A ANNASAHEB BAPUSAHEB PATIL AND ORS.

v.

BALWANT @ BALASAHEB BABUSAHEB PATIL (DEAD) BY LRS. AND HEIRS ETC.

JANUARY 6, 1995

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[K. RAMASWAMY, S. MOHAN AND N. VENKATACHALA, JJ.]

Hindu law—Hindu Joint family—Primogeniture—Impartible estate—Rule of succession by survivorship—To establish that a family ceases to be C *joint it is necessary to prove intention on part of junior members to renounce their right of succession to estate.*

Hindu law—Hindu Joint Family—Impartible estate—Watan lands—Abolition of 'Patel watan' by the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 on 1.1.1963—Regrant u/s 5—Whether on re-grant, D *the attached watan lands assumed the character of self-acquired property of the watandar—No—Regrant of lands to watandar must ensure to the benefit of entire joint Hindu family—Right of members of family to claim partition.*

Limitation Act, 1963—Article 65—Adverse possession—Onus of E *proof—Hindu joint family—Hostile assertion during statutory period.*

Father of the appellant and first respondent B died in 1956. B was the eldest male member in the joint family consisting of himself and the appellant. All properties except two items of agricultural lands attached to the 'Patel watan' were partitioned by metes and bounds. The watan F **properties attached to the office of Patel, by rule of primogeniture, became impartible. The Maharashtra Revenue Patels (Abolition of Office) Act, 1962 came into force on January 1, 1963. The Patel watans stood abolished.**

B. being the eldest member of the family, obtained a re-grant u/s 5 G **of the Act which provides for re-grant on payment of occupancy price. The appellants filed the suit for partition and allotment of half share therein. The trial court decreed the suit. However, the decree was set aside in appeal. The High Court held that after the re-grant, the properties became the personal property of B and were therefore not partible.**

H **In appeal it was contended by the respondents that after the aboli-**

tion of the 'Patel watan' and re-grant in favour of B in 1965, in consequence of the abolition of the watan and the burden of service attached to the office, the pre-existing rights and liabilities appertaining to the land stood abolished and the regrant and the terms contained therein determined the rights of the parties. Since it was a re-grant made personal to the watandar the property became his self acquired property.

They further submitted that after the Hindu Succession Act, 1956 came into force, the property had become the self acquired property in terms of the sanad and B was responsible to the State Government for payment of the land revenue. As Kolhapur District bore a distinctive feature of the watandari rights, it was necessary to find the existence of the watan from the grant and not subject it to operation of section 3 of the Act. Upon the demise of the parties, father in 1956 the right to succession opened under the law of primogeniture. The junior members of the family, by custom, had no right to any share in the property. The property thereby vested in B in the year 1956 and his heirs alone were entitled to succeed to the estate of B. The appellants, therefore, had no right to claim any partition in the property.

In the connected appeal *Vilas G. Devi* v. *Ramachandra Y. Dalvi and Ors.*, it was further contended that the respondents had acquired title by prescription. It was averred that mutation was effected on August 16, 1955 and from that date the respondents were in exclusive possession and enjoyment and that after the abolition of the watan and subsequent re-grant it was their exclusive property to which they prescribed title by adverse possession.

The question raised for consideration was whether on re-grant made under Sec. 5 (1) of the Act, the attached watan lands assumed the character of the self acquired property of the watandar.

Allowing the appeals, this Court

HELD : 1.1. Primogeniture means first born and denotes the preferential rights of the senior most in age to succeed to the estate in preference to his younger brother. In an impartible estate though the other rights which a coparcenar acquires by birth in joint family property do not exist, the right by birth of the senior member to take by survivorship still remains. In order to establish that a family governed by Mitakshra in

A which there is an impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to renounce their right of succession to the estate. It is not sufficient to show a separation merely in food and residence. The custom or special law displaces the rule of succession by survivorship of the Hindu joint family. [95-F-G]

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Dattatraya and Ors. v. *Krishna Rao and Ors.*, [1993] supp. 1 SCC 32, relied on.

1.2 By operation of Sec. 3 of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962, watans have been abolished and all the incidents attached to the watandari including pre-existing custom, operation of law or any decree or order of the court were nullified by statutory operation. Therefore, the incidents attached to the watan i.e. liability to render service as Patel became extinct and the lands became ryotwari lands, office of watan stood extinguished, the lineal primogeniture stood abolished and the land on re-grant became the Hindu joint family property held by the watandar for and on behalf of the members of the joint Hindu family. All the members of the family became entitled to claim right to partition by survivorship. The Act had come into force on January 1, 1963 after the Hindu Succession Act. 1956 became operational. Therefore, after the death of the father in 1956, the right to succession as watandar opened to the senior lineal male descendant as per the existing watan law. The re-grant was made in 1965 in which year the right to claim partition accrued to all the members of the family. Thereby, plaintiff No. 1 became entitled to claim 1/2 share in 15 acres 20 gunthas along with his brother. [98-E-H]

1.3 By rule of lineal primogeniture, the Hindu Succession Act stood excluded until the watan, together with the burden of service, was abolished. After re-grant was made, the property became coparcenary and was liable to partition among coparcenars. [99-H, 100-A]

2.1 Where possession can be referred to a lawful title, it will not be considered to be adverse, the reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful

title cannot divest another of that title by pretending that he had no title at all. [101-A-B] A

2.2 In the case of a Hindu joint family, there is community of interest and unity of possession among all the members of the joint family and every coparcener is entitled to joint possession and enjoyment of the coparcenery property. The mere fact that one of the coparceners is not in joint possession does not mean that he has been ousted. The possession of the family property by a member of the family cannot be adverse to the other members but must be held to be on behalf of himself and other members. The possession of one, therefore, is the possession of all. The burden lies heavily on the member setting up adverse possession to prove adverse character of his possession by establishing affirmatively that to the knowledge of other members he asserted his exclusive title and the other members were completely excluded from enjoying the property and that such adverse possession and continued for the statutory period. Mutation in the name of the elder brother of the family for the collection of the rent and revenue does not prove hostile act against the other. [101-C-E] B C D

2.3 In the instant case, the right of the plaintiff to file suit for partition had arisen after the Act had come into force and re-grant was made by the Collector under sub-s. (1) of s.5. The defendant, therefore, must plead and prove that after the re-grant, he asserted his own exclusive right, title and interest to the plaint schedule property to the knowledge of the plaintiff and the latter acquiesced to such a hostile exercise of the right and allowed that defendant to remain in continuous possession and enjoyment of the property in assertion of that hostile title during the entire statutory period of 12 years without any let and hindrance and the plaintiff stood thereby. [101-E-G] E F

2.4 Unit the character of the land was changed, by operation of the rule of lineal primogeniture, the lands were impartible and the plaintiff therein could not claim any right for partition. After the Act had come into force and on re-grant, cause of action had arisen to file a suit for partition. [101-H] G

2.5 There was no pleading and proof that the defendants asserted their hostile title to the property to the knowledge of the plaintiff and they acquiesced in the same. In its absence the right to claim partition would arise only when the right to partition was denied. The character of the land from impartibility to partibility had been changed under the Act, and both H

A **the courts had rightly held that they did not acquire title by adverse possession. [102-A-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 32 (N) of 1980 etc. etc.

B From the Judgment and Order dated 28.6.77 of the Bombay High Court in A. No. 162 of 1969.

U.R. Lalit, V.N. Ganpule, V.D. Khanna, A.M. Khanwilkar, S.K. Agnihotri, Ms. Punam Kumari, A.S. Bhasme, Krishan Mahajan, P.H. Parekh, E.R. Kumar, Ms. Shefali Fazl, V.B. Joshi and M.N. Shroff for the C appearing parties.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. This batch of appeals raise common question D of law, though the High Court of Bombay had decided several appeals by separate judgments. On this account they have been tagged together and were referred to three-Judge Bench. We propose to dispose them of by common judgment. The facts in Civil Appeal No.32/80 are sufficient to decide the question of law. One Bapu Anna Patil (for short B.A. Patil), father of Anna Saheb, the first appellant/Ist plaintiff and Balwant alias E Balasaheb, the first defendant, deceased Ist respondent in Special Civil Suit No. 79/67 on the file of Civil Judge (Senior Division) Kolhapur, died on October 31, 1956. Balwant was the eldest male member in the joint family consisting of himself and Anna Saheb. Their sister is Laxmibai, 4th defendant. It is now an admitted fact that all other properties, except two items F of the agricultural lands bearing R.S. Nos. 359 and 172/8 situated in the village Rukadi of a total extent of 15 acres and 20 gunthas, attached to the Patel watan, were partitioned by metes and bounds. The watan properties attached to the office of Patel, by rule of primogeniture, became impartible. The Maharashtra Revenue Patels (Abolition of Office) Act, 1962 (for short 'the Act') came into force on January 1, 1963. The Patel watans, by G operation of s.3, stood abolished. Thereafter, Balwant, being eldest member of the family, obtained a re-grant under s.5 of the Act. The appellants filed the suit for partition and allotment of half share therein. The trial Court decreed the suit and a preliminary decree was made for division of 15 acres and 20 gunthas in equal moities. In First Appeal No. 162/69 by H judgment and decree dated June 28, 1977, the Division Bench of the High

Court following its earlier decision in *Kalgonda Babgonda* v. *Balgonda Kalgonda*, 78 Bom. L.R. 720, allowed the appeal and set aside the decree. The High Court held that after the re-grant under the Act, the properties became personal property of Balwant and that therefore, they were not partible.

Section 2 (e) defines 'Patel watan' to mean the office of patel of a village held hereditarily under the existing watan law, together with the tenure of watan property, if any, and the rights, privileges and liabilities attached thereto. 'Existing Watan law' defined under s.2(d) to mean, in relation to any area, includes any enactment, Ordinance, Rule, Bye law, Regulation, order, notification, Vat-Hukum or any instrument, or any custom or usage having the force of law, relating to patel watans, and which is in force in that area immediately before the appointed day. Appointed day is defined, under s.2(1) (a) to mean the date of commencement of the Act. 'Representative watandar' is defined under s.(i) to mean a watandar registered or recognised under the existing watan law, as having a right to perform the duties of the hereditary office of patel of a village. 'Watandar', defined in (k), means a person having under the existing watan law a hereditary interest in patel watan of a village provided that, where any watan has been entered in a register of record under the existing watan law as held by the whole body of watandars, the whole of such body shall be deemed to be a watandar. 'Watan land' has been defined under s.2(1)(l) as the land forming part of watan property. 'Watan property' has been defined under s.2(1)(m) including the movable and immovable property held, acquired or assigned under the existing watan law for providing remuneration for the performance of the duty appertaining to the hereditary office of patel of a village, and includes cash payments made voluntarily by the State Govt. and subject to periodical modification or withdrawal. Section 3 abolishes watans postulating that notwithstanding anything in any usage, custom, settlement, grant, agreement, or sanad, or in any decree or order of a court, or in the existing watan law, with effect from the appointed day -

(a) all patel watans shall be and are hereby abolished;

(b) all incidents appertaining to the said watans (including the right to hold office and watan property and the liability to render service) shall be and are hereby extinguished;

A (c) subject to the provisions of sections 5, 6 and 9, all watan lands shall be and are hereby resumed, and accordingly shall be subject to the payment of land revenue under the provisions of the relevant Code and the rules made thereunder, as if they were unalienated land. The proviso is not relevant for the purpose of this case. Hence omitted.

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Under s.4, the Collector is to decide any question enumerated in clauses (a) to (e) that arise between the parties, after giving to the affected party an opportunity of being heard and after holding an inquiry. His decision on the question, subject to a decision on appeal to the State Government, C shall be final. Sub-s. (1) of s.5 envisages that watan land resumed under s.3 shall, on an application (in cases not falling under ss.6 and 9), be regranted to the watandar of the watan to which it appertained, on payment by or on behalf of the watandar to the State Govt. of the occupancy price equal to twelve times the amount of the full assessment of such land, within the prescribed period, and in the prescribed manner; and the watandar shall D thereupon be an occupant within the meaning of the Revenue Code in respect of such land, and shall be primarily liable to pay land revenue to the State Govt. in accordance with the provisions of that Code. The proviso is not relevant for the purpose of this case. Hence omitted.

E Under sub-s.(3), the previous sanction of the Collector is mandatory for transfer or partition by metes and bounds of the occupancy of the land regranted under sub-s. (1) s.5. The other provisions are not material for the purpose of this case. Hence omitted. By operation of s.3 read with s.5 notwithstanding anything in any usage, custom, settlement, grant, agreement or sanad, or in any decree or order of a court, or in the existing watan F law, with effect from January 1, 1963, not only patel watans have been abolished but also all incidents appertaining to the said watans including the right to hold office and watan property and the liability of the watandar to render service shall be and thereby extinguished. Under sub-s.(1) of s.5, the lands resumed under s.3 shall be regranted to the watandar of the watan to which it appertained, on payment by or on behalf of the watan to G the State Govt. of the occupancy price enumerated therein. Watandar thereupon shall be an occupant for the purpose of the Code and shall be primarily liable to pay land revenue to the State Govt. under the Code. Any alienation or partition of the occupancy of the land regranted under s.5(1) shall be only with the previous sanction of the Collector and subject to the H terms contained in sub-s. (3) of s.5.

The question, therefore, is whether on regrant made under sub- s.(1) of s.5, the attached watan lands assumed the character of the self-acquired property of Balwant, the watandar? It is contended by Sri Lalit, the learned Senior counsel who led the arguments in the batch of appeals of the watandars that after the abolition of the patel watan and regrant made in 1965 in favour of Balwant, in consequence of the abolition of the watan, and the burden of service attached to the office, the pre-existing rights and liabilities appertained to the land stood abolished; the regrant and the terms contained therein determine the rights of the parties. Since it was a regrant made personal to the watandar, the property became his self-acquired property. After the Hindu Succession Act, 1956 has come into force, it has become the self-acquired property in terms of the sanad and Balwant was responsible to the State Government for payment of the land revenue. Therefore, the property is the personal property of Balwant. Kolhapur Dist. bears a distinctive feature of the watandari rights and that, therefore, it is necessary to find the existence of the watan from the grant and not to subject it to operation of s.3 of the Act. B.A. Patil having died in 1956, the right to succession opened, on his demise under the law of primogeniture. The junior member of the family, by custom, has no right to any share in the property. The property thereby vested in Balwant in the year 1956 and his heirs alone are entitled to succeed to the estate of Balwant. The appellants, therefore, have no right to claim any partition in the property. We find no force in the contention. The questions raised are no longer *res integra*. Primogeniture means first born and denotes the preferential rights of the senior most in age to succeed to the estate, since senior most in age is entitled to succeed to the estate in preference to his younger brother. In an impartible estate though the other rights which a coparcenar acquires by birth in joint family property do not exist, right by birth of the senior member to take by survivorship still remains. In order to establish that a family governed by Mitakshra in which there is an impartible estate has ceased to be joint, it is necessary to prove an intention express or implied, on the part of the junior members of the family to renounce their right of succession to the estate. It is not sufficient to show a separation merely in food and residence. The custom or special law displaces the rule of succession by survivorship of the Hindu joint family.

In *Dattatraya & Ors.* v. *Krishna Rao and Ors.*, [1993] Supp. 1 SCC 32, a two Judge Bench of this Court to which one of us (K. Ramaswamy, J.) was a Member, was to consider the rule of primogeniture extensively and

held at p.39 that there are estates which by special law or custom descend to senior-most member of the family, generally the eldest, to the exclusion of the other members and which are impartible, though they are joint family property, in the eye of the law, belonging equally to the other members; and their rights are hedged in by a number of restrictions or limitations. It was further held at p.42 in para 18 that the impartible estate, though descends by rule of primogeniture and survivorship on the eldest male member of the family, it must also be proved that the junior members gave up expressly or by implication his right to a share therein. An impartible estate may be created by a grant or by custom. It is a creature of custom. In the case of ordinary joint family property, the members of the family have the right to partition and the right of survivorship. The right to partition cannot exist in the case of impartible estate. The pre-existing law attached the property, movable or immovable, by grant etc. to the watan for rendering service by the watandar. As its concomitance recognised the rule of primogeniture and by its operation, the eldest male member in the family or the eldest in the first branch gets the right to watan and the property attached to the watan would be enjoyed as an incidence of or consequential to his rendering watan service. The statute also can abrogate the operation of the custom and succession to watan property by rule of primogeniture and the Act in fact did achieve that object, abolished the office of watan and liabilities appertaining to it including the burden of service and made the lands ryotwari lands. On regrant the erstwhile watandar holds the lands for and on behalf of the Hindu joint family impressed with the character as joint family property.

This Court in *Nagesh Bisto Desai etc. etc.* v. *Khando Tirmal Desai etc. etc.*, [1982] 3 SCR 341, considered the effect of the Bombay Merged Territories Miscellaneous Alienations Abolition Act 1955, the pre-existing rule of primogeniture, the consequences of the abolition under that Act and the resultant effect thereof. It was also contended therein that Kundgol Deshgat Estate was an impartible estate and its succession was governed by the rule of lineal primogeniture consequent to the abolition of the watan under the Act 22 of 1955. The question for consideration therein was whether the impartibility of the tenure of a paragana watan appertaining to the office of a Hereditary District (Paragana) Office by reason of family custom or a local custom, whether watan lands lost the character of being joint family property with the resumption of the watan under s.4 of that Act and regrant thereof and whether the lands were exclusive to the

watandar by reason of his status as watandar and whether they were not capable of partition. A

A Bench of three judges after exhaustive consideration had held that the grant of watan to the eldest member of a family did not make the watan properties the exclusive property of the person who is the watandar for the time being. The property though impartible may be the ancestral property of the joint Hindu family. The impartibility of property does not *per se* destroy its nature as joint family property or render it the separate property of the last holder, so as to destroy the right of survivorship; hence the estate retrains its character of joint family property and devolves by the general law upon that person who being in fact and in law joint in respect of the estate. He is also the senior member in the senior line. Impartibility is essential a creature of custom. In the case of ordinary joint family property, the devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquires by birth in joint family property no longer exist, the birth-right of the senior member to take by survivorship still remains. In order to establish that a family governed by the Mitakshara in which there is an ancestral impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to renounce their right of succession to the estate. The estate though is impartible does not make it the separate and exclusive property of the holder where the property is ancestral and the holder has succeeded to it, it will be part of the joint estate of the undivided family. The incidents of joint family property, which still attaches to the joint family property is the right of survivorship which, of course, is not inconsistent with the custom of impartibility. Junior members of the joint family, in the case of impartible joint family estate, take no right in the property by birth and, therefore, have no right of partition having regard to the very character of the estate that it is impartible. The expression watandar of the same watan includes the member of a joint Hindu family other than the watandar, who were entitled to remain in possession and enjoyment of the watan property. The holder of the watan land is entitled to regrant of the land in occupancy rights as an unalienated land. The abolition of the watan extinguishes the office and modifies the right in which the land is held. B C D E F G

The abolition, extinction and modification arise by operation of s.3 of 1955 Act and not from the exercise of the executive power of confisca- H

A tion or resumption by the State Government. The commutation of service of watan lands by which the watandars were relieved in perpetuity from liability to perform the services attached to their offices in consideration of payment of the land revenue. The lineal primogeniture regulating succession to the estate cannot prevail under s.4 of 1955 Act, as being nothing more than incidents of the watan which stand abrogated by s.4 of that Act. B It was, therefore, held that watan families if had a hereditary interest in the watan property, such inheritance enures to the benefit of all the members of the family as the property belongs to the family and all persons belonging to the watan family who had a hereditary interest in such watan property were entitled to be called 'watandars of the same watan' within the Watan C Act. The members of the joint Hindu family must be regarded as holders of the watan land along with the watandar for the time being, and therefore the regrant of the lands to the watandar under s.4 of that Act must enure to the benefit of the entire joint Hindu family. This Court upheld the full bench judgment of the Bombay High Court reported in *Laxmibai Sadashiv Date* v. *Ganesh Shankar Date*, 79 Bom. L.R. 234 and another judgment in D *Dhondi Vithoba* v. *Mahadeo Dagdu*, Bom. L.R. 290. The division bench judgment in *Badgonda's* case was over-ruled.

The same ratio proprio vigore would apply to the facts in this case as well. It is seen that by operation of s.3 Watans have been abolished and E all the incidents attached to the watandari including the pre-existing custom, operation of law or any decree or order of the court were nullified by statutory operation. Thereby, the incidents attached to the watan i.e., liability to render service as patel became extinct and the lands became ryotwari lands, office of watan stood extinguished, the lineal primogeniture F stood abolished and the land on regrant became of Hindu joint family property held by the watandar for and on behalf of the members of the joint Hindu family. All the members of the family became entitled to claim right to partition by survivorship. The Act had come into force on January 1, 1963 after the Hindu Succession Act, 1956, became operational. Therefore, after the death of the father in 1956, the right to succession as G watandar opened to the senior lineal male descendant i.e. Balwant as per the existing watan law. The regrant was made in 1965 in which year the right to claim partition accrued to all the members of the family. Thereby, Anna Saheb, plaintiff No. 1 became entitled to claim 1/2 share in 15 acres 20 gunthas along with his brother Balwant. In *Kalgonda Babgonda Patil* v. H *Balgonda Kalgonda Patil & Ors.*, [1989] supp. 1 SCC 246, a bench of this

Court reversed the judgment of the division bench of the High Court following the ratio in *Nagesh B. Desai's* case. This case relates to patel watan property of wat-hukum by Kolhapur State. In *Anant Kibe* v. *Purushottam Rao*, AIR (1984) SC 1121, another bench of three judges considered the effect of the rule of primogeniture and impartibility of the estate as a special mode of devolution under the M.P. Reserved (Inam lands) and M.P. Land Revenue Code and held that the inam lands together with the properties acquired from the income of the inam were ancestral joint family property, though impartible estate which devolved by survivorship by the rule of lineal primogeniture and after the inam lands were abolished, the property became the joint family property. Consequently it became partible. The plaintiffs were held to be entitled to partition and separate possession to the extent of their 1/2 share in those properties. We do not find any ground to refer the case to five judges for decision. In *Shivappa Tammanappa Kairaban* v. *Parasappa H. Kuraban & Ors.*, [1994] 4 Scale 750, a bench of two Judges (K. Ramaswamy and N. Venkatachala, JJ.) following *Nagesh B. Desai's* case and *Nalgonda's* case upheld the right to partition by the junior members after the Karnataka Village Officers Abolition Act, 1961 came into force. In *Shiddappa Satappa Murugude & Ors.* v. *Ramappa S. Murugude & Ors.*, C.A. No. 944 of 1973 by a judgment dated November 25, 1986, two Judge Bench held that it is not a joint family property but separate property of the watandar. *Nagesh B. Desai's* case and *Anand Kibe's* case decided by two benches of three judges were not brought to the notice of the bench. Therefore, with due respect, the ratio therein cannot be regarded as good law. The ratio in *Bandu Kallappa Patil & Ors.* v. *Balagonda S. Patil*, (1971) 1 SCJ 429 is equally inapplicable to the facts of this case. In that case the question was under the pre-existing law prior to the abolition and that therefore, a bench of two judges of this Court held that Wat-Hukum enures to the family of the Watan lands as Natmastha.

Undoubtedly, by operation of Wat Hukum, an enquiry into heirship was conducted and the eldest son of the deceased Watandar was declared as his successor (Navawala), and he succeeded to the Watan property attached to the office as successor by inheritance. That the operation of the pre-existing law, customary or codified would be subject to operation of the Hindu Succession Act, 1956 and the inconsistent law prevalent in (the then) Kolapur State stood repealed. As held earlier, by rule of lineal primogeniture, the Hindu Succession Act stood excluded until the watan

A together with the burden of service abolished. After regrant was made, the property becomes coparcenary and is liable to partition among coparcenars. The contention, therefore, that the provisions of Kolapur Hindu Succession Act, 1920, becomes operational and the interpretation thereon made prior to the Act and the Hindu Succession Act came into force, bears no relevance.

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The trial court, therefore, had rightly granted the preliminary decree and the division bench of the High Court had committed manifest error of law in following the judgment which was subsequently overruled by this Court. The appeal is accordingly allowed and the decree of the trial court C stands restored and that of the appellate court stand reversed.

Civil Appeal No. 2267/80

The ratio of our judgment in the above appeals would equally apply to the facts in this case. However, one more contention raised in this D appeals is that the defendants have acquired title by prescription. It was pleaded that mutation was effected on August 16, 1955 and from that date the defendants, it was averred, were in exclusive possession and enjoyment and that after the abolition of the watan under Merged Territories Miscellaneous Alienations Abolition Act, 1955 after regrant, it was their exclusive E property and that, therefore, they prescribed title by adverse possession. That contention is negatived by the appellate court and the High Court.

Article 65 of the Schedule to the Limitation Act, 1963 prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date the defendant's F interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property G claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to H the real owner and amounted to a denial of his title to the property

claimed.

Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

In the case of Hindu joint family, there is a community of interest and unity of possession among all the members of the joint family and every coparcener is entitled to joint possession and enjoyment of the coparcenery property. The mere fact that one of the coparceners is not in joint possession does not mean that he has been ousted. The possession of the family property by a member by of the family cannot be adverse to the other members but must be held to be on behalf of himself and other members. The possession of one, therefore, is the possession of all. The burden lies heavily on the member setting up adverse possession to prove adverse character of his possession by establishing affirmation that to the knowledge of other member he asserted his exclusive title and the other members were completely excluded from enjoying the property and that such adverse possession had continued for the statutory period. Mutation in the name of the elder brother of the family for the collection of the rent and revenue does not prove hostile act against the other. The right of the plaintiff to file suit for partition had arisen after the Act has come into force and regrant was made by the Collector under sub-s. (1) of s.5. The defendant, therefore, must plead and prove that after the regrant, he asserted his own exclusive right, title and interest to the plaint schedule property to the knowledge of the plaintiff and the latter acquiesced to such a hostile exercise of the right and allowed the defendant to remain in continuous possession and enjoyment of the property in assertion of that hostile title during the entire statutory period of 12 years without any let and hindrance and the plaintiff stood thereby.

It would be seen that until the character of the land is changed, by operation the rule of lineal primogeniture, the lands became impartible.

A Therefore, the plaintiff therein could not claim any right for partition. After the Act has come into force and on making regrant, cause of action had arisen to file suit for partition. There is no pleading and proof that the defendants asserted their hostile title to the property to the knowledge of the plaintiff and they acquiesced in the same. In its absence the right to
B claim partition would arise only when the right to partition is denied. The character of the land from impartibility to partibility had been changed under the Act. Thereby, both the courts have rightly held that they did not acquire title by adverse possession. This appeal also accordingly stands dismissed.

C *CIVIL APPEAL NO. 2485/85*

In this case apart from the main question which was already held against the appellants, two more contentions were raised in the High
D Court. They filed an application in the High Court under Order 6 Rule 17 for amendment of the written statement to include some other land for re-partition. On ground of laches, the application for amendment was disallowed. The same was reiterated in this appeal. In view of the findings recorded by the High Court, we do not think that it is a fit case warranting interference by this Court at this distance of time. It was also pleaded that
E the suit was barred by limitation. It is their case that the partition had taken place prior to the Act 22 of 1955 had come into force, they remained in possession as owners and that, therefore, the suit is barred by limitation. The appellate court disbelieved prior partition. That was also negatived by the High Court holding that the suit was filed after the character of the
F land from impartibility to partibility had been changed and that, therefore, it was not barred by limitation. We find that the conclusion reached by the High Court is well justified. The High Court and the appellate court have appreciated the evidence and reached the conclusion, therefore, this Court does not embark upon the appreciation of evidence. The appeal also since tagged with C.A. 32/80, the controversy and the question of law stand
G concluded by the decision rendered hereinbefore. The appellate court remitted the matter for re-consideration whether the alienation made by the first appellant in favour of the appellants 2 to 8 respondent No. 3 were for legal necessity. That was upheld by the High Court. Therefore, subject to the above, the judgment of the High Court and the appellate court are
H upheld. The appeal is accordingly stands dismissed.

CIVIL APPEAL NO. 3200 - 01/91

The only question raised was with regard to the character of the land and the right to partition. Since the appeals were tagged with C.A. 32/80, the controversy gets concluded with the question of law decided in C.A. 32/80, therefore, the appeals also stand dismissed.

CIVIL APPEAL NO. 2557/93

The High Court in Second Appeal No. 1277/73, construing the terms of the sanad, held that it is a personal property for the benefit of the watandar in Act 22 of 1955. The property assumed the character of self-acquired property and that, therefore, the properties are not liable to partition and on its basis reversed the decree of the trial court and the appellate court. On the question of law, the appeal was tagged with C.A. 32/80. In view of the decision therein for the same reasons, this appeal also stands allowed. The further contention that documents are required to be looked into the find the chequered history involved in the interpretation thereof is untenable since the question of de-tagging the appeal does not arise. The terms of Sanad Ex. 70 and 71 and the interpretation placed on them by the High Court in reversing the decree of the courts below primarily hinge upon the interpretation of the provisions of Act 22 of 1955 which was already settled by this Court. The High Court did not have the benefit of its Full Bench decision and of the decision of this Court which led to the wrong view taken by the High Court. The appeal is accordingly allowed. For the reasons stated in C.A. No. 32/80 (supra), the appeal is allowed and the judgment and decree of the High Court dated November 7, 1981 made in Second Appeal No. 1377/73 are set aside and that of the trial court and of the appellate court stand restored.

In view of the facts and circumstances, parties are directed to bear their respective costs throughout in all these appeals.