, Nagpur Bench, in Misc. Civil Application (Review) No. 46 of 2019 in Second Appeal No. 38 of 2009.

3. Spl. C.S. No. 286 of 2005 was filed by the appellant for partition and separate possession of the suit schedule properties, which included houses and agricultural lands. Defendant Nos. 1 to 6 in the suit were the widow and progeny of the plaintiff's deceased brother, Laxmanrao Navkhare. Defendant No. 7 was the wife of the plaintiff. Defendant Nos. 1 to 4 filed a counter-claim in the suit seeking a perpetual injunction restraining the plaintiff from obstructing them from carrying on the business. By judgment dated 29.02.2008, the Trial Court decreed the suit in part, holding that the plaintiff was entitled to partition and separate possession of a half-share in the agricultural land in Survey No. 22/1-A at Mouza Shendola, Taluk Teosa, District Amravati. According to the Trial Court, this agricultural land alone was proved to be ancestral property, belonging to the plaintiff and his deceased brother, while the rest of the properties were the self-acquired properties of late Laxmanrao. The Trial Court further held that late Laxmanrao was the sole proprietor of the business concern named 'Gajanan Automobiles' and the plaintiff had no interest therein. The counter-claim of defendant Nos. 1 to 4 was accordingly decreed.

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4. Aggrieved by the judgment of the Trial Court, the plaintiff filed Regular Civil Appeal No. 69 of 2008 before the learned District Judge-III, Amravati. By judgment dated 14.11.2008, the Appellate Court held in favour of the plaintiff on all counts and decreed his suit in its entirety. The plaintiff was held to have a half-share in all the suit properties. The counter-claim of defendant Nos. 1 to 4 was dismissed.

5. Assailing this reversing judgment of the Appellate Court, defendant Nos. 1 to 6 filed Second Appeal No. 38 of 2009 before the Nagpur Bench of the Bombay High Court. The second appeal was dismissed, *vide* judgment dated 24.11.2018. Significantly, the learned Judge observed therein that the conclusion of the Appellate Court that the business was joint from 1991 was not a perverse finding. On the strength of this observation, defendant Nos. 1 to 6 filed a review petition in Misc. Civil Application (Review) No. 46 of 2019 contending that as the garage business started by Laxmanrao was a joint business only from 1991, properties which were acquired prior thereto would not be liable for partition, as such properties could not be treated as joint properties of late Laxmanrao and his brother, the plaintiff. They prayed for modification of the judgment dated 24.11.2018 in Second Appeal No. 38 of 2009 by excluding two plots of land in Survey No. 17/2 at Mouza Saturna and the agricultural lands in Survey Nos. 6/1 and 59/07 at Mouza Nimbura. By order dated

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22.03.2019, the very same learned judge, who had dismissed the second appeal earlier, accepted their plea and held that, while maintaining the decree for partition and separate possession as passed, the properties covered by Exs. 205, 224 and 226 in Survey No. 17/2 at Mouza Saturna and the properties in Survey No. 59/07 at Mouza Nimbora covered by Ex. 316 and the property in Survey No. 6/1 at Mouza Nimbora covered by Ex. 317 were liable to be excluded from partition. The aforestated order dated 22.03.2019 and the observation in the second appeal judgment that the garage business became joint only in the year 1991 are called in question presently before us.

6. Parties shall hereinafter be referred to arrayed in the suit.

7. The case of the plaintiff as set out in his plaint in Spl. C.S. No. 286 of 2005 was as follows: Motiram Marotirao Navkhare was survived by his widow and two sons, namely, Laxmanrao and the plaintiff. At the time of the death of their father, Laxmanrao and the plaintiff were of tender age. Thereafter, Laxmanrao and the plaintiff came to constitute a Joint Hindu Family, of which Laxmanrao was the Karta (Manager). After their marriages, the brothers lived together along with their mother and other family members. The joint family started an Auto Garage business, named 'Gajanan Automobiles' and 'Trimurti Auto Garage' at Badnera Road, Amravati. The suit properties were purchased from the income of this joint

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family business. Some of the properties were bought in different names, including the names of defendant Nos. 2 and 7. According to the plaintiff, the property on which the garage business was running at that point of time was also purchased by them jointly though the sale deeds stood in the names of late Laxmanrao, the plaintiff and defendant No. 2 respectively. The joint family business was started in the year 1962 and continued as such since then. The three-phase electric meter connection for the garage business, set up in the three plots of land, stood in the plaintiff's name as did the municipal tax assessment on the file of Amravati Municipal Corporation. Laxmanrao expired on 15.11.2004 and prior to that, their mother also passed away. Thereafter, owing to a change in the behaviour of defendant Nos. 1 to 6, as evidenced by the mutation carried out in their own names against the joint family properties, the plaintiff addressed legal notice dated 16.08.2005 calling upon them to partition all the properties mentioned therein. The defendants, however, contested the plaintiff's claim and in their reply legal notices dated 31.08.2005 and 03.09.2005, they claimed that only one item of the garage property stood in the name of the plaintiff and none of the other properties were liable to be partitioned.

8. It would be appropriate at this stage to note the contents of the plaintiff's legal notice and the response of defendant Nos. 1 to 6 in their reply notices. In his notice dated 16.08.2005, the plaintiff stated that his

father, Motiram Marotirao Navkhare, owned ancestral agricultural land admeasuring 5 acres. After his death, the family relied upon the father's brother, Narayanrao Navkhare. In due course of time, Laxmanrao and, thereafter, the plaintiff started working in a motor garage. Eventually, they took over the garage on rental basis and started a joint garage business in the year 1962. They remained joint during the life time of late Laxmanrao and expanded the garage business by establishing it on their own lands under the name and style of Gajanan Automobiles and Trimurti Auto Garage. The three-phase electric meter at the garage stood in the name of the plaintiff as did the tax assessment in relation thereto on the file of the Municipal Corporation, Amravati. After the death of Laxmanrao, which was preceded by their mother's death, the plaintiff noticed a change in the attitude of defendant Nos. 1 to 6, as was evident from the mutations gotten effected by them in relation to the joint properties, leading to the plaintiff's demand for a partition which failed to evoke a positive response. The plaintiff accordingly called upon defendants to partition the notice-scheduled properties and deliver his half-share therein.

9. By way of their reply legal notice dated 31.08.2005, defendant Nos. 1 to 4 stated as follows: Late Laxmanrao, by the dint of his own hard work, built up the garage business by taking a site on rent at Badnera Road, Amravati, from one Shri Tapar in the year 1964. The garage

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business was being run under the name and style of Gajanan Automobiles. Laxmanrao was the sole proprietor of this business and the plaintiff, who was also a motor mechanic, worked in the said garage on weekly wages. Shri Tapar filed an eviction suit in relation to the leased land and Laxmanrao purchased separate land, under three separate sale deeds in three names. One, in his own name, one in the name of the plaintiff and the last in the name of his son, defendant No. 2. It was further stated that the plaintiff got separated in respect of the business establishment after Diwali, 2003, and continued with his own separate establishment in the plot of land purchased in his name, with no concern with the rest of the business and the properties of late Laxmanrao. According to defendant Nos. 1 to 4, "mere joint venture or residence under one roof till 1975 was not by itself any type of source or nucleus to connect them into a Joint Hindu Family or Hindu Undivided Family as there were no funds, source or property to hold as joint family or ancestral family property". They denied that Laxmanrao ever acted as the Karta or Manager of the Joint Hindu Family. According to them, Laxmanrao's branch, represented by Ashok and another son, was running the garage business independently as the plaintiff got separated from January, 2003. They reiterated that even during Laxmanrao's life time, the plaintiff got separated in all respects and denied the plaintiff's claim for partition and separate possession. In their reply notice dated 03.09.2005,

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defendant Nos. 1 to 4 stated that some recitals in the earlier notice required correction and they adverted to the corrections that they wished to make. According to them, the plaintiff got separated after Diwali, 2003, and not in January, 2003, as was mentioned in certain paragraphs of the earlier notice.

10. Surprisingly, in their written statement, defendant Nos. 1 to 4 adopted a different stand. They stated therein that, after their father's death, Laxmanrao and the plaintiff, who were of tender age, were brought to Amravati by their uncle. They asserted that, in the absence of any nucleus of joint family property, late Laxmanrao could not have become the Karta or Manager. The two establishments, viz., Gajanan Automobiles and Trimurti Auto Garage, were stated to be of recent origin, having been set up in the year 1991 on three different plots which stood in three individual names and, therefore, it could not be said to be a joint family business. They asserted that there was never any nucleus which could support the contention of the plaintiff with regard to purchase of joint family properties and the labour work and automobile repairs undertaken separately by Laxmanrao and the plaintiff could not be equated to formation of a Joint Hindu Family or change what was separate property into joint property. They pointed out that the present garage establishment was in three different plots. The property at Sl. No. 1(i) of the suit schedule, being the

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middle portion, stood in the name of the plaintiff and it had the structure, while the western side portion which was bought in the name of defendant No. 2 had machinery, equipment and the servicing facility. They claimed that as the middle portion stood in the name of the plaintiff and was constructed upon, the electricity meter and water connection were taken in his name. They asserted that the garage business was not an old business and was of recent origin, having been established in 1991 under the name and style of Gajanan Automobiles and Trimurti Auto Garage. They, however, admitted that Laxmanrao had initially worked at motor garages and then took land on rent at Badnera Road, Amravati, from Shri Tapar and started his own exclusive establishment. They claimed that the other suit schedule properties were purchased by late Laxmanrao independently and that the plaintiff had no interest or right in the same. They raised a counter-claim for a permanent injunction restraining the plaintiff from obstructing them from carrying on the garage business or interfering with their possession. In that context, they also referred to the fact that late Laxmanrao had filed an affidavit in Regular Civil Suit No. 127 of 2002, which was filed by the plaintiff’s son in relation to his marriage proposal. According to them, as that suit was filed for damages for defamation, it was necessary for the plaintiff’s son to show his status and, therefore, late Laxmanrao had stated in his affidavit that there was a joint family business

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named Gajanan Automobiles. They asserted that the said statement could not be taken to be an admission by late Laxmanrao for the purposes of this suit as it had been made only to help the plaintiff's son. They, therefore, contented that the said affidavit could not be relied upon in the context of the present suit.

11. Upon consideration of the aforestated pleadings, the Trial Court framed the following issues.

> '1. Whether the suit property shown in schedule is joint family property of plaintiff and defendants and purchased out of joint family business?
> 2. Whether the plaintiff has ½ share in the suit property?
> 3. Whether the plaintiff is entitled for partition and separate possession in the suit property?
> 4 Whether the suit ramps is run by the defendant nos. 1 to 4 since beginning?
> 5. Whether the suit is properly valued by the plaintiff?
> 6. Whether the defendant nos. 1 to 4 are entitled for permanent injunction as prayed?
> 7. What order and decree?'

12. The plaintiff examined himself as PW 1 and also PWs 2 to 5. Defendant No. 2 deposed as DW 1. Exhibits were marked by both sides.

13. In its judgment dated 29.02.2008, the Trial Court opined that Laxmanrao was the sole proprietor of the garage business which was started in the year 1964 in the rented plot belonging to Kesardas Tapar.

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Thereafter, *per* the Trial Court, late Laxmanrao vacated the said leased land and shifted Gajanan Automobiles to Survey No. 17/2 in Mouza Saturna in the year 1991. The Trial Court held that two plots of land at Mouza Saturna were purchased by late Laxmanrao and defendant No. 2 from out of their own income and they were their self-acquired properties, while the plaintiff purchased one plot in his own name. The Trial Court, however, found that the agricultural land at Mouza Shendola was the ancestral property of the plaintiff and late Laxmanrao but opined that there was no income therefrom. Referring to the affidavit given by late Laxmanrao in the civil suit filed by the plaintiff's son in connection with his marriage proposal, the Trial Court opined that the said suit and the partition suit were different from each other and, therefore, what was stated by late Laxmanrao in that suit was not binding on defendant Nos. 1 to 6. The Trial Court, accordingly, held that only the agricultural land at Mouza Shendola was ancestral in nature and was liable to be partitioned between the plaintiff and the heirs of late Laxmanrao. The Trial Court found in favour of defendant Nos. 1 to 4 insofar as their counter-claim was concerned and held them entitled to a perpetual injunction, as prayed for.

14. However, the Appellate Court of the learned District Judge-III, Amravati, took a diametrically different view. In his judgment dated 14.11.2008, the learned District Judge framed the following points: -

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‘1. Whether in given set of facts and circumstances of the case the trial Court has committed error in holding that the plaintiff has failed to prove that suit property shown in the schedule is not joint family property of plaintiff and defendant and have not purchased out of joint family business?

2. Whether in given set of facts and circumstances of the case the trial Court has committed error in holding that the suit ramps in the suit property are being run by defendant no. 1 to 4 since beginning and they are entitled for perpetual injunction?

3. Whether in given set of facts and circumstances of the case the trial Court has committed error in holding that the plaintiff is not entitled for partition and separate possession of suit properties except the suit property i.e. agricultural land field survey no. 22/1-A of mouja Shendola?

4. Whether in given set of facts and circumstances of the case impugned judgment and order of the trial Court is according to facts and law?

5. What order?’

15. The Appellate Court took note of the evidence of the plaintiff that his brother, Laxmanrao, and he were residing together and had a joint mess till the year 1975 but as the premises were inadequate to accommodate all the family members, Laxmanrao started staying at the farmhouse at Badnera Road, Amravati, which was purchased out of joint family business income. The Appellate Court also took note of Laxmanrao’s affidavit, wherein he had stated that he was the Karta of the joint family and

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that the garage business was also a joint family business. It held that though all the documents and licences in relation to the garage business stood in the name of the late Laxmanrao, that would not suffice to infer that there was no joint family business in the running of the garage. The specific suggestion put to the plaintiff that he worked as labour on weekly basis in the said garage was denied by him and the Appellate Court found that nothing was placed on record to show that he worked as such. The Appellate Court also noted that, even according to defendant Nos. 1 to 6, the plaintiff had separated from the business only after Diwali, 2003, meaning thereby, that he was in the business jointly prior to that date. The Appellate Court observed that there would be a presumption of jointness in a family governed by Hindu law and there were sufficient indications to show that the plaintiff started working with his brother in the garage business and, therefore, a reasonable inference could be drawn that there was a joint family business of late Laxmanrao and the plaintiff. The Appellate Court concluded that the garage business was a Joint Hindu Family business and that the suit properties were also joint in nature. The plaintiff's suit was accordingly decreed in full and the counter-claim of defendant Nos. 1 to 4 was dismissed.

16. In Second Appeal No. 38 of 2009, the stand of defendant Nos. 1 to 6 was that there was no joint family business ever. In the judgment

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dated 24.11.2018, whereby the said second appeal was dismissed, the learned Judge of the Bombay High Court, Nagpur Bench, framed two substantial questions of law: -

> '1. Whether respondent/plaintiff has proved that "Gajanan Automobiles"' was/is a joint family business of Laxmanrao and Vitthalrao?
>
> 2. Whether non-inclusion of all alleged joint family properties in suit by the respondent/plaintiff is fatal?'

17. As regards the second question of law framed above, the learned Judge noted that a plea to that effect had not been raised earlier by defendant Nos. 1 to 6 in their written statement or even later and, therefore, it was not permissible for them to raise it for the first time at the stage of the second appeal.

18. The learned Judge noted that Laxmanrao started the garage business initially in the year 1964 at the leasehold plot taken from Kesardas Tapar and the business continued there till the year 1991, when possession of the leasehold plot was required to be returned to the lessor pursuant to the eviction decree secured by him. In the meanwhile, Laxmanrao purchased a plot admeasuring 55 feet x 120 feet in Survey No. 17/02 on 21.04.1982, under the sale deed marked as Ex. 226. Similarly, the plaintiff purchased 2750 sq. ft. in the same Survey No. 17/02 on 22.06.1982, under the sale deed marked as Ex. 205. Defendant No. 2 purchased an extent

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admeasuring 55 feet x 105 feet in Survey No. 17/02, under Sale Deed dated 06.07.1983 marked as Ex. 224. It was on these three plots that late Laxmanrao shifted the garage business after eviction from the leasehold plot of Kesardas Tapar. In this regard, the learned Judge observed: -

> '………..From this evidence on record, it can be gathered that in the year 1982-83 Laxmanrao, the plaintiff and the defendant No. 2 purchased three separate plots in their respective names and from 1991, the business of Gajanan Automobiles was shifted from the lease hold premises of Keshardas Tapar to Survey No. 17/2. While the office as well as the water, electricity meter and bore well were on the plot of plaintiff, the ramps were located on the plot of the defendant No. 2. There was no demarcation of three plots and there was no dispute amongst the said three owners in that regard. The essentials for running the Garage namely the three phase meter and the bore well were located in the plaintiff's plot. When this factual aspect is considered along with the reply at Exhibit-91 sent on behalf of the defendants, it becomes clear that said business was being run jointly by the parties and there was no bifurcation as such. It has been stated that the Office premises and the three phase connection was intended to be kept common. Though it is true that all documents stood in the name of Laxmanrao and thereafter in the name of the defendant No. 2, the explanation furnished by the plaintiff is that this was done for the sake of convenience which appears quite reasonable. It can be seen that though the defendants have pleaded the aspect of weekly payments being made to the plaintiff, when he was working at Gajanan Automobiles, there is no evidence brought on record in that regard.'

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19. Further, the learned Judge noted that, as per Section 32(5) of the Indian Evidence Act, 1872, the Affidavit filed by late Laxmanrao in the plaintiff's son's suit could be relied upon and the statement of late Laxmanrao, on oath, that he was the Karta of the joint family could also be taken note of. Having said so, the learned Judge then observed as under: -

> 'However, it is to be noted that when the entire material on record is taken into consideration and by applying the principle of preponderance of probability, the fact that since 1991 the Garage business was being run from the three plots located on Survey No. 17/2, each plot having been separately and individually purchased by Laxmanrao, the plaintiff as well as defendant No. 2 and various vital installations that are necessary for running the Garage being located in the plaintiff's plot without there being any demarcation of each plot, <u>the conclusion drawn by the appellate Court of the business being joint since 1991 is not a finding which is so perverse that such finding cannot be arrived at by any person of ordinary prudence based on the material on record</u>. Though the initial business was started by Laxmanrao in the lease hold premises of Keshardas Tapar, the purchase of three separate plots in the year 1982 and shifting of the entire Garage there in the year 1991 and the same being conducted there without any dispute from 1991 till at least the death of Laxmanrao in the year 2004 is a sufficient indication of the business being joint between Laxmanrao and his young brother.'
>
> (*emphasis is ours)*

20. In conclusion, the learned Judge held that he found no reason to interfere with the judgment of the Appellate Court, whereby the plaintiff's

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suit for partition and separate possession had been decreed in toto and, accordingly, dismissed the second appeal.

21. The Review Petition filed thereafter by defendant Nos. 1 to 6 solely turned upon the observation of the learned Judge that the joint business commenced only from 1991. However, this was not a finding arrived at by the learned Judge himself but was recorded as a finding of the Appellate Court in its judgment dated 14.11.2008. However, as has been forcefully stressed before us by the plaintiff, no such finding finds mention in the judgment dated 14.11.2008 of the Appellate Court.

22. As a matter of fact, we find that defendant Nos. 1 to 6 never put forth a consistent plea in respect of the garage business at any stage of the proceedings. So much so that, even before us, their argument was prefaced with the assertion that there was never any joint business. However, as already noted, their stand in their reply notice was to the effect that there was a partition of the joint business after Diwali, 2003. Even in their second appeal grounds, their stand was that there was never any joint business at any point of time between the plaintiff and late Laxmanrao.

23. Further, we may also note that the learned Judge of the Bombay High Court, Nagpur Bench, initially dismissed the second appeal by his judgment dated 24.11.2018 and neither that judgment nor the findings therein were ever challenged by defendant Nos. 1 to 6. They

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chose to file a review petition basing on a stray observation made in the said judgment, which was made under the mistaken impression that the Appellate Court had given a finding that the joint business commenced only from 1991. Once that observation is set at naught as it was based on a clear misreading of the Appellate Court's judgment, the very basis of the review petition filed by defendant Nos. 1 to 6 would vanish. Surprisingly, the learned Judge, despite dismissing the second appeal in the first instance, practically overturned the said decision on a misreading of his own erroneous finding as to when the joint family business commenced and did a *volte face* on his earlier decision.

24. The irrefutable fact also remains that late Laxmanrao himself filed an affidavit in lieu of his examination-in-chief before a Court of law, wherein he stated as follows:

> "I am a Karta (Manager) of Hindu Joint Family and carrying on business of Motor Garage under the name and style of 'Shri Gajanan Automobiles', Amravati and 'Trimurty Auto Garage, Amravati' and also having some landed property situated within limits and territorial jurisdiction of Amravati Municipal Corporation, Amravati."

He then deposed on oath before the Court and in his cross-examination, he stated as follows:

> **"**I myself and my brother Vitthalrao (Manohar's father), we two are the owners of Gajanan Automobiles Workshop. We both are the

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> owners of the house where the workshop is situated. Whatever the income we get, we get it from the workshop and we spend it**.”**

25. Be it noted that this deposition was made on 30.06.2003. This date becomes significant, given the claim of defendant Nos. 1 to 4 that the plaintiff separated from the joint business during the life time of late Laxmanrao. There is, however, no evidence whatsoever of any such partition taking place during the lifetime of late Laxmanrao or even thereafter. The Appellate Court referred to Section 32(5) of the Indian Evidence Act, 1872, but we find that the relevant provision is Section 32(3) and not Section 32(5) of the said Act. Section 32(5) relates to existence of a relationship and that is not even in issue in the present case. Sections 32(3) of the Indian Evidence Act, 1872, reads as follows: -

> **‘Section 32 – Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-** Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :
>
> **(3) - or against interest of maker.-** When the statement is against the pecuniary or proprietary interest of the person making it or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

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What is of relevance presently is the statement made by late Laxmanrao on oath before a Court of law which would be binding not only upon himself but also upon his successors-in-interest and would, therefore, have to be construed as having been made against their interest, if they take a different stand, and would bind them. It is not open to defendant Nos. 1 to 6 to claim that the affidavit and deposition of late Laxmanrao should not be used against them as the two suits are entirely different. Once late Laxmanrao affirmed on oath that he was the Karta of the Joint Family consisting of himself, his brother, viz., the plaintiff, and their family members and that the garage business was a joint family business, there is no avenue left for defendant Nos. 1 to 6 to escape therefrom. The said affirmation by Laxmanrao would be binding upon them.

26. That apart, we may also note that the three plots where the business was being run were purchased in individual names in the years 1982 and 1983 and the middle plot was in the name of the plaintiff. The business is stated to have shifted to these three plots in the year 1991, after the leasehold plot of Kesardas Tapar was vacated pursuant to an eviction decree. If it had been the intention of Laxmanrao not to have a joint garage business then and he wished to set up his brother independently, as has been claimed by defendant Nos. 1 to 4 at one stage, he would not have given him the middle plot. Logically, he would not have wanted his

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own brother to compete with him by opening a separate motor garage next door. Further, the middle plot being that of the plaintiff, it is completely unrealistic for defendant Nos. 1 to 4 to contend that he was running a separate garage there after Diwali, 2003. It is an admitted fact that the garage business was not started for the first time in the year 1991. It is also an admitted fact that both the brothers were motor garage mechanics. In the absence of any fall out between them, as is clear from late Laxmanrao's supportive stance in the plaintiff's son's suit, it is not believable that they would not have worked together from the start. As rightly pointed out by the Appellate Court, if that was not their intention, late Laxmanrao would not have asked his brother to take the middle plot, flanked on one side by a plot in his name and on the other side in his son's name, while shifting the garage business. Never was it the case of defendant Nos. 1 to 6 that there was a joint family business only from the year 1991 but, by taking advantage of the erroneous observation of the learned Judge in the second appeal judgment on a misreading of the Appellate Court's judgment, they built up an entirely new story.

27. In any event, the High Court acting in second appellate jurisdiction could not have arrived at a new finding of fact without any foundation being laid therefor and the stray observation made by the

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learned Judge that the joint family business commenced in the year 1991, based on a misreading of the Appellate Court's judgment, cannot stand.

28. Reliance placed by defendant Nos. 1 to 6 upon ***D.S.Lakshmaiah and another vs. L. Balasubramanyam and another***[1] is of no avail. That was a case where this Court held that there could be no presumption that a property is a joint family property only on account of existence of a Joint Hindu Family. In the present case, however, late Laxmanrao himself stated on oath before a Court of law that the garage business was a joint family business. Further, as no evidence was adduced of the plaintiff working in the garage on weekly wages, the presumption would be that the brothers worked together and jointly managed the garage business. Similarly, the decision of this Court in ***Kiran Devi vs. Bihar State Sunni Wakf Board and others***[2] also does not further their case. It was held therein that a member of a Hindu Undivided Family would be competent to enter into a contract with a stranger in his individual capacity. However, the facts in this case manifest that late Laxmanrao did not treat the garage business as his own independent enterprise at any point of time and, on the other hand, gave evidence under oath that it was a joint family business with his brother, the plaintiff.

1 (2003) 10 SCC 310
2 (2021) 15 SCC 15

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29. On the above analysis, we hold that the learned Judge of the Bombay High Court, Nagpur Bench, made a factually incorrect observation by misreading the judgment of the Appellate Court and compounded that error by acting upon such erroneous observation and reviewing the judgment. The offending observation in the judgment dated 24.11.2018 in Second Appeal No. 38 of 2009 and the order dated 22.03.2019 in Misc. Civil Application (Review) No. 46 of 2019 are accordingly set aside. In consequence, the judgment dated 14.11.2008 of the learned District Judge-III, Amravati, in Regular Civil Appeal No. 69 of 2008 is upheld.

Both the civil appeals are allowed in the above terms.

Parties shall bear their own costs.

………………………..,J
(ANIRUDDHA BOSE)

………………………..,J
(SANJAY KUMAR)

April 8, 2024;
New Delhi.