

1869  
Feb. 10.

*Special Appeal No. 624 of 1868.*

Vithoba Bava... .. *...Appellant.*

Hariba Bava... .. *...Respondent.*

*Hindu law—Partition—House built upon family ground  
by a single member of a family.*

Where a member of a joint Hindu family built (at his own expense with borrowed money) a house upon ground belonging to the family, it was held that each of the coparceners was entitled to a share in the house and the site upon which it was built, equal in value to his share of the site.

This was a Special Appeal from the decision of A. C. Watt, Acting Assistant Judge at Sattara, in Appeal Suit No. 681 of 1867, amending the decree of Munsif of Rahimatpur.

The plaintiff, Vithoba Bava, sued Hariba Bava for possession of a one-third share of the family property moveable and immovable including a certain house built upon the family land.

The defendant, Hariba Bava, answered that the house he lived in was built by himself, and that, therefore, it was not liable to partition.

The Munsif found that Hariba Bava built the house, having borrowed money for that purpose, and that, therefore, it was not subject to division.

The judgment of the Assistant Judge on the point was:—

“I cannot see that the Munsif is wrong. Had we been able accurately to fix the date of separation, then we could have determined whether the house was built jointly or separately. This neither the Munsif is, nor am I, able to do; and I agree with the Munsif, in thinking, that the weight of evidence goes to show, that the defendant built the house separately.”

The case was heard before COUCH, C. J., and WARDEN, J.

*Shantaram Narayan* for the Appellant:—Building the house separately is not the correct test in this case. The

house is admittedly built on ground belonging to the family. The defendant was the manager and may have borrowed the money to build the house, and it should have been ascertained how he repaid it.

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Vithoba Bava  
r.  
Hariba Bava.

*Dhirajal Mathuradas* for the Respondent.

COUCH, C. J.—It is found as a matter of fact that the defendant, Hariba, built the house with money which he had borrowed; and though the finding is not precise, it is clear that the house was built on ground belonging to the family. The point, whether the defendant was personally liable for the money which he had borrowed should have been raised in the Courts below; and as that has not been done we cannot allow it to be raised at this stage of the proceedings. According to the Hindu Law, if one build a house on ancestral land with separate funds of his own, the other members of the family have only a claim on him for other similar land equal to their respective shares (a). The plaintiff in this case must therefore be compensated for his share of the ground used for building the house. We, accordingly, amend the decree of the Appellate Court by ordering that, in addition to the one-third share of the other house and land thereby awarded to the plaintiff, the defendant Hariba do make over to the plaintiff so much of his the said defendant's share in the said house built by him, and in the ground on which it stands, as is equal in value to one-third of the site of the said house. Costs in proportion.

WARDEN, J., Concurred.

*Decree amended.*

(a) Macnaghten P. H. L. 152;