FULL BENCH

Before G. D. Khosla, S. S. Dulat and K. L. Gosain, JJ.

KHAIRATI RAM AND ANOTHER,—*Appellants.*

versus

FIRM BALAK RAM-MEHR CHAND, ESC.,—*Respondents.*

Regular First Appeal No. 55 of 1950.

1959

Aug., 21st

*Hindu Law—Joint Hindu family—Whether a juristic person—*Karta *of the Joint Hindu family—Position, powers and liability of—Other coparceners—Liability of,* qua *contracts of* Karta*—Indian Partnership Act (IX of 1932)—Section 4—Joint Hindu family—Whether can be a partner—* Karta *of a joint Hindu family becoming a partner in a firm—Status of—Liability of other coparceners and of the joint family property—Extent of—Death of* Karta*—Whether dissolves the partnership.*

A joint Hindu family consisted of B, his son K and his nephew L. B on behalf of this family joined R, a stranger, in partnership. The business of the partnership was carried on in the name and style of firm B—R. B died on 12th May, 1946 and thereafter certain liabilities were incurred by the firm. A suit was field by the creditors against K, L and R and the question arose whether the death of B dissolved the firm and whether K and L were liable. It was contended on behalf of the creditors that joint Hindu family was an entity and as such became the partner through the *Karta* and the death of the Karta did not dissolve the firm and the other members of the joint family were liable as partners. On behalf of the defendants it was urged that the partner was the *Karta* and not joint family and the death of the *Karta* dissolved the partnership.

Held, that a joint Hindu family occupies a peculiar position in law. It is, no doubt, a body of persons, but it is not the sort of body which has a single entity as a juristic person It derives its nature and characteristics from the ancient Hindu law. Its character alters with every death and birth in the family. It has not been defined in any

statute and it is treated as a person only for the purpose of Income-tax Act and Excess Profits Tax Act. A joint Hindu family can be said to be a juristic person. A joint Hindu family is more of a condition or state than an entity. The property of a joint Hindu family may be joint. It may own a joint business or the family may possess no property at all and there is no presumption in law that it does possess joint property. The manager of the family acts on behalf of the joint Hindu family, but he does not act as an agent in the legal sense. This is clear from the fact that a manager is liable not only to the extent of his share in the joint Hindu family property when he enters into contract but is liable personally also. His separate property is liable as well as his share in the joint family property. As regards the other coparceners, however, they are liable only to the extent of their interest in the family property unless, of course, any individual member, being an adult, has become a party to the contract. The coparceners of a joint family are also liable in tort but only to the extent of their share in the joint family property. A manager cannot impose a new business on the adult members of the family.

Held further, that for the purposes of the Partnership Act, 1932, joint Hindu family cannot be deemed to be a person. When the *karta* of the family enters into a partnership, he alone becomes a partner, although he represents the joint Hindu family. The transactions into which he enters make the other members of the family liable to the extent of their share in the joint family property. They can also claim the share of the profits to which they are entitled as coparceners, but beyond this they have no rights and incur no liabilities with regard to the partnership business. The *Karta* alone becomes the partner and he is counted as one person. On the death of the *Karta* the partnership is automatically dissolved because it was he who was member and not the family. The death of the *Karta* puts an end to the partnership and the surviving members of the family cannot be held liable for any debts incurred after the death of the *Karta*.

Case referred by Hon'ble Mr. Justice K. L. Gosain, and Hon'ble Mr. Justice Harbans Singh on 1st October, 1958 to a Full Bench for an authoritive-decision of the law points involved in the case. The Full Bench consisting of Hon'ble Mr. Justice G. D. Khosla, Hon'ble Mr. Justice S. S. Dulat, and Hon'ble Mr. Justice K. L. Gosain after deciding

the law points on 21st August, 1959, remitted the case to the Division Bench for disposal and the case was finally disposed of on 22nd October, 1959, by the Division Bench consisting of Hon'ble Mr. Justice K. L. Gosain and Hon'ble Mr. Justice Harbans Singh.

Regular First Appeal from the decree of the Court of Shri Ram Lal, Sub-Judge, 1st Class, Hoshiarpur, dated the 5th day of April, 1950, granting the plaintiffs a decree for Rs. 16,422/3/3 with costs against the defendants and further ordering that the defendants 2 and 3 would be liable to the extent of the joint Hindu Family property in their hands.

D. R. MANCHANDA, and G. P. JAIN, for Appellants.

C. L. AGGARWAL and MOHINDERJIT SETHI, for Respondent.

JUDGMENT

G. D. Khosla, J.

G. D. KHOSLA, J.—The following two questions have been referred to us :—

(1) Where a *karta* or manager of a joint Hindu family enters into a partnership in his representative capacity, can the family as a unit be deemed to have become a partner, and

(2) whether on the death of the *karta* of the family the partnership stands dissolved or must be deemed to continue because of the fact that the joint Hindu family continues and it has a *karta*, though a different person ?

The questions have been framed in a manner which permits universal application, but it will facilitate appreciation of the matters under consideration if the facts which have given rise to this reference are briefly stated. A joint Hindu family consisted of Babu Ram, his son Kuldip

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Chand and his nephew Kharaiti Ram. Babu Ram on behalf of this family joined Bindra Ban, a stranger, in a partnership. The business of the partnership was carried on in the name and style of firm Babu Ram-Bindra Ban. They are the defendants in the case which has given rise to this reference. Babu Ram died on 12th May, 1946, and thereafter certain liabilities were incurred by this firm. In the present suit brought by the creditors the plea taken by the defendants was that Babu Ram's death on 12th May, 1946, dissolved the partnership and, therefore, the other members of the joint Hindu family were not liable for any debts incurred on behalf of the partnership. The plaintiff's plea was that Babu Ram had entered the partnership as the *Karta* and representative of the joint Hindu family and so his death could not put an end to the partnership, the joint Hindu family was to be considered as a unit and a juristic person represented by its *karta* Babu Ram ; Babu Ram, apart from being the *karta* was a coparcener in the family and his death did not put an end to the existence of the joint Hindu family but merely altered its complexion to some extent ; the joint Hindu family must be deemed to have entered the partnership as a unit or person and, therefore, Babu Ram's death made no difference to the constitution of the partnership and the partnership continued as before ; in this view of the matter, the surviving members of the joint Hindu family must be held to be liable for the amount claimed by the plaintiff. It was these pleas which gave rise to the two questions which were referred to the Full Bench.

The first point to consider is what is the exact nature of a joint Hindu family in law ; is it to be deemed as a single entity and a juristic person within the meaning of section 3(42) of the General

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Clauses Act ? Clause (42) does not give an exhaustive definition of "person" and is in the following terms :—

> " 'person' shall include any company or association or body of individuals, whether incorporated or not."

The contention made on behalf of the plaintiff is that a joint Hindu family is a "body of individuals" and, therefore, it is to be deemed as a person ; section 4 of the Partnership Act permits partnership between 'persons', a joint Hindu family acts through its *karta* just as a firm or corporation acts through its manager, and so when the *karta* joined the partnership, he did so on behalf of the joint Hindu family and the joint Hindu family being a person became a partner in the new firm.

Reliance was sought to be placed on a number of cases in which the learned Judges have expressed the view that a joint Hindu family is a juristic person. In *Shankar Lal and another* v. *Toshan Pal Singh* (1), Niamatullah, J., observed—

> "The word 'person' is defined in the General Clauses Act, Section 3(39), as including 'any company or association or body of individuals whether incorporated or not'. We have no doubt that the word person used in Section 182, and other cognate sections of the Contract Act, includes a joint Hindu family."

Niamatullah, J., observed :—

> "A joint Hindu family has always been treated as a juristic person on whose behalf contracts can be entered into and enforced."

(1) A.I.R. 1934 553

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Mears, C.J., observed in *Moti Ram* v. *Kunwar Md. Abdul Jalil Khan* (1), that the word "person" can be used to include a collection of people and an appropriate illustration which will at once occur to Indian lawyers is that association of individuals known as a joint Hindu family. "Bennet, J., made a similar observation in *Mahabir Ram* v. *Ram Krishan Ram and others* (2), but in this case he was making a distinction between a joint family firm and a partnership firm. He observed that the members of the joint Hindu family must be looked upon as a body of individuals who come under the definition of 'person' as defined in the General Clauses Act. He, however, used this argument to show that a joint Hindu family cannot have a partnership by itself as long as it remains a joint Hindu family.

It is only, however, in a limited sense that a joint Hindu family can be said to be a juristic person. A joint Hindu family is more of a condition or state than an entity. The property of a joint Hindu family may be joint. It may own a joint business or the family may possess no property at all and there is no presumption in law that it does possess joint property. The manager of the family acts on behalf of the joint Hindu family, but he does not act as an agent in the legal sense. This is clear from the fact that a manager is liable not only to the extent of his share in the joint Hindu family property when he enters into contract but is liable personally also. His separate property is liable as well as his share in the joint family property. As regards the other coparceners, however, they are liable only to the extent of their interest in the family property unless, of course, any individual member, being an adult, has become a

(1) A.I.R. 1924 All. 414
(2) A.I.R. 1936 All, 855

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party to the contract. The coparceners of a joint family are also liable in tort but only to the extent of their share in the joint family proprty. A manager cannot impose a new business on the adult members of the family. Mayne observes in his Treatise on Hindu Law, eleventh edition, paragraph 299—

> "The position of a *karta* or manager is *sui generis;* the relation between him and the other members of the family is not that of principal and agent, or of partners. It is more like that of a trustee and *cestui que trust.* But the fiduciary relationship does not involve all the duties which are imposed upon trustees. In the absence of proof of direct misappropriation, or fraudulent and improper conversion of the moneys to the personal use of the manager, he is liable to account only for what he has received and not for what he ought to or might have received if the moneys had been profitably dealt with."

The Supreme Court has observed in *Messrs Kshetra Mohan-Sannyasi Charan Sadhukhan* v. *Commissioner of Exess Profits Tax* (1), that although a Hindu undivided family is included in the expression 'person' as defined in the Indian Income-tax Act, it is not a juristic person for all purposes.

From the above discussion it follows that a joint Hindu family occupies a peculiar position in law. It is, no doubt, a body of persons, but it is not the sort of body which has a single entity as a juristic person. It derives its nature and characteristics from the ancient Hindu law. Its character alters with every death and birth in the family.

(1) A.I.R. 1953 S.C. 516

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It has not been defined in any statute and as far as we are at present advised, it is treated as a person only for the purpose of Income-tax Act and Excess Profits Tax Act. The weight of authority seems to favour the view that for the purposes of the Partnership Act a joint Hindu family cannot be deemed to be a person. When the *karta* of the family enters into a partnership, he alone becomes a partner, although he represents the joint Hindu family. The transactions into which he enters make the other members of the family liable to the extent of their share in the joint family property. They can also claim the share of the profits to which they are entitled as coparceners, but beyond this they have no rights and incur no liabilities with regard to the partnership business. There are, no doubt, one or two cases in which a contrary view appears to have been taken, but these are clearly distinguishable.

The first of these cases is *Maharaj Kishen* v. *Har Gobind and another* (1), The head-note to this case is somewhat misleading. The facts are that five persons signed a partnership deed. The partnership was between Maharaj Kishen who was a stranger to the family on the one hand and two firms, Gange Ram-Jamna Das and Basheshar Lal-Har Gobind, on the other. One of the partners of the firm Ganga Ram-Jamna Das was Munna Lal, a member of the joint Hindu family. It was alleged that on the death of Munna Lal the partnership dissolved. On the other hand, it was contended that Munna Lal had joined the firm on behalf of the joint Hindu family, and since the family had become a partner, Munna Lal's death made no difference to the case. It was held by the Judges that Munna Lal's death did not put

(1) A.I.R. 1914 Lah. 517

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an end to the partnership; but on a reading of the judgment it appears that the joint Hindu family consisted of Munna Lal and his nephew Piyari Lal. Piyari Lal had also signed the partnership deed and, therefore, the view taken was that on Munna Lal's death Piyari Lal continued the partnership on behalf of the family because he had already signed the deed. The judgment proceeds on the ground that Piyari Lal, the heir of Munna Lal by survivorship, was at the time of his (Munna Lal's) death one of the partners and so all that happened was that on Munna Lal's death Piyari Lal became entitled to a larger share in the partnership than he previously possessed in his individual right. The Judges went on to say—

> "But even if it be held that the death of Munna Lal had the technical effect of dissolving the partnership of which he was a member, it is clear from the evidence of Maharaj Kishen himself that all parties agreed expressly or by necessary implication to continue the partnership as if no dissolution had taken place."

This ruling, therefore, is not an authority for the view that where the *karta* of a joint Hindu family joins a partnership, the entire family becomes a partner and the death of the *karta* continues the partnership. *Narain Das and others* v. *Ralli Brothers* (1), was another case relied upon by the learned counsel for the plaintiff. In this case Sita Ram who was the manager of a joint Hindu family consisting of himself and his sons joined a stranger in a partnership. It was held that Sita Ram represented the whole family in the partnership and his

(1) A.I.R. 1915 Lah. 186

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death, therefore, did not bring about a dissolution of the partnership. Shadi Lal, J., observed—

> "His death did not, therefore, bring about a dissolution of the partnership and the *family,* which may be regarded as a *persona,* remained partner both before and after his death."

This case undoubtedly appears to be an authority for the view advanced by the learned counsel for the plaintiff, but the weight of authority now seems to be overwhelmingly opposed to it. Another ruling cited before us was a Privy Council decision in *Lachhman Das* v. *Commissioner of Income-tax* (1), In this case the status of a joint Hindu family was considered in relation to the income-tax law and, therefore, the observations contained in the following passage cannot be said to be of universal application. Also it is to be observed that this was a case between the *karta* of the joint Hindu family on the one part and one of its members in his individual capacity on the other part :—

> "In conclusion, it was argued for the respondent that a joint Hindu family being, by its nature a frequently changing entity no partnership could be formed with it. This objection, if valid, would be equally operative against a partnership of the family with a stranger, which the authorities prove, and it is practically conceded in this case, can be validly formed. But, apart from this answer, it may be pointed out that though in its nature a joint Hindu family may be fleeting and transitory, it has been regarded as capable of entering, through

(1) A.I.R. 1948 P.C. 8

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the agency of its *karta*, into dealings with others. Without accepting the view of some eminent Hindu Judges that a Hindu joint family is, in its true nature, a 'corporation' capable of a continuous existence in spite of fleeting changes in its constitution, it is enough to state that for the purpose of such a transaction effected through the medium of its *karta*, it has been for a long time past, regarded as an entity capable of being represented by its manager."

Reliance was also placed on certain remarks made by Chagla, C.J., in *Udhavji Anandji Ladha and others* v. *Bapudas Ramdas Darbar* (1), The learned Chief Justice observed—

"There is nothing in Hindu law to prevent a member of a joint family becoming a partner with a stranger. Whether a *karta* becomes a partner in his own right and incurs liabilities only personally or whether a joint family becomes a partner is always a question of fact and must be decided on the circumstances of each case."

The learned Chief Justice found that the *karta* had joined the partnership as representing the joint family.

But when the *karta* joins a partnership as representing his joint family, it cannot be said that the whole family becomes a partner. All that can be said is that the assets of the joint family become liable in case of any losses incurred by the partnership business. It seems to me that it is only

(1) A.I.R. 1950 Bom. 94

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in this restricted sense that the Judges who dealt with the above-mentioned cases have referred to the joint family being capable of becoming a partner. When the question arises as to who is the real partner and whether the *karta* is to be counted as one partner or all members of the joint family are to be considered as partners, the Judges are unanimous in their view. They have always held that the *karta* alone becomes a partner and he is to be counted as one member. This matter was considered in a number of cases in which the question was whether a certain partnership became illegal within the meaning of section 4 of the Indian Companies Act, because it consisted of more than twenty members, one of its members being a *karta* who represented the joint Hindu family. It was held that the *karta* was to be counted as one member only. In this connection reference may be made to *Mewa Ram* v. *Ram Gopal* (1), Again it was held in *Kanhaya Lal* v. *Firm Devi Dayal-Brij Lal and others* (2), that where a managing member of a joint Hindu family enters into a partnership with a stranger, the other members of the family do not *ipso facto* become partners in the business unless they themselves enter into a contractual relation with the stranger. Similar view was expressed in *Mahadeodas and others* v. *Gherulal Parekh and others* (3), In this case two persons acting as *kartas* of two joint families entered into a partnership. It was held that the other members of the respective families did not automatically become partners. The same proposition was laid down in *Daiya Ammal and others* v. *Selvaramnuja Nayakar and others* (4). In this case the manager of a joint Hindu family entered a trading partnership. It was held that on his

(1) A.I.R. 1926 All. 337
(2) A.I.R. 1936 Lah. 514
(3) A.I.R. 1958 Cal. 703
(4) A.I.R. 1936 Mad. 479

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death the partnership terminated. An exactly similar view was taken in *Sokkanadha Vannimundar* v. *Sokkanadha Vannimundar and others* (1), *Ramanathan Chetty* v. *Yegappa Chetty and others* (2), and *A. N. Chockalingam Chettiar* v. *K. M. S. Chinnayya Servai and others* (3). The facts in this last-mentioned case were that the manager of a joint Hindu family joined a partnership. The family consisted of himself and his children by two wives. His sons by the first wife were major, but his sons by the second wife were minors. After his death the major sons by his first wife continued the business and certain liabilities were incurred by the partnership business. It was held that the minor sons who did not continue the business were not liable for these moneys, because the partnership had automatically dissolved on the death of the manager. *P. K. P. S. Pichappa Chettiar and others* v. *Chokalingam Pillai and others* (4), is another authority for the view that where a managing member of a joint family enters into a partnership with a stranger, the other members of the family do not *ipso facto* become partners. "In such a case the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger." Another authority for this view is *Grande Gangayya* v. *Grande Venkataramiah and others* (5), R. P. Mookerjee, J., pointed out in *Sm. Lilabati Rana* v. *Lalit Mohan Dey and others* (6), that the proposition stated in paragraph 308 of Mayne's Hindu Law was generally accepted. This paragraph which is based on a number of

(1) I.L.R. 28 Mad. 344
(2) 30 M.L.J. 241
(3) 1939 M.L.J. 585
(4) A.I.R. 1934 P.C. 192
(5) I.L.R. 41 Mad, 454
(6) A.I.R. 1952 Cal. 499

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authorities states that where a managing member of a joint family enters into a partnership with a stranger, the other members of the family do not *ipso facto* become partners in the business. Accordingly on the death of one member of such a partnership, the whole partnership is *ipso facto* dissolved, and the business will cease unless reconstituted by the mutual agreement of all those who propose to carry it on. Mulla lays down a similar proposition in paragraph 234 of his Principles of Hindu Law, 12th edition, and observes that where a manager joins a partnership on behalf of the joint family, the partnership is dissolved on his death. "The surviving members of the family cannot claim to continue as partners with the stranger, nor can they institute a suit for a dissolution of the partnership, their position being no higher than that of sub-partners. Nor can the stranger partner sue the surviving members as partners for the manager's share of the loss." Malik, C.J., in *Ram Kumar-Ram Niwas Nanpara* v. *Commissioner of Income-tax* (1), refers to the status of another coparcener as 'a sort of sub-partner' who can only act through the *karta* who has joined the partnership on his behalf. A reference may also be made to *Lakshman Kushaba and others* v. *Bhikchand Raichand and another* (2), and *Kharidar Kapra Company, Limited* v. *Daya Kishan and others* (3), where similar observations have been made. The latest pronouncement of the Supreme Court on the subject is contained in *Firm Bhagat Ram-Mohanlal* v. *Commissioner of Excess Profits Tax, Nagpur and another* (4), In that case it was contended that when one Mohan Lal, acting as the manager of a joint Hindu family, entered into partnership with Richpal and

(1) A.I.R. 1953 All. 150
(2) A.I.R. 1930 Bom. 1
(3) I.L.R. 43 All. 116
(4) A.I.R. 1956 S.C. 374

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Gajadhar, the other members of the family, Chhotelal and Bansilal, also became, in substance, partners of the firm. Their Lordships held—

> "It is well settled that when the *karta* of a joint Hindu family enters into a partnership with strangers, the members of the family do not *ipso facto* become partners in that firm. They have no right to take part in its management or to sue for its dissolution."

The judgment contains the following observation :—

> "But in the present case, the basis of the partnership agreement of 1940 is that the family was joint and that Mohanlal was its *karta* and that he entered into the partnership as *karta* on behalf of the joint family. It is difficult to reconcile this position with that of Chhotelal and Bansilal being also partners in the firm in their individual capacity, which can only be in respect of their separate or divided property.
>
> If members of a coparcenary are to be regarded as having become partners in a firm with strangers, they would also become under the partnership law partners *inter se*, and it would cut at the very root of the notion of a joint divided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners."

We, therefore, find that although in a sense a joint Hindu family has been looked upon as a

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juristic person, it is only in a very restricted sense that this notion can be applied to a joint family. Under the Income-tax law a joint Hindu family is to be treated as a person, but under Hindu law the joint Hindu family cannot be treated as a corporation for all purposes. In particular, where the question of entering into partnership with strangers is concerned, it has been held in a large number of cases that it is only the *karta* who becomes the member of the partnership and not the entire joint family. The *karta* counts as one person. He himself is liable to the extent of his coparcenary property as well as his personal property, but the other members of the family are liable only to the extent of their coparcenary share. On the death of the *karta* the partnership is automatically dissolved, because it was he who was member and not the joint family. He was not entering the partnership as the agent of the joint family and his peculiar position is defined by the rules of Hindu law. The latest pronouncement of the Supreme Court on the subject shows that only the *karta* and not the entire family becomes a partner when there is association between him and strangers under section 4 of the Partnership Act. The death of a partner automatically dissolves partnership and, therefore, the death of the *karta* puts an end to the partnership. The surviving members of the family cannot, therefore, he held liable for any debts incurred after the death of the *karta*.

In this view of the matter I would answer the first question in the negative holding that the family cannot be deemed to have become a partner when the *karta* of the family enters into partnership in his representative capacity. My answer to the second question would be that on the death

of the *karta* the partnership stands dissolved. The case will now be remitted to the Division Bench for disposal.

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DULAT, J.—I agree.

GOSAIN, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

DITTU RAM,—*Plaintiff-Appellant.*

versus

BALWANT RAI AND OTHERS,—*Defendants-Respondents*

Letters Patent Appeal No. 187 of 1959.

1959

Aug. 21st

Punjab Pre-emption Act (I of 1913)—Agricultural land being used for purposes of a brick-kiln for more than a year before sale—Whether retains its character as agricultural land liable to be pre-empted

Held, that the relevant date for determining whether the land in suit was agricultural or not is the date of the sale. The land which had been used for purposes of running a brick-kiln for more than a year before sale had ceased to be agricultural land and cannot be pre-empted.

Appeal under Clause 10 of the Letters Patent from the judgment of the Hon'ble Mr. Justice Harbans Singh, dated the 19th day of March, 1959, reversing that of Shri K. S. Chadha, District Judge, Hissar, dated the 9th August, 1958, and restoring that of Shri G. K. Bhatnagar, Senior Sub-Judge, Hissar, dated the 3rd March, 1958, dismissing the plaintiff's suit and leaving the parties to bear their own costs, and further ordering that the defendants will have their costs in the lower appellate Court and the trial Court.