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Case No: HC11C00268

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 April 2014

Before :

Sir William Blackburne

- -

Between:

BAL MOHINDER SINGH	**Claimant**
- and -	
(1) JASMINDER SINGH	
(2) HERINDER SINGH	
	Defendants

- -
- -

John McDonnell QC and **Daniel Burkitt** (instructed by **Richard Slade & Co**) for the Claimant
Ian Croxford QC and **Daniel Lightman** (instructed by **Orrick, Herrington & Sutcliffe (Europe) LLP)** for the First Defendant
Andrew Thompson (instructed by **Magwells**) for the Second Defendant

Hearing dates: 19-22, 25-29 November, 2-6, 9-11, 13 and 19 December 2013

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Judgment

Sir William Blackburne :

Introduction

1. This is litigation of a most unusual nature. It is a dispute between Bal Mohinder Singh ("Father"), who is the claimant and was represented by John McDonnell QC and Daniel Burkitt, and his elder son, Jasminder Singh ("Jasminder"), who is the first defendant and was represented by Ian Croxford QC and Daniel Lightman. The dispute is over the ownership of certain property. That property includes Tetworth Hall which is a spacious house standing in its own grounds on the edge of Ascot race course and in which the two of them live together with Satwant Kaur Singh, who is Father's wife and Jasminder's mother ("Mother"), Jasminder's wife, Amrit ("Amrit"), and their children. Tetworth Hall was purchased by Jasminder and is registered in his sole name. Other property subject to the dispute includes the shares held by individual members of the Singh family in a hugely successful hotel group called Edwardian Group Limited ("EGL"). EGL holds and runs a number of hotels in central London and others at Heathrow and elsewhere. Jasminder, who is its chairman and chief executive, has a personal holding of 5.28% of the issued shares in EGL. A further 90.7% is held on various Singh family trusts. Herinder has a personal holding of 0.36% and Father and Mother each have holdings of 0.13%. Outside (non-Singh related) shareholders hold nearly all of the remaining shares. Father's claim, insofar as it concerns the shares in EGL, relates to the beneficial ownership of the Singh family's personal holdings, in particular Jasminder's very valuable 5.28% which is worth several millions of pounds.

2. So summarised there is nothing out of the ordinary about a contest of this kind. What makes the dispute so unusual is Father's claim that these and other items of property are joint family assets which are held in accordance with the principles of what is known as the *Mitakshara*. This is the legal code, for want of a better description, by which a Hindu family living and eating together as a composite household may hold its property. The code which is of very ancient origin applies as much to Sikhs as to Hindus. This is relevant because, as their name implies, the Singh family are Sikhs. The beneficial interest in property of a joint Hindu (or Sikh) family, if held subject to the *Mitakshara*, belongs jointly to the male members of that family down to the third generation from a common male ancestor. The male members are sometimes called "coparceners." The property owned by the coparceners is frequently referred to as "coparcenary property." Before me it was referred to, and I shall also so refer to it, as "joint family property." That expression must not be confused with property which is jointly owned according to notions of English property law. I will explain in more detail later how, so far as it is material to understand it, the *Mitakshara* operates.

3. Apart from Jasminder, Father and Mother have two other children, namely a daughter called Suninder Kaur or, as she prefers, Seema ("Seema"), and a second son called Herinder Singh ("Herinder"). All three children are married and have children. In the case of Jasminder and his wife, Amrit, there is one son, Inderneel, and three daughters. Inderneel is 29 and their youngest daughter is 23. Inderneel is married and has an infant daughter. The eldest of the three daughters is married and has an infant daughter. Seema and her husband, Deepak Abhi, have three children (and a further child who died at the age of nine). Their eldest child is married and has an infant son. Herinder and his wife, Alka, have a teenage son and daughter. For ease of reference a family tree is attached to this judgment. It shows the Singh family and certain

collaterals on both Father's and Mother's sides. I understand that all of the persons shown on the family tree are Sikhs in terms of their ethnic and cultural origins.

4. Father contends that he and Mother brought up their children from infancy to regard themselves as a new Hindu joint family consisting of the two of them and their children. It is "Hindu" in the sense that, as I have mentioned, a Sikh family is for *Mitakshara* purposes treated as if it were Hindu, and "new" in the sense that (as it is alleged) it was started by themselves as distinct from forming part of some larger joint family derived from Father's paternal side. He contends that he and Mother brought up their children to regard all of their savings and any property acquired or to be acquired by any member of the family as joint family property. In particular, he contends that Tetworth Hall and the shares in EGL (other than those that were placed in certain trusts for members of the family - I will come later to these) and any other property similarly treated are held subject to the *Mitakshara* under a common intention constructive trust. In paragraph 56 of his particulars of claim he pleads that the

> "principles and customs [of the *Mitakshara*] provide the content of a constructive trust which governs the family property of the Singh family by virtue of the common understanding of Father, Mother and their children throughout the period when the property was being acquired that they all had beneficial interests in that property which were in accordance with those principles."

5. Jasminder resists the claim. He contends that what he holds in his name, including in particular Tetworth Hall and his shares in EGL, is beneficially his own and is not held by him as joint family property in accordance with the *Mitakshara*. Indeed, he says that until this dispute first arose he had never even heard of the *Mitakshara*, let alone had any understanding of how it operates. Although a defendant, the only part Herinder has taken in these proceedings has been to give evidence broadly supportive of Father. He takes no position on whether the *Mitakshara* applies and, if it does, what property is subject to it. He like Jasminder had never heard of the *Mitakshara* until this dispute first arose. He is a defendant because, on Father's case, he is a coparcenar. It is not clear whether Father claims that the shares held by Herinder are joint family property but the logic of his case would suggest that they are. Father's remoter male descendants (Jasminder's and Herinder's sons) have not been joined.

6. By an order dated 27 July 2012 Newey J ordered that there be a trial of the following preliminary issues:

> "a. whether there was, at any material time, a common understanding of the Claimant and the Defendants that any property acquired and legally owned by the Claimant and/or the Defendants and each of them would be subject to a common understanding that the concept of Joint Hindu Property as alleged at paragraphs 9-12 and 15 of the Particulars of Claim applied to all such property; and

> b. if the answer to Issue (a) is "yes", whether such property was then held as a matter of English law subject to a constructive trust; and
>
> c. if such property or any of it was held subject to a constructive trust, what the terms of such trust were."

7. At the same time Newey J made directions for the trial of these issues, including a direction permitting each side to rely on the evidence of an "expert in the principles of the Hindu Joint Family System and the principles of the *Mitakshara* as applicable to a family of Sikh origin." Both sides have adduced expert evidence in conformity with that direction. (I should say that, although the reference is to 'Hindu Joint Family' and there were references in the evidence to 'Hindu United Family' or 'HUF' for short, they are the same as joint Hindu family, the phrase most commonly used in the expert evidence and the expression which I shall adopt.) It is as a result of that evidence and the textbooks and authorities, principally Indian, to which reference has been made, coupled with help from counsel that I have been able to derive an understanding of the *Mitakshara* and how, so far as I need to know, it operates in practice.

8. On the fifth day of the trial Mr McDonnell sought by amendment to introduce a new way of advancing the claim. This was to allege that Indian law, as the law of the domicile of Father, Mother and their children, applied to their dealings as regards property of the kind in issue in these proceedings and that as the family lived as a joint Hindu family *Mitakshara* principles provided the basis upon which their property was held. He submitted that there was no reason why this court should not give effect to this and that if it applied there was no need to establish a common intention constructive trust. He sought my permission to add a further preliminary issue to enable the court to adjudicate upon this new basis of claim. The application was opposed. For reasons set out later in this judgment I was not willing at so late a stage of these proceedings to allow this. So the claim – and therefore the trial of the preliminary issues – proceeded on the basis pleaded.

9. It is the trial of those preliminary issues that has come before me and this is my judgment on those issues. In order to understand Father's claim, and thus to reach a conclusion on the preliminary issues, it is necessary to go into the relevant background, including the legal basis, in some detail. I start with some family history.

The Singh family: a little of their history

10. If nothing else this litigation has highlighted the extraordinary enterprise that has enabled the Singh family, in the space of just two generations, to rise from obscurity and very modest circumstances in what was then rural British India, overcome all manner of difficulties, come eventually to this country and make a fortune for itself. I dare say it is not untypical of many such families but there can be few whose rise has been quite so meteoric. The family's story as it unfolded in the course of this trial has a heroic quality to it. It has made it all the more painful to have to listen to the tragic differences that now divide its members.

11. Father's family lived, I was told, in a district called Kallar which is about 25 miles to the south west of Rawalpindi in what is now Pakistan. At the time of Father's birth, which was on 10 January 1927, Kallar lay in undivided Punjab of what was then

British India. It seems that Father's paternal grandfather was a Hindu. In his witness statement Father stated that this grandfather, together with his own (i.e. Father's) father and the latter's three brothers and their wives and children, all lived together as a single household. They did so in a large compound in the country earning their living as farmers producing wheat and milk. It was an agrarian existence of a kind which doubtless stretched back over several, perhaps many, generations. The witness statement went on to contend that it was taken for granted that "our property all belonged to the family" and that "in terms of joint ownership of the family property the family meant the males, though the wives, widows and daughters had to be looked after in well-known and accepted ways: for example, the daughters were entitled to dowries." According to his witness statement, although Father's father and his elder brother were Hindus, his two younger uncles were (or became) Sikhs. I do not know, and the witness statement does not explain, how this came about. Along similar lines apparently was the fact, according to the witness statement, that Father and his six brothers were brought up as Sikhs. In their case, however, their mother was a Sikh.

12. Father attended school until he was 16 or so when he went to work on the family farm. He said that he continued to do so for about three years. At that point, it seems, he decided to give this up, leave the family home and make his way in another part of the world. It was 1946. That new world was East Africa, in particular the (then) British territory of Tanganyika. He was able to do so because his sister, Harbans Kaur, was living there and was married to another Sikh called Madan Singh. Madan Singh was a police officer in up-country Arusha, near to Kilimanjaro and a very long way from the capital, Dar-es-Salaam. Madan Singh was able through friends there to obtain for Father a job as an assistant cashier in the Arusha branch of Barclays Bank DCO. After two years in that job, Father moved to Dar-es-Salaam when Madan Singh and his sister transferred there. He took up different employment, this time with the Tanganyika Railway as a guard (or it may have been as a ticket inspector).

13. In the meantime, dire events had occurred back home in India. In August 1947 the British Indian Empire came to an end and the subcontinent was divided to form the two independent states of India and Pakistan. It resulted in the partitioning of the Punjab (and of Bengal in the east) between the two new successor states. In the ensuing upheaval, involving terrible bloodshed and mass movements of people (Muslims from India to Pakistan, and Hindus and Sikhs from Pakistan to India), the Singh family lost its land in Kallar and was forced to migrate to India. The family was eventually re-settled in Meerut, not far from Delhi. It meant that there was even less for Father to return to (and in a place that would have been strange to him) than there had been when he left the subcontinent the previous year.

14. Madan Singh was helpful to Father in another significant way. In 1950 he arranged for Father to marry Mother. At the time he was 23 and she just 16. She was the third of ten children (five boys and five girls) of Sardar Singh Vohra ("SS Vohra"). She was born on 15 December 1933 in Nairobi. She left school, reluctantly she said, at the age of 15 "as my father decided that I needed to get married." In the event she was to marry Father. She mentioned that she saw Father for the first time after the ceremony had taken place. As it happens the youngest of her many siblings, Satinder Singh Vohra, was born in January 1949, just over two years before Jasminder who was born on 2 April 1951. Satinder and Jasminder, respectively uncle and nephew, were later to become close friends when they were both in London. But, at this stage,

London and the UK generally were sometime in the future and East Africa – Kenya and Tanganyika – was where the Singh family had their home and centre of activities.

15. SS Vohra was a prominent member of the local Sikh community in Kenya and a successful businessman running a large bicycle enterprise and investing in property and hotels. His background was at least as colourful as Father's. His family had also come from the Rawalpindi area. They were, as Mother put it, "Papus" or business people. In his case he had been orphaned at an early age when his parents had perished in what Mother described as "the plague which killed thousands of people in India at the time." I took this to refer to the influenza pandemic of 1918/19. He was the youngest of a family of five children. He decided, like Father many years later, to seek his fortune in East Africa. At the age of about 15 he took passage in a dhow across the ocean from India to Kenya where he was able to settle, find work (despite being of limited education and with no relatives there to help him), marry, father a large family and build up a successful business in Nairobi. (After building up a grocery store, he opened a bicycle shop, became the distributor for Raleigh bicycles and never looked back.) In fact it was on a visit to India (to see his relatives in Rawalpindi) that he saw and arranged to marry Mother's mother. She, it seems, was initially reluctant but relented: they married and he brought her back to Nairobi.

16. According to Mother the Vohra family had always been devout Sikhs and were well known and respected in the Sikh community. SS Vohra became President of the largest Gurdwara (a Sikh temple) in Nairobi. He and his wife devoted themselves to much charitable work in the community. Mother understood that she and her siblings were brought up by their father "as a joint family according to the system which his own parents observed in India." She stated that "The family business and property all belonged to him and my brothers and their male descendants. My mother and the girls in the family were all maintained by the family according to our needs; but the girls were expected to marry and when they did they would leave our family (with their dowries of course) and become part of their husbands' families, the marriages being of course arranged between the two families."

17. So much for the circumstances of Father's and Mother's family backgrounds. I now come to the background to Father's claims and the events which have culminated in these proceedings.

The background to Father's claims

18. As I have mentioned, Father married Mother in 1950 by which time he was working with the Tanganyika Railway. On 2 April 1951 Jasminder was born. He was followed by Seema on 2 January 1954: as it happens, she was born in India during a visit by the family to Father's relations in Meerut.

19. Father's and Mother's early married life was spent in Dar-es-Salaam where Jasminder was born. The Railway then moved the family inland to Morogoru, then further up-country to Dodoma, and then back to Dar-es-Salaam. In the meantime, Seema, at the age of 3, went to live with Mother's eldest brother, Anoop, and his wife in Nairobi. Anoop was the eldest of Mother's many siblings. Seema remained there for two years.

20. Jasminder's early education was at an Aga Khan pre-school in Dodoma and then at a Catholic school in Dar-es-Salaam.

21. In 1965 Father took early retirement from the Railway where he had worked for 18 years. He was 38 at the time. The family then moved from Tanzania (as Tanganyika had by then become) to Kenya, staying initially with Mother's parents and then moving inland to Kisumu (on the shore of Lake Victoria) where Mother's sister and her husband were living. It appears that Mother's brother-in-law had connections with hotels there and, although Father had no previous experience of the hotel business, he was encouraged to try it. His brother-in-law arranged for him to take over the management of the bar at the Marina Hotel. This appears to have worked out successfully and Father was then asked by his brother-in-law to take over the management of another establishment which belonged to a family connection. In 1966 Father took over the management of yet another bar and of a restaurant at Kisumu. He also opened and managed a night club for the owners of a cinema. The result of all this activity was that Father was able to prosper and, as will appear, afford to send Jasminder to this country to complete his education. In the meantime, Jasminder lived with Mother's father in Nairobi (sharing accommodation with his uncle, Satinder) where he attended a Catholic school.

22. On 1 April 1967 Herinder was born. Jasminder was then a day short of 16. In September of the following year Jasminder, by now aged 17, had completed his O Levels and was sent by Father and Mother to this country to complete his education. For a while he studied at a school in Edinburgh. During the Christmas/New Year holiday of that first year in the UK, he stayed in London in the house, 25 Princes Avenue, North Finchley, which was owned by four of Mother's brothers (including Satinder) through a company called Chrysanta Ltd. Over that Christmas/New Year break Jasminder met a person called Shashi Shah who was training to become (and was shortly to qualify as) an accountant. Shashi was several years older than Jasminder. The upshot of the meeting was that Jasminder decided that he too wished to study to be an accountant. He left his school in Edinburgh, gave up the idea of studying pharmacy (which had been the aim up to that time) and, instead, took up employment with an accountancy firm called Nathan & Co. This change of educational and career path was evidently accepted by Father.

23. After remaining a few weeks at the Vohra home at 25 Princes Avenue, Jasminder found accommodation at the Methodist International Hotel in the Bayswater area of London. Later that year, 1969, he took up accountancy studies at Tottenham College. The funding for this was in part from what Father remitted from Kenya and in part from Jasminder's meagre earnings as a junior clerk at Nathan & Co and subsequently with two other firms. In due course, in 1974, he qualified as a certified accountant.

24. Chrysanta Ltd, through which the Vohras had purchased 25 Princes Avenue, was later to change its name to Chrysanta Hotels Ltd and was the corporate entity through which the Vohra brothers acquired and managed their hotel business. They went on to invest in a number of hotels. The details do not matter. It is sufficient to note that their business prospered.

25. The Singh family circumstances changed when in late June 1972, at a time when Father, Mother, Seema and Herinder were still in Kenya, Father bought 25 Princes Avenue from the Vohras. The price paid by him was £9,400. Jasminder, who had

nothing to do with the arrangement of this transaction, moved back to live there. A few weeks later, in August 1972, Seema and a Vohra cousin called Guddi arrived in this country. Seema came to follow in Jasminder's footsteps and study accountancy. In due course she and Guddi joined Jasminder at 25 Princes Avenue. At the time, he was living there with a girlfriend.

26. In 1974 Jasminder qualified as a certified accountant and, in May of that year, Father and Mother decided to move from Kenya and come to live in London. There was a conflict in the evidence over whose idea this was. Was it Father's and Mother's idea to come? Or was it Jasminder's? Father's and Mother's evidence was that they came at Jasminder's urging. Jasminder was certainly keen that they should come but said that it was their decision to do so. Mother's evidence was that she liked it in Kenya (East Africa had been where she had spent all of her life up to that time), in particular the temperature there, and that it was where she and Father had made for themselves a comfortable living. I do not think it matters whose idea it was that they should come to the UK. The fact is that they came. Years later, in February 1988, when completing a questionnaire for the UK Revenue regarding his domicile, Father stated (in answer to a question asking him what his reasons were for coming to this country) that "I was in business in Kenya. I was not granted a renewal of permit to trade there as I was not a Kenyan citizen so I joined my son in business in the UK …"

27. When they arrived in this country Father and Mother (together with Herinder who was then just 7) went to live at 25 Princes Avenue where they joined Seema and Jasminder, the latter's girlfriend having vacated in the meantime. Not long afterwards Father purchased 82 Stamford Hill, Hackney, which was a Post Office and shop with a flat above. It was purchased in his name for £25,000 with assistance from National Westminster Bank. Jasminder said that it was he who found the property. The house at 25 Princes Avenue was not sold at that stage; instead it was rented out.

28. Father ran the Post Office with Mother and with help from others, including Seema. In the meantime Jasminder took up employment – as a manager – with an accountancy firm called Hacker Young. Eventually, in February 1976, Father sold 25 Princes Avenue for £18,000. That coincided with a decision by Jasminder to give up working as an accountant and to join Satinder Vohra and other members of the Vohra family and a Mr S K Gulhati ("Mr Gulhati") in operating a hotel business. It was to prove a fateful decision.

29. It came about in the following way. The opportunity arose in late 1975 for the Vohras to acquire a hotel from the receivers of the previous owner. The hotel was the Edwardian Hotel located at 40-44, Harrington Gardens in South Kensington. The vehicle chosen for the acquisition was a dormant company called Surena Ltd. To this end, on 20 November 1975, the company changed its name to Edwardian Hotels Ltd ("EHL"). Satinder Vohra and three of his elder brothers were its only shareholders and each held the same number of shares. Jasminder, who heard of the project from Satinder, was invited to join his Vohra uncles in the venture. He was keen to do so, describing the invitation as the "light bulb moment" of his life. It was arranged that he should take on the management of the hotel business. He gave up his employment as an accountant with Hacker Young and, following an increase in EHL's share capital on 5 January 1976 from £100 to £1,000, subscribed for and was allotted 333 shares of £1 each. Jasminder stated, and I have no reason to doubt, that he paid for those shares out of his own pocket. A further 234 shares were allotted equally

between Satinder and his three elder brothers to add to the 25 shares which each of them already held. This meant that following the allotment Jasminder's 333 shares were fewer by just one than the 334 shares which, between them, his Vohra uncles held. In effect he was a 50% co-venturer in the project. He was also appointed a director of the company to serve alongside two of his four Vohra uncles and three others, including Mr Gulhati.

30. The purchase of the hotel was completed on 21 January 1976. The price paid, together with the costs of the transaction, came to a little over £316,000. In addition, £19,500 odd was spent on fixtures, fittings and other equipment. Funding for this came in part from a secured loan of £159,500 provided by BCCI, and unsecured loans of £142,000 provided as to £69,000 by the Vohras (through two of their companies), £43,000 by Mr Gulhati (through a Liechtenstein entity called Arrow Trading & Investment Establishment ("Arrow Trading")) and £30,000 by Father. Further funding of the hotel and its business came from Jasminder and Sanjit S Vohra (Anoop S Vohra's son and therefore Jasminder's cousin) as reflected in their respective director's loan accounts, and also by means of a bank overdraft.

31. There was much debate before me over the basis upon which Father provided his £30,000 to EHL. I will return to this issue later: the provision by Father of that sum lies at the forefront of his claim in these proceedings.

32. EHL was able to negotiate the BCCI loan through the manager at the relevant branch, a Mr I K Patel. He was known to the Vohras and to Father and Mother and was introduced to Jasminder by the solicitors, Vohora & Clarke (the Vohora being no relation of the Vohras), who acted for EHL on its purchase of the hotel. Following the acquisition Jasminder moved out of 82 Stamford Hill where he had been living with the rest of his family and into the hotel to enable him to devote more time to the running of the business there. The Vohras had separate hotel interests which they operated through other companies under their control. As I have mentioned, the details of this do not matter.

33. Just over a year later, in February 1977, EHL's ordinary shares were converted into Management Shares carrying an exclusive right to manage the company. The remaining 333 unissued shares were allotted to Mr Gulhati. In effect, therefore, the Vohras held one-third of those shares, Jasminder a further one-third and Mr Gulhati the other third. At the same time a further 9,000 new ordinary shares were created ranking *pari passu* with the (re-designated) Management Shares save that the holders enjoyed no right to participate in the management of the company. Of the 9,000 new ordinary shares 3,000 were allotted to Jasminder, 3,000 to corporate entities belonging to the Vohras and 3,000 to Arrow Trading. The shares were allotted for cash. It was not suggested that Jasminder did not fund his own acquisition of these further shares.

34. Other transactions of significance took place in 1977. On 25 May 1977 Father sold 82 Stamford Hill for £35,000. Jasminder seemed to recall that, over and above that amount, a further sum was paid to Father for goodwill and the like. The sale coincided with the purchase in Jasminder's name for £29,000 of 53 Spencer Road which was a dwelling house in North Wembley. He financed the purchase with the aid of a £20,000 advance from Nationwide Building Society. He was under the impression that the £9,000 balance, together no doubt with the costs of the transaction, were lent to him by Father. At all events, it is common ground that at

about this time Jasminder became indebted to Father for £10,000. I will return to this later. Father, Mother, Seema and Herinder went with Jasminder to live at 53 Spencer Road.

35. A few days after Jasminder had acquired 53 Spencer Road, a new company called Patentgrade Ltd was incorporated. This occurred on 2 June 1977. Towards the end of the following month, July 1977, the two subscribers' shares in Patentgrade were transferred to Jasminder and new shares allotted so that out of the 100 which were in issue Father, Mother and Jasminder each held 30 shares and Herinder, although then only ten years old, the remaining ten shares. The purpose of acquiring Patentgrade was to enable premises at 6 Collingham Road, South Kensington, to be acquired. The purchase was from old Kenya friends called Taneja. The price paid was £90,750. This was funded in part by a secured loan from BCCI and in part out of the sale proceeds of 82 Stamford Hill. Father, Mother, Jasminder and Seema were appointed directors. 6 Collingham Road, which was in a run-down state at the time of purchase, was acquired to be run as a business for the letting of holiday flats. The premises needed, and in due course received, extensive improvement. Father and Mother then took up and ran the holiday lettings business.

36. Including the costs of the transaction and payments for the improvements and for the necessary furniture and equipment, the overall investment appears to have cost £126,000 odd. This was financed, as to £24,400, by a secured loan from BCCI, as to a further amount of around £12,800 by a secured overdraft (provided by BCCI) and as to the £89,000 or so balance by loans from Father, Mother and Jasminder. In evidence was a Patentgrade document headed "Directors Loan Accounts" showing the position as at 31 December 1978 which was the end of the first period of trading (which started on 14 November 1977) following the acquisition of 6 Collingham Road and after, I presume, the improvements made to it to enable it to function as a holiday lettings business. That document shows that Father and Mother advanced the following sums to Patentgrade: (1) £18,150 out of the sale proceeds of 82 Stamford Hill, (2) £30,000, being the sum which Father had previously lent to EHL and which he withdrew from his loan account with that company, (3) £10,000 which Jasminder repaid to him, being, it is thought, the loan which Father had previously made to Jasminder to enable him to complete his purchase of 53 Spencer Road, and (4) £23,000 described in the document as "repayment of a loan by a relative living in Kenya". There was also a small measure of undrawn directors' remuneration. After deducting £6,000 used to repay another loan, the directors' loan account of Father and Mother as at 31 December 1978 stood at the figure of £75,212. For his part Jasminder withdrew £19,750 from his current account with EHL out of which he repaid the £10,000 which he owed Father and, after deducting certain sundry drawings, he is shown as at 31 December 1978 as having advanced Patentgrade £9,013. In all therefore Patentgrade is shown at the year-end to be indebted to Father, Mother and Jasminder in the overall sum of £84,225 with the lion's share owed to Father and Mother. The figures do not wholly reconcile but, given the paucity of the available documentation after the passage of so many years, this is not surprising. Patentgrade's annual accounts indicate that by 31 December 1984, all but £200 odd of what Father was owed had been repaid.

37. The other transaction of importance which occurred in 1977 was the sale by EHL of the Edwardian Hotel. Apparently this occurred on the initiative of the Vohra

directors and was only communicated to Jasminder after the deal had been struck. The sale was completed on 31 October 1977. It was to cause some friction between him and his Vohra relatives. I was not told precisely what the hotel sold for but EHL's accounts suggest that the net sale proceeds (after the discharge of secured loans of £160,000 odd) amounted to about £380,000. Following the sale Jasminder went to live at 53 Spencer Road which he had acquired some months earlier and where the rest of his family were living.

38. Patentgrade was later to be renamed Edwardian Group Ltd. It is the same EGL which, over the years, was to grow into and become the hugely successful business described earlier in this judgment. It is first necessary to say something more about EHL.

39. In May 1978 EHL purchased the Vanderbilt Hotel at 76-86 Cromwell Road, West London. According to EHL's accounts the price paid was £515,000 odd. There was mention in the evidence of a figure of around £600,000. I do not think that the precise amount matters. The purchase appears to have been funded in part out of the sale proceeds of the Edwardian Hotel and as to the balance by means of unsecured borrowing (I presume from BCCI). At about this time Mr Gulhati disposed of his (and Arrow Trading's) shares to entities controlled by the Vohras so that the Vohras controlled two thirds of the issued shares and Jasminder the other third. This disposal also happened without Jasminder's knowledge and caused him to feel some resentment, not least as he believed that he should have had the chance to offer for some of the shares. At the same time Mr Gulhati resigned as a director. That left Jasminder, Satinder and two other Vohra uncles as directors. In fact at this time, indeed from shortly after the sale of the Edwardian Hotel the previous autumn, Jasminder had spent time in the USA. He was considering whether to use some of the cash in the EHL balance sheet which he might expect to be paid to set up in the USA and live quite separately from his own family and the Vohras. In the event nothing came of this, not least because he fell ill while out there which necessitated a period in hospital on his return to this country. It was while all this was happening that the purchase of the Vanderbilt and the sale of the Gulhati holdings in EHL to the Vohras occurred. When Jasminder did leave hospital and was sufficiently recovered he threw himself into the running of the newly acquired Vanderbilt Hotel leaving his parents to get on with the running of the holiday lettings business at 6 Collingham Road.

40. The year 1979 saw further developments in the Singh family fortunes. In February of that year Patentgrade sold 6 Collingham Road for £158,000. In its place the company acquired its first hotel, the Savoy Court Hotel off Oxford Street in central London. The opportunity to acquire the short residue of its lease had been identified by Jasminder who was required to guarantee its obligations. The hotel needed refurbishment. This was financed by a combination of the sale proceeds of 6 Collingham Road, personal loans by Vinod and Shashi Shah (friends of Jasminder), bank finance provided by BCCI and the issue (in February 1979) of further shares in Patentgrade, 1200 to Jasminder, 2660 to Mr Gulhati (held through Arrow Trading) and 1440 to Shashi Shah (in each case for £8 per share, representing a premium of £7 per share). In addition, the three of them provided personal guarantees to secure the company's bank borrowings and Mr Gulhati and Mr Shah joined the board. There was also an issue of bonus shares to the existing shareholders, i.e. Father, Mother, Jasminder and Herinder, rateably to their existing holdings. The effect of these steps

was that by the end of 1979, Jasminder held a little over 26% of the shares, Arrow just under 26%, Father and Mother just over 14.5% each, Shashi Shah just under 14% and Herinder (still only a child) just under 5%. It is clear from the accounts that the company was becoming increasingly successful: turnover was increasing and so too were profits.

41. In September 1979 Seema married Deepak Abbhi. Deepak was a Punjabi Hindu: his family came from Amritsar in India. After their marriage the two of them went to live in the USA where they have made their home ever since. Not long afterwards she resigned her directorship of Patentgrade and, in so doing, ended her involvement with the company. Seema gave evidence at the trial before me. I will return later to what she had to say.

42. The next important step in the life of Patentgrade was its acquisition of the Vohras' two-thirds of the shares in EHL. This was achieved in March 1980. The price paid was £258,000. The Vohras resigned their directorships of EHL and were replaced by Mr Gulhati and Shashi Shah. Thenceforward EHL became and was to remain a subsidiary of Patentgrade with, at that stage, Jasminder retaining his one third shareholding in it.

43. The following years witnessed a rapid expansion in Patentgrade's activities. Further hotels were acquired, in each or nearly every case with secured finance provided by BCCI, and the group, as by now it had become, was increasingly successful. The audited accounts for the year ended 31 December 1986 disclosed consolidated net profits before tax of £3.1 million (on a turnover of £18.1 million) and net assets of £59.4 million. The details of how this was achieved are not relevant.

44. In December 1986, there was a further share restructuring when Jasminder transferred his shares in EHL to Patentgrade in consideration of the issue to him, credited as fully paid, of 266,350 ordinary shares in Patentgrade. At the same time, in exchange for further shares in Patentgrade Mr Gulhati gave up the shares held by him (through a company called Veladail) in a company which owned the Kenilworth Hotel and which was owned 50:50 by Veladail and Patentgrade. In the meantime bonus issues had increased the capital of Patentgrade but with the percentage shareholdings left as before. This resulted in Jasminder holding 45.8% of the issued share capital of Patentgrade, Arrow Trading 16.6% and with others (including another Gulhati-owned corporate entity) each holding lesser percentages. In March 1987, Patentgrade changed its name to Edwardian Group Limited, by which name – I refer to it as EGL - it has since been known.

45. During this time Father had worked in the group and he and Mother had remained members of EGL's board of directors. Jasminder (as chairman and chief executive) was of course on the board. So also were Mr Gulhati and Shashi Shah. Herinder joined the board on 2 April 1986, a day after his 19th birthday. He had no management role at this time. This was not to come until 1992.

46. The group continued to expand and prosper. By 1990 it owned about nine hotels. Professional senior management was recruited. The board of directors was increased in size. With its increasing prosperity, reflected in the value of the underlying shareholdings, attention now turned to how best the shareholdings of Father and Mother might be dealt with to minimise the impact of tax. This led in 1988 to advice

from a firm of tax consultants called Chamberlains and solicitors called Heydons and also from tax counsel. Chamberlains were a firm of chartered accountants and tax advisers who over the years had provided the family with a tax advisory service while a connected firm of chartered accountants called Shah Dodhia (of which Shashi Shah was a partner) audited EGL's accounts (and still does so, although for some years now it has acted jointly with what has since become KPMG) and, in addition, carried out tax compliance work for members of the Singh family. A so-called "Memorandum on Estate Planning" drawn up in connection with the advice given to Father and Mother at this time went into their personal circumstances in some detail. It mentioned, for example, that the shares which each owned in EGL represented "their only assets which have a significant value." It also mentioned the salary which each drew as a working director of EGL and what their entitlements were under EGL's pension scheme.

47. The advice which they were both given at this time resulted in the transfer in January 1989 by Father (then aged 62) and by Mother (then aged 55) of 154,424 of their shares in EGL (leaving each with a small holding of just under 2%) to a series of trusts (ten in all) with, in each case, Jasminder, Herinder and Shashi Shah as the trustees. The net effect of those trusts ("the UK trusts") was as follows. Just over 92,400 shares were settled on trust for Herinder for life and, subject thereto, for the benefit of his children with extensive powers to apply capital and with a gift over for Jasminder's children in the event of a failure of the trusts in favour of Herinder and his children. (At the time, Herinder was unmarried and Jasminder had three children.) There was no equivalent trust in favour of Jasminder. A further 54,000 shares were settled on trusts for the benefit of Jasminder's and Herinder's existing and future children with various gifts over. The remaining 8,000 shares were settled on discretionary trusts for the benefit of either Mother (as widow in the case of the 4,000 shares settled by Father) or Father (as widower in the case of the 4,000 shares settled by Mother) and, additionally in each case, for the benefit of their children or remoter issue, any spouse, widow or widower of such children and remoter issue and for nominated charities. At the same time Father and Mother each signed a Memorandum of Wishes relating to the trusts for the benefit of their grandchildren and, separately, the discretionary trusts. In the case of the trusts for grandchildren each of them expressed the wish that the funds be divided into two equal parts, one for Jasminder's children and the other for Herinder's. Each then expressed wishes as to how each part should be dealt with. Failing any wishes as to how they should be dealt with by the parent in question (i.e. Jasminder or, as the case might be, Herinder) the wish was expressed that the children of each parent should be treated equally *inter se*, and, barring serious economic need, should not receive capital before the age of 30. In the case of the discretionary trusts each of them expressed the wish that during his/her life there should be no distributions, that after his/her death income should be made available for the survivor during his/her life and, subject to that, for division into two equal parts with one going to Jasminder and his wife and children (with directions as to how it should be dealt with after Jasminder's death) and the other for Herinder (with directions for how it should be dealt with after Herinder's death). There were gifts over in the event of a failure of issue, including an ultimate gift over to Seema and her children.

48. While all this was proceeding there had been changes in the family's living arrangements. On 3 June 1981 Jasminder exchanged contracts for the sale of 53

Spencer Road. He did so for £66,500. The sale completed in November of that year. In the meantime he purchased in his sole name for £102,500 a property called The Stables, Caldecot, Bushey Heath, Hertfordshire with the aid of a £100,000 loan (initially, on a bridging basis, from BCCI and later from Barclays Bank). The family remained there until September 1989 when Jasminder purchased his present home, Tetworth Hall, in Ascot, Berkshire.

49. The price paid for Tetworth Hall was £2.8 million. The purchase was initially funded by a short term secured loan provided by BCCI. This was replaced in November 1990 by a secured loan of £2.5 million provided by Nationwide Building Society. Jasminder believed that the difference was made up in part by the sale proceeds of The Stables on the basis that the purchase of Tetworth Hall was completed long before completion of the sale of The Stables which was over a year later, on 31 December 1990, and was to Shashi Shah and his wife for £500,000. The balance, he thought, came from loans to him by Mother and Herinder (funded in each case out of dividends from EGL to which each had become entitled) and the part-repayment by Father (by recourse to dividends on his shares) of a loan which Jasminder had made to him in November 1988. These loans were the subject of signed memoranda, each dated 11 September 1990. I am doubtful whether the position was quite as Jasminder seemed to think. Thus, the repayment to him by Father occurred in October 1989 which was many months before he refinanced the purchase through Nationwide Building Society. That said, I do not doubt that these loans existed. In particular, I was told and accept that substantial works were carried out at the new home which involved very considerable expense. I do not question the validity of the memoranda dated 11 September 1990. (I heard brief evidence about them from the accountant who was responsible for drawing them up, Chandrika Shah of Shah Dodhia.) Much the largest loan came from Herinder. It was for £197,000 odd. Jasminder stated, and Herinder accepted, that that loan was gradually repaid: £97,000 was repaid in May 1991 and the balance, £100,000, was discharged by an advance to him in September 2004 to assist him in the purchase of his own home. The loan from Mother – it was for £16,500 odd – was repaid some years later when Jasminder topped up her and Father's retirement pension. In his witness statement Jasminder referred to a suggestion which he received from Bryan Robson, a fellow director, to the effect that EGL make a special bonus payment to him of £750,000 to help in the refurbishment of Tetworth Hall. He said that this was approved at EGL's board meeting held on 2 October 1989 and that at a board meeting on 3 June 1991 further expenditure for refurbishment was approved on the basis that this would be provided to Jasminder as additional remuneration.

50. By the end of 1990, EGL had a turnover of £44 million and net assets, including nine hotels, worth about £175 million. It was on any view an exceedingly profitable and successful business. But events turned against it. According to Jasminder's evidence, which was not challenged in this respect, three matters combined which almost led to the liquidation of the group. The first was a downturn in the economy at about this time. The second was the First Gulf War which deterred visitors from coming to London. The third, and most dramatic, was the collapse of BCCI into provisional liquidation in June 1991. Following this collapse the provisional liquidators made demand for immediate payment of the totality of what the bank had made available to the group. It amounted to approximately £28 million. EGL was unable to make the payment. That it was nevertheless able, with the co-operation of its other banks, to

trade out of its difficulties, discharge what was due to BCCI and become once more a hugely successful group is attributable in large part to the skill and efforts of Jasminder, aided by, among others, his fellow director Bryan Robson. This in summary is what happened.

51. Initial efforts were concentrated on negotiating with the banks a refinancing of the facilities which had been provided by BCCI. As matters worsened in 1992, attention was focused on saving the group from insolvent liquidation. In November 1992 Coopers & Lybrand produced a report on the group. This stated that the hotels had been well managed and had benefited from "the close involvement of senior executives (specifically the Chairman and marketing Director)". The report considered alternative strategies. Negotiation with the banks resulted in the signing of Heads of Agreement in December 1992 whereby the banks agreed to forego enforcing their rights for a period and, instead, to subscribe for £4.5 million of convertible share capital (being the amount of the outstanding bank interest) which would carry a dividend of between 6% and 8% and would be convertible into ordinary shares. It was agreed that the new convertible shares could be the subject of call options. A key element of the package was the need to retain the services of Jasminder and incentivise him to work in order to return the group to profitability with a view to ensuring that the banks were repaid. The documentation which was finally agreed with the banks, a Master Facilities Agreement dated 7 June 1993 and a Shareholders' Deed dated 31 December 1993, contained provisions designed to tie Jasminder in personally to the rescue arrangements and incentivise him to work for the group's recovery. So far as relevant the agreed package involved the sale of two of the hotels, the issue to the banks of 9 million cumulative preference shares of 50p each and the conversion of the existing £1 ordinary shares into a 50p ordinary share and a 50p deferred share. It resulted in the banks between them holding 90.3% of EGL's issued share capital with the original shareholders holding the remaining 9.7%.

52. But that was only a part of the package. A most important element for Jasminder was his negotiation with the banks, as part of the arrangement to ensure his commitment to the rescue, for the grant by them in his favour (and to a significantly lesser extent in favour of two of the other original shareholders, Mr Gulhati and Shashi Shah) of call options over the cumulative preference shares to be issued to the banks. At the same time Jasminder took advice from Shah Dodhia and Chamberlains on the most tax-efficient way of receiving the options. To this end it was decided to establish twelve off-shore (Jersey) discretionary trusts ("the Jersey trusts") for the benefit of such members of the Singh family as Jasminder should chose. It was arranged that Father would be the settlor of six of them and Mother the settlor of the other six. All twelve would have a Jersey-based professional trust company, Verite Trust Company Limited ("Verite"), as trustee. This duly happened: the twelve trusts were set up in the course of May 1993. It was also arranged that Father and Mother, with the agreement of the other original shareholders, would transfer one ordinary share to each of the new trusts. This duly happened later in the year. The way was now clear for the grant to the twelve trusts of the benefit of the options which Jasminder had agreed that the banks should grant over that proportion of the cumulative preference shares which the banks were willing to allocate to him as part of his incentivisation package. It amounted to call options over 75% of those shares. Options over a further 12.5% of the shares were granted for the benefit of non-family shareholders, of which 10% was granted to Arrow Trading and 2.5% to another off-shore trust for the benefit

of Shashi Shah. The banks retained the remaining 12.5% of their shares free of any options. To allay any concern that the banks might have that any settlement of the benefit of the call options for persons other than Jasminder might dilute the purpose underlying their grant, namely to incentivise Jasminder to work for the recovery of the group, Verite (as trustee of the family off-shore trusts) was required to warrant (and in the Shareholders Agreement of 31 December 1993 did warrant) that the classes of beneficiary would not be altered from those established under those trusts on pain of loss of the right to exercise the option in question.

53. On 12 April 1994 Jasminder arranged for twelve memoranda of wishes to be executed by Father and Mother (one for each trust) in their capacity as settlors whereby the twelve Jersey trusts were divided into three groups of four. Four of the trusts (holding 12% of the options granted to Jasminder) were intended for Jasminder and his family but with provision for benefiting directors and employees of EGL and its subsidiaries, a further four (holding a further 66% of the options) were to be solely for Jasminder and his family, and the remaining four (holding the remaining 22% of the options) were to be for Herinder and his family but with power for Jasminder to say that others should be beneficiaries.

54. Happily, the rescue proved to be successful, EGL recovered, the outstanding liability to BCCI was discharged, two of the hotels which had been sold during EGL's financial travails were reacquired (together with BCCI's tranche of cumulative preference shares) and, on 30 December 1997, a variation agreed to the terms on which the cumulative preference shares could be purchased from the banks. In due course the options were called and the shares in question were bought along with the remaining shares which had not originally been the subject of any option arrangement. This enabled EGL to be restored to the exclusive ownership of its original (pre-rescue) shareholders together, now, with the various off-shore trustees. It meant that 81% of the shares were held in trust for members of the Singh family, a further 5% by Jasminder, Herinder and Father and Mother, and the remainder by entities or in trust for the benefit of Mr Gulhati and Shashi Shah. In 2005 the Gulhati share interests were acquired.

55. In the meantime EGL went from strength to strength. Further hotels were acquired. The group continued to expand. According to its audited financial statements for the year ended 31 December 2012 it has 30 direct and indirect subsidiaries and net assets of £828 million. Group turnover in that year was £164 million. Operating income before exceptional items and tax was £33.4 million. It has around 2000 employees. Wages, salaries and pensions costs totalled £46 million in 2012. Directors' emoluments were in addition. Its issued share capital consists of just over eight million ordinary shares of 50p each. (There are also just over 700,000 deferred shares, also of 50p each, but because of their very restrictive terms they are for all practical purposes of no value.) Of the overall issued share capital Jasminder is far and away the largest individual shareholder with 5.28% of the shares. Herinder holds 0.36% and Father and Mother together a further 0.26%. The remainder of the shares are held in various trusts. Trusts for the Singh family hold altogether 90.7%. The rest of the shares, amounting to 3.4%, are held on trusts for non-family members.

56. While all this was going on Jasminder executed a fresh will. He did so on 3 December 1998. By it he gave his personal chattels to Amrit and directed his trustees to allow her to continue to live in Tetworth Hall for so long as she should wish.

Subject to that he directed that that property should be sold and the income paid to Amrit for her life and that it should then be paid to Inderneel conditional on his attaining 25 (with a substitutional gift for his issue if he should die under that age). He directed that his shares in EGL should be held on discretionary trusts for the benefit of Amrit, his children and remoter issue (and their spouses, widows and widowers), Father, Mother, Seema and Herinder and their respective issue (and their spouses etc.). Subject to those trusts he directed that residue should be for Amrit for her life and, on her death, for their children.

57. In the course of 1998/1999 there were discussions between Herinder, Father, Mother and Jasminder designed to meet Herinder's wish that there be greater certainty that only he and his immediate family would benefit from the Jersey trusts held primarily but not exclusively for their benefit. (It coincided with the onset of a gradual deterioration in the relationship between Jasminder and his brother which I will deal with in more detail later.) To this end Herinder instructed solicitors. It was agreed that the share of the trusts held for the benefit of Herinder's family (representing 22% of the shares in EGL held on Singh family trusts) should thenceforward be held for the benefit of Herinder and his family to the exclusion of Jasminder and his family and that the other 78% be thenceforward held for the benefit of Jasminder and his family to the exclusion of Herinder and his family. In anticipation of these changes, on 3 December 1998 Jasminder executed a new letter of wishes in respect of all twelve Jersey trusts expressing his overriding wish that the shares in them should not be disposed of except as part of a disposal of the totality of the Singh family holding in EGL, including the shares held in the UK trusts and Jasminder's own holding. His main concern was to avoid share value dilution resulting from part disposals. These moves were ultimately concluded at a meeting on 1 February 1999 attended by Father, Mother, Jasminder and Herinder and by representatives of Verite, Shah Dodhia and Chamberlains. An agenda of the meeting was prepared and notes taken of what was agreed by Chandrika Shah of Shah Dodhia. It resulted in the signature by Jasminder that same day of five letters of wishes affecting the twelve Jersey trusts. In a letter to Jasminder dated 6 February (and written therefore after the meeting) Verite stated that the writer of the letter, Mr G R Machan, as a director of Verite, had specifically asked Jasminder, Herinder and Father and Mother if they were happy with the letters of wishes to which, as the letter recorded, "a reply to the affirmative was received by all members of the family." Some months later, on 25 May 1999, revocable declarations were executed by Verite (as trustee) to give effect to Jasminder's letters of wishes. The effect of these declarations was to exclude all of the children and remoter issue of Father and Mother other than Jasminder and his children and remoter issue, and their respective spouses, widows and widowers, from benefiting under the eight Jersey trusts held for the benefit of Jasminder and his family ("the Jasminder Jersey trusts"), and similarly (but for the benefit of Herinder and his children and remoter issue and their respective spouses etc) in the case of the four Jersey trusts held for the benefit of Herinder and his family ("the Herinder Jersey trusts"). Father and Mother both remained as potential beneficiaries under all twelve Jersey trusts. The following month Herinder wrote to Shah Dodhia to say that his concerns over the trusts had been satisfactorily dealt with and his solicitors wrote to express their satisfaction with the way that matters had been handled.

58. It seems that in the course of that same year, 1999, Father and Mother became concerned about their financial position. At a meeting on 23 June 1999 attended by

Father, Mother, Herinder, a Mr Vijay Wason (EGL's company secretary) and Chandrika and Satish Shah (of Shah Dodhia) to discuss various issues affecting their financial position, Father told Shah Dodhia (according to handwritten notes of the meeting made by Chandrika Shah) that he "wanted between £500k to £600k in cash in his name so that he could do what he wanted with the cash & it would give him security if he didn't get on with his sons' families." The note continued: "Mrs Singh [i.e. Mother] re-inforced this view saying the concerns were primarily because of what they saw happening to other families & JS [Jasminder] had always looked after them properly." According to the note Jasminder joined the meeting a little later and, after being told what Father had said, agreed they should be paid an amount which when added to a lump sum payment which Father could receive from his pension monies would add up in all to £500,000. This was followed up at a meeting on 1 July 1999 attended by Father, Mr Wason and Chandrika Shah (who again made notes of what was discussed) at which Father made clear that he wanted "absolute control" of the £500,000 so that he "had the monies in his own right." He stated that he "wanted no loans or trusts." The notes then referred to Ms Shah speaking to Jasminder (who was not at that later meeting) who agreed to what Father was asking. That same day Ms Shah wrote to Father and Mother to confirm what had been discussed and agreed. Jasminder and Herinder were copied in. It seems that because £200,000 (in the event it was to be just over £210,000) of the £500,000 was to come from the revival of a Patentgrade pension scheme (the reasons why this was necessary are not material) it took some time to secure the necessary Inland Revenue approval. This was not forthcoming until late the following year, 2000. On 3 November 2000 Ms Shah wrote again to Father and Mother to confirm the earlier arrangements over the £500,000. This, she recalled, was followed up by a meeting with them, attended by Ms Shah, Satish Shah and Herinder, to explain the arrangements (as regards the pension lump sum they were not altogether straightforward) to Father and Mother in person although on this occasion there was no note of what was discussed. The monies in question were duly paid. £289,357 came from Jasminder as he had promised; the rest came from the pension scheme.

59. By now other moves were afoot to meet a change in Herinder's wishes regarding where he and his immediate family wanted to live. He wanted to acquire his own home and he needed financial assistance to enable him to do so. The idea was that he should be provided with £1 million for this purpose. To that end Jasminder executed a new Memorandum of Wishes in respect of the Jasminder Jersey trusts. This was designed to encourage Verite (as trustee) to release £780,000 (net of tax) out of income arising from those trusts to enable Herinder to buy a house. It was to augment a sum of £220,000 that was to come from the income arising from the Herinder Jersey trusts. In the event nothing came of that expression of wishes as certain conditions set out in the Memorandum were not or could not be satisfied. Instead (and I am now jumping ahead in time but it is convenient to mention the matter at this point), Jasminder repaid Herinder in September 2004 the remaining £100,000 which he owed arising out of Herinder's loan to Jasminder in connection with the acquisition in 1989 and subsequent refurbishment of Tetworth Hall and, in addition, made a gift to him of a further £150,000 making £250,000 in all. Together with money which he raised from other sources Herinder was able to acquire a home for himself and his children – it is where they continue to live - in London SW15. At the same time as he executed the Memorandum of Wishes designed to procure £780,000 for Herinder's house purchase, Jasminder executed a revised Memorandum of Wishes addressed to the

trustees of the Jersey and UK trusts to express the wish that the family's shareholdings in EGL should not be broken up for the benefit of individual shareholders and to set out various wishes as to what should happen to the business after his, Jasminder's, death. The Memorandum was assented to by Herinder in respect of the Herinder Jersey trusts. Among the wishes was a request designed to safeguard the participation of Father and Mother in the running of the business. It was in the following terms:

> "My father, Bal Mohinder Singh and my mother Satwant Kaur are founder members and directors of EGL. In view of their immense experience due to their long term involvement in the Group I regard their general counsel on Group matters to be extremely valuable to the Group. It is therefore my wish that after my death, and until [*sic*] such time as the Trusts have a controlling interest in the shares of EGL, I would like you to use your influence, as a majority shareholder, to ensure that both my father and my mother, subject to their agreement, continue their employment as directors of EGL and other group companies and continue to be remunerated by the Group at least at the rate of remuneration similar to that for the tax tear ending 5 April 2001."

60. Shortly after this, Father and Mother instructed Shah Dodhia and Chamberlains to prepare new wills for them. They were to replace earlier wills. These were mutual wills which Father and Mother had executed on 11 March 1986. Under those earlier wills each had appointed the other, together with Jasminder and Herinder and a Mr R.M. Shah, to be the executors and trustees. Each had expressed a wish to be cremated in India according to Sikh rites. After giving to the other his/her personal chattels each had given to the other a life interest in residue (with power in the trustees to resort to capital), after which residue was to be divided into ten equal shares of which nine were to be for the children of Jasminder and Herinder (subject to attaining the age of 30 and with a substitutional provision in the event of death before reaching that age) and the remaining one tenth share was to go to Seema's children (on the same basis as with Jasminder's and Herinder's children) and with accruers over in the event of failure. There was an ultimate gift over in favour of Jasminder and Herinder equally. (At the same time - in fact it was a week earlier - Jasminder had made a will in favour of Amrit and their children but with an ultimate gift over, in the event of the failure, in favour of Herinder and Seema.) This was followed some months later by the tax advice given to Father and Mother which had led to the execution of the UK trusts. The instructions which Shah Dodhia received in about November 2000 from Father and Mother to change their wills (and which, Chandrika Shah said, she passed on to their associated firm, Chamberlains) resulted in due course in the preparation of new wills which were sent to Father and Mother for signature on 1 August 2001. The executed wills, assuming they were executed, were not in evidence. The drafts, which were in evidence, mirrored each other. Each provided that if the testator should not be survived by the other then all of the shares in EGL held by the testator should pass to Herinder. As with the 1986 wills residue was, subject to a life interest in favour of the survivor of them (with power to resort to capital), to be divided into ten equal parts. On this occasion, however, five equal parts were to go to Seema and if she should predecease the testator then to her

children upon reaching 25, a further three equal parts were to go to Herinder (on like terms for him and his children) and with two equal parts for Jasminder (on like terms for him and his children). There was an accruer provision in favour of the others in respect of any gift that failed.

The events leading to these proceedings

61. In 1995 Herinder had been appointed EGL's marketing director. He had already been a director for many years, had qualified as a chartered accountant in 1992 and had married his wife, Alka, in 1994. For some years Herinder and Alka lived with the others at Tetworth Hall. They were to have two children, Rohan born in 1996 (at a time when they were still living at the Hall) and Ravisha born in 2001. By 1999, however, relations between Jasminder and Herinder began to deteriorate. Tensions arose. They led to various steps, some of which I have described, designed to provide Herinder with greater independence, both as regards the various trusts for the benefit of himself and his immediate family and as regards his living accommodation. I have mentioned how by mid-1999 Herinder's concerns over the terms of the Herinder Jersey trusts had been dealt with, to the entire satisfaction of him and his solicitors, by the execution of deeds ensuring that Jasminder and his issue (and their respective spouses etc.) were excluded from the permitted range of beneficiaries. I have also described how Herinder was eventually able to find and obtain the money (in part from Jasminder) to enable him to acquire a home of his own.

62. By 2005 relations between Jasminder and Herinder had broken down to the extent that Herinder saw no future for himself in EGL. By then Mr Gulhati was no longer involved in the business. The latter's directorship of EGL had been terminated in the autumn of 2002 and, in due course, his interests in EGL were bought out.

63. It would seem that Father and Mother were willing to give support to Herinder. On 11 April 2001 Father and Mother executed a declaration. It terms were expressed to be by Father alone. In it he set out matters which, as the declaration stated, "are important to my wife and me, and central to the ethics, understandings and principles which underlie the way in which I have always tried to operate within the family." This declaration was evidently made with legal advice. Jasminder had no hand in its preparation. Indeed he only became aware of it in the course of these proceedings. I set out the declaration in full. I do so because it has a bearing on the claim which Father was later to make that the assets acquired by members of the family were joint family property in the sense understood by reference to the *Mitakshara* system.

> "I, Bal Mohinder Singh, of Tetworth Hall… wish to declare certain matters which are important to my wife and me, and central to the ethics, understandings and principles which underlie the way in which I have always tried to operate within the family.
>
> My principal aim is to clarify the reason why I have set aside 22 percent or thereabouts of the shares in Edwardian Group Limited held by the family trusts, to benefit my son Herinder.
>
> It is important to understand that all the wealth of the family derives from the original equity capital put in by myself and my

> wife Satwant Kaur, derived from our business operations in Kenya and later in England. We funded the education of our elder children in London, sending money over from Kenya; and after arriving in England we worked very hard indeed in the sub-Post Office we had purchased, whilst at the same time helping Jasminder learn the hotel business and build up the first hotel.
>
> Our knowledge and experience were invaluable to Jasminder, allowing him to take the lead role (with the benefit of his education) but ensuring in the background that everything he planned was executed efficiently and profitably. Throughout, we have continued to add our contribution to Jasminder's and to the efforts of the rest of our family, to build the business. Even now, we continue to do so.
>
> Jasminder was, of course, favoured by being born 16 years earlier than Herinder; he has inherited the senior role in the companies, and has benefited accordingly. We are proud of his achievements, and of our success in his initial training in the business; and equally of the erudition and understanding, not to say integrity, of our younger son Herinder. We helped Herinder learn his accountancy and marketing skills just as we had helped Jasminder.
>
> It is important that Herinder's contribution is not understated, because with his accountancy knowledge, he played a key role in helping to rescue the business during the recession, which was made doubly difficult for him because of his relative youth. He tends to hide his light under a bushel, and there is no doubt that the official reports of the time did not do him justice, nor do they reflect our view of what he achieved.
>
> Therefore, having established Jasminder securely, we firmly wish to do the same for Herinder by allocating the 22 percent to him alone; and by putting in place the mechanism for funds to be made available for the purchase of the residence for Herinder and his family. Being unable to make legal arrangements through our wills (because we do not own our shares directly), we find it essential to do what we can to secure the trust arrangements for Herinder. In particular, we are comforted by verbal assurances we have received from Jasminder that he personally is intending to contribute £1m toward the purchase of a house for Herinder and his family.
>
> I urge all concerned to please deal with Herinder's part of our family wealth in accordance with the wishes of myself and my wife (who has signed this paper also)."

64. I have explained that for various reasons the request contained in the Memorandum of Wishes dated 10 November 2000, designed to secure the payment to Herinder of

£780,000, came to nothing and was succeeded four years later by a much more modest contribution towards the acquisition by Herinder of his present home. This was followed by other steps taken by Father, Mother and Herinder. On 13 December 2005 a separate trustee was appointed by Father and Mother to act as co-trustee with Verite of the Herinder Jersey trusts and another trustee was appointed to act as co-trustee with Verite of the Jasminder Jersey trusts. Jasminder's unchallenged evidence was that these steps occurred without his foreknowledge. This was followed in January 2006 by a letter to Verite, signed by both Father and Mother, asking "as settlors of the Singh family trusts" that "in the light of the recent dispute involving members of our family" Verite resign as a trustee of the Herinder Jersey trusts. It was supported by a letter from Herinder stating that as primary beneficiary under the Herinder Jersey trusts he wanted Verite to resign. Like Father and Mother, he referred to a family dispute.

65. Jasminder got to hear of what was afoot. He was opposed to Verite's resignation as a trustee. In a letter dated 22 February 2006, to which (at any rate in the course of his opening) Mr McDonnell attached importance and which I therefore set out in full, his solicitors wrote as follows:

> "We act for Mr Jasminder Singh (hereafter referred to as Mr Singh) in his personal capacity.
>
> As you know, in 1993 Mr Singh arranged for the establishment of twelve discretionary trusts in Jersey, to which Verite Trust Company Limited ("Verite") was appointed trustee. The trusts were created for the purpose of receiving certain share options in Edwardian Group Limited ("EGL"), granted to Mr Singh as part of a refinancing deal for the group to ensure his continued commitment to the management and success of the business.
>
> Two new trustees have recently been appointed to the trusts: Bailhache Labesse Trustees Limited are now co-trustee of the Elm, Oak, Lilly and Rosemary trusts and Jemma Trust Company Limited have been appointed as co-trustee of the remaining eight trusts. Mr Singh has written to you separately summarising his wishes for the trusts for the benefit of the new trustees.
>
> The purpose of this letter is to record Mr Singh's wish that, notwithstanding the appointment of the new trustees, Verite should continue as trustee of all twelve trusts. In particular Mr Singh is concerned that, due to a current difference of opinion between him and his brother Herinder, Verite may come under pressure to resign as trustee from the Elm, Oak, Lilly and Rosemary trusts on the basis that they face a conflict of interest. There is no such conflict of interest and, on the contrary, it is in the interests of the beneficiaries of all twelve trusts that Verite continues as trustee for the following reasons.
>
> 1. As you know, but for the efforts of Mr Singh, the EGL shares constituting the principal asset of the

twelve trusts would never have come to be settled into them. Mr Singh negotiated the share options and it was his decision to create these trusts. It is for that reason that over the twelve years that the trusts have been in existence the trustees have always had regard to Mr Singh's wishes.

2. Foremost among those wishes has been Mr Singh's desire to preserve the family's investment in EGL for the benefit of current and future generations and to ensure that the shareholding is not broken up or eroded by selling off minority holdings to pass on a cash benefit to one or more beneficiaries. This wish has been recorded in two memoranda dated 3 December 1998 and 10 November 2000.

3. Mr Singh's most recent memorandum of wishes, in respect of the Elm, Oak, Lilly and Rosemary trusts, of 1 February 1999, asks the trustees to consult Herinder Singh with regard to distributions of income and capital. However, that memorandum is subject to Mr Singh's wish that the shares in EGL be kept as a single block as recorded in his memorandum of 3 December 1998. The 1 February 1999 memorandum should now be read subject to Mr Singh's 10 November 2000 memorandum of the EGL shares which for the avoidance of any doubt has been countersigned by Herinder Singh.

4. Verite have previously acknowledged the importance and good sense of Mr Singh's request that the EGL shares be kept together. In your letter to Mr Singh of 6 February 1999 you confirmed it was your opinion that to keep the shares together and ensure maximum value is generated for all twelve trusts was consistent with your clear duty as trustee of all twelve trusts.

5. Were Verite now to resign, Mr Singh's wish that the preservation of the value of the EGL shareholding for the family as a whole should take precedence over the wishes of a single beneficiary may be compromised - in direct contradiction to the memoranda of 3 December 1998 and 10 November 2000. It is precisely to avoid that type of situation that Verite were appointed to all twelve trusts in the first place.

For all these reasons Mr Singh considers it to be of vital importance that Verite remain as trustee of all twelve family trusts. This letter is a summary of the position and we

> appreciate that you may wish to discuss matters in more detail. To that end we suggest a meeting with you in Jersey sometime in the near future and will telephone you to agree a date. In the meantime we should be grateful if you would keep us informed of any discussions or correspondence which you receive which calls for Verite to resign as trustee.
>
> Yours faithfully…"

66. In July 2006 Father's and Mother's Jersey solicitors faxed to the solicitors acting for Verite a revised Memorandum of Wishes, signed by Father and Mother, which after referring to earlier memoranda relating to the Herinder Jersey trusts asking that Jasminder be consulted by the trustee on the management, administration and investment policy of the trust in question, stated that this previous wish be revoked and that "during our life and after our death you consult with Herinder Singh alone" with regard to these matters. It confirmed their wish set out in the earlier memoranda that "all the benefit under the four Trusts should go to Herinder Singh."

67. Later that year proceedings were launched in Jersey for Verite's removal as a trustee of the Herinder Jersey trusts. In due course Verite agreed to resign. This was shortly before the application was due to be heard in 2008. Verite was ordered to pay its own costs. Jasminder's attempt to intervene in the proceedings was dismissed. The effect of this separation of trusteeship was to create two distinct Jersey trust shareholdings (which between them hold 88.7% of the issued shares in EGL) with the Jasminder Jersey trusts (holding 69.2%) as the majority shareholder and the Herinder Jersey trusts (holding 19.5%) as the minority shareholder.

68. In July 2009 Herinder was formally removed as a director of EGL. His employment with EGL was terminated in 2010. He sought legal advice. On 11 June 2010 solicitors acting for him and for the trustee of the Herinder Jersey trusts (other solicitors now act for the trustee) sent a lengthy 42-page letter to Jasminder's solicitors giving notice of an intention to bring unfair prejudice proceedings under section 994 of the Companies Act 2006. They wished to allege that Herinder had been wrongfully excluded from management, unfair distribution of profits and the receipt by Jasminder of unauthorised personal benefits. Jasminder's solicitors replied at length, rejecting the allegations, in a letter dated 13 August 2010. The proceedings have not yet been launched. Mr Thompson who appeared before me for Herinder explained that once the necessary funding is in place the proceedings will be launched. He said that the trustee of the Herinder Jersey trusts (now separately advised) will be the lead petitioner. Jasminder and the trustees of the Jasminder Jersey trusts will be the effective respondents. In the meantime, as may be imagined, there have been communications about the claim. It was common ground that the issues arising in the dispute are irrelevant to the determination of Father's claim in these proceedings and I was not taken to any of the underlying material relating to them. They are simply a part of the wider picture.

69. On 30 December 2009 EGL wrote to Father to invite him to retire from the board. (By this time Mother's involvement had ended.) The letter pointed out that he would be 83 in a few days time, that he had to cope with various ailments, including deafness, and that the duties and obligations of board membership were becoming increasingly onerous. It said that his status on the payroll would not change but

questioned whether he felt it right to continue. Father declined the invitation. Through his solicitors he accepted that his health was not as good as it had been but asserted that EGL was a quasi-partnership, that he was a founder of it and a shareholder and involved in its management since its inception and that in his position as a director he had been able to protect his own and his family's interests as investors and quasi-partners in the enterprise. It was claimed that he had always discussed "key" matters relating to the company with the other executive directors and continued to do so. It was stated on his behalf that if the ground for removing him was that he was too infirm to participate directly in meetings there could be no objection to him nominating an acceptable replacement or an alternate "to protect his interests as a quasi-partner (including the interests of the Singh family as a whole with its substantial shareholdings in the Company)".

70. To no avail. On 3 February 2010 Father was formally removed as a director. Father's solicitors protested at the action taken. There is a dispute (not material to these proceedings) whether this was at the instigation of Jasminder. Jasminder through his solicitors denied any involvement in the decision. The next step was a letter from EGL to Father in mid-April inviting him to retire from his employment with the company (with an offer of terms if he agreed to do so) and, if he was unwilling to depart, giving notice to retire him at the end of that October. Father was not willing to go. He was retired against his will with effect from 31 October.

71. This was followed a few days later with the claim which has led to these proceedings. The opening shot came with a letter from Father and Mother dated 3 November 2010. It was addressed to both Jasminder and Herinder. This is the letter which they signed.

> "Dear Jasminder and Herinder
>
> Our Family Property
>
> As you know, we have been deeply saddened by the disagreements between you over the management of our family property which has led to Herinder leaving our family home and to the threat of legal action between you.
>
> Our intention since before you were born was that our family should be undivided with a joint home and joint property according to the customs of the Sikhs and Hindus in which we ourselves were brought up. We brought you up to observe those customs; and we established a family home and family business for you and your future sons and grandsons, first in Kenya and then in London, which (through the hard work of all of us and the unfailing support of Patel Sahib at the Bank whom we must never forget) grew into our splendid home at Tetworth Hall and the great Edwardian Hotel Group.
>
> We appointed you, Jasminder, to be our Karta because you are our eldest son and you were the first to obtain professional qualifications. That is why you were entrusted with our family's share of the original joint venture with our brothers and cousins of the Vohra family in Edwardian Hotels Ltd and

> with our own company, Edwardian Group Ltd; and that is why our family homes, starting with 55 Spencer Road have been purchased in your name. But we have been disappointed in recent years by the appearance which you have given of forgetting your responsibilities as Karta and the reasons why you are in your present position.
>
> For that reason we have decided that the time has come to divide our family and partition the joint family property between its members, that is to say, ourselves, the two of you and our two grandsons.
>
> We have considered this decision anxiously for a long time; and we have reached it with heavy hearts. But it is final and you must both treat this letter as terminating our joint family. We must now discuss a sensible and practical scheme for partitioning the joint family property. From our own point of view, the first priority will be to find a suitable independent home for ourselves; and we hope that our share of the value of the present family home at Tetworth Hall will be sufficient for that purpose.
>
> Let us discuss that when you have both had time to consider the consequences of this letter and explain it to our grandsons. You should tell them that our love for our family and our pride in its achievements is as strong as ever but we have decided that it is our duty to take this step because it has become clear to us that it is the only way to restore and preserve some of the love and respect which originally enabled us to achieve prosperity built on hard work together."

72. Jasminder replied with a letter dated 12 November to say that he regretted that the family was divided and that his parents felt they should move out of Tetworth Hall. He expressed surprise that they appeared to be adopting entirely the allegations that Herinder was making against him. He did not accept their account of events concerning Tetworth Hall and the other property. He described their criticisms of him as unfair and unfounded. He denied the existence of what their letter had described as "joint family property" but said that, on a personal level, he would try and help them with their accommodation needs. Herinder did not make any reply to the letter.

These proceedings

73. These proceedings followed three months later on 11 February 2011. I do not need to deal with the procedural steps that the proceedings have followed. I need only mention that on 11 July 2011 Jasminder issued an application for summary judgment which he supported with a lengthy and comprehensive witness statement. In his evidence in response Father abandoned any claim that shares in EGL subject to the UK and Jersey trusts were joint family property. But he raised issues of fact which led Jasminder to take the view that there was no longer any point in pursuing the application. It was discontinued. On 21 February Proudman J ordered that the costs of both sides should be dealt with as costs in the case.

74. In the event, Jasminder's witness statement in support of that application has served as his principal witness statement at the trial. The witness statement of Father relied on at the trial was prepared in response to this (and in support of his particulars of claim). In other words his written evidence in support of his claim was responsive to Jasminder's and not the other way round. The position is the same with Mother's witness statement.

The Mitakshara

75. I must deal with this in some detail. Being a matter of foreign law it was the subject of expert evidence. I begin by saying something about the two experts. Father and his team relied on a report, and also an earlier witness statement, by Dr Werner Menski, who since 2004 has been Professor of South Asian Laws at the School of Oriental and African Studies in London. His earlier witness statement had been supplied as part of the evidence filed in opposition to Jasminder's summary judgment application. In the event, as I have mentioned, that application did not proceed. Jasminder and his team relied on a report by Dr Arun Mohan, a Senior Advocate of the Supreme Court of India since 1982 and in practice as an advocate since 1970. I was also referred by the two experts and in the course of the argument to what I was given to understand are two of the main textbooks on Hindu law in use among practitioners, namely *Mulla's Principles of Hindu Law*, now in its 21st (2010) edition although I was provided only with the 10th (1946) edition ("*Mulla*"), and, by way of an up-to-date textbook, *Mayne's Hindu Law & Usage*, 16th edition (2010) ("*Mayne*") where the subject is dealt with in great detail and with copious citation of authority.

76. Professor Menski said, and I do not doubt, that he is internationally recognised as an expert in matters of South Asian Laws and culture, particularly on Indian family laws and on Hindu law and that he is acknowledged to be the foremost Western academic legal expert in this field. He referred to impressive qualifications, including a degree (from his native Germany) in Indology and to several publications. He referred also to a doctorate he held which had focused on the subject of marriage rituals in Hindu law since Vedic times and which, he said, had given him a "detailed insight into the perceptions that the South Asian people, including Sikhs, have of their family arrangements." He said, in connection with his professorship of South Asian Laws, that he is the main academic teacher of such laws in the UK, covering all important aspects of traditional and modern South Asian legal systems on a regular basis at undergraduate, postgraduate and PhD level. It was clear, however, both from his report and, increasingly as it progressed, from his cross-examination that his expertise and interest lay rather more in what I might describe as the sociological role and impact of Hindu law as it affects the lives and culture of the peoples who are subject to it than in the day-to-day operation of the law in question. In his oral evidence he described himself as a "legal theorist". Not for nothing was he a student of Indology which is the academic study of the history and cultures of the Indian sub-continent.

77. A difficulty about Professor Menski's evidence was that his witness statement and his report had different objectives: his witness statement focused on his efforts to understand and report on the perceptions held by Father, Mother, Seema and, I think, Herinder - but not Jasminder and his family - of the way that their family property should be governed and to assess those perceptions in the light of the applicable *Mitakshara* principles and any other relevant customary law. This exercise, conducted in connection with the opposition to Jasminder's summary judgment application, was

partly investigative in nature in that it involved interviews with Father and Mother to establish what those perceptions were. In so doing it necessarily made judgments in order to reach conclusions about those perceptions. The report, by contrast, had a much more limited role. This was to set out what the relevant principles are of the *Mitakshara* so far as applicable to a family of Sikh origin. The intention, as I think was clear by the terms of Newey J's order, was to provide the court with an objective statement of the applicable principles and not to speculate on whether and to what extent they were observed by this family. The difficulty was that in his report Professor Menski did not wholly distinguish between these two matters. Indeed his report was largely an edited version of the witness statement. Thus, at paragraph 13 of his report he commented that "[t]hroughout the Claimant's written case, from the family's history with its early roots in what is today Pakistan to the family connections that allowed the Claimant to migrate to Tanganyika, to the marriage arrangements that were made for himself and later his children, I see a pattern of observance of situation-specific Hindu/Sikh customary traditions of marriage, family solidarity and property arrangements." He went on to say (in paragraph 14) that this "traditional system…was the *Mitakshara* system of Hindu family law..." He was clearly reaching a conclusion on the facts and doing so by drawing on his earlier investigations.

78. If there was a lacuna in Professor Menski's expertise, and a weakness in the utility to this trial of the many interesting insights which he brought to bear on the subject matter of that expertise, it was his lack of any detailed understanding of the way that the *Mitakshara* system worked in everyday practice. An example of this, and it was of importance to the applicability or otherwise of the system to the treatment of their assets by Father and Mother and by Jasminder and Herinder, was his lack of practical familiarity with the circumstances in which what is otherwise separately-owned property becomes subject to the *Mitakshara* system. He was frank about this lack of detailed knowledge. He accepted that he did not possess the relevant experience which he would or might have had if he had been a lawyer practising in this field. Thus, he accepted, when asked about it, that he had no detailed knowledge of property and commercial law as it affected the application of the *Mitakshara* system. Yet, it might be thought, this was precisely where such expertise was needed.

79. Over and above that admitted gap in Professor Menski's practical knowledge of the everyday operation of *Mitakshara* principles, there was to my mind another aspect of Professor Menski's report which detracted from its value. This concerned the extent to which, in so far as it was appropriate to have any regard to them, I could place reliance on his conclusions concerning the extent to which the family adhered to the traditional principles of Hindu law in their property dealings. In paragraph 34 of his report he acknowledged that there had been "various statutory reforms post-Independence" but was of the view that "the traditional principles of joint Hindu family law have remained firmly in place as part of the official law in India, and have also continued to influence customary norms, in post-Independence India and thereafter, and even among overseas Indians". He claimed to find evidence of this in Father and his family as the following passage from paragraph 35 of his report illustrates:

> "Although he migrated abroad in search of greener pastures…he did not set out to establish himself as an

> individual entity or an autonomous individual. Rather, very soon, by falling in line with traditional marriage arrangements and in turn founding his own family, he perceived himself to be continuing to live a traditional life as a Sikh, based on religious and secular values germane to his culture. This also meant that, particularly once he had children, he would see himself as the manager (*karta*) of a newly emerging joint family, a familiar continuous process of renewal and re-emergence when a larger family splits up into various new branches that then continue to grow into new joint families."

80. In a later passage (at paragraph 38) he went so far as to state that "it would be unsurprising, therefore, to find that Sikh families like the Claimant's family and his wife's family who had been living in Tanzania and Kenya and later in the UK and whose senior members had first-hand experience of growing up in the Indian sub-continent itself, had not abandoned adherence to traditional principles of their cultures, religions and family life." I do not think it was for Professor Menski to be making findings of this kind. In any event, in so far as he was reaching conclusions about the principles which the Singh family observed in the regulation of their lives, which that passage would suggest that he was, it might have been fairer, and his findings rather more balanced, if Professor Menski had interviewed Jasminder and the members of his family. But he did not. Nor, it turned out, had he troubled to read any of the documentation from among the very considerable quantity disclosed which touched on these matters. Interestingly, Professor Menski himself noted, in paragraph 32 of his report, that in resolving a property dispute "…a court in British India and right until the time after independence in 1947 would always need to ascertain the specific facts and circumstances of a particular case concerning Hindu joint family property" as "there was no blind application of some codified statutory law, since such a law did not exist." This was significant because, *if* he was to venture an opinion on the extent to which the Singh family adhered to and observed Hindu/Sikh traditions in the ownership and management of their property, it is a pity that Professor Menski did not see fit to enquire into the specific dealings by Father and Mother with their own property over the years to see whether and to what extent their actual conduct lived up to the adherence to traditional cultural, religious and family principles which he claimed to have found. Nor did he interview Jasminder or, it seems, concern himself with the contents of Jasminder's witness statement or of the defence served on his behalf. I can only assume that, despite feeling able to reach findings about this family, he did not consider that it was any part of his function to do so. The uneasy feeling that I was left with as his evidence proceeded was that, given his interest in and wide knowledge of the customs of the Hindu and Sikh communities living in or originating from the historic Punjab, he was looking to find in Father's claim and his family origins what he expected to find in the Singh family and not what a dispassionate examination of the circumstances might have led him to find. The result of this was not in any sense to undermine Professor Menski's learning and very interesting insights into the history and development of Hindu law and its place in the lives of those affected by it but to highlight the fragility of the very impressionistic conclusions reached by him, in so far as it was appropriate for him to be doing so at all, concerning the extent to which Father and Mother ordered their financial arrangements in accordance with *Mitakshara* principles.

81. I turn now to the report and oral evidence of Dr Mohan. In contrast to Professor Menski, Dr Mohan confined himself almost entirely to setting out what the relevant principles are of the *Mitakshara* and how they operate in practice. He ventured no opinion on whether this family observed them in their family dealings. He set out the relevant principles by reference to both decided authority, which consisted very largely of post-Independence decisions (mostly of the Indian Supreme Court), and also, where it was appropriate to do so to show how legislation has sought to adapt those principles to meet changing social norms, to one or two of the statutes enacted in the years since Independence. In contrast to Professor Menski, Dr Mohan did not concern himself, except very fleetingly, with the cultural background to the *Mitakshara*.

82. Dr Mohan's knowledge of black-letter law (as it was described) was impressive. It was also relevant to the enquiry which faced the court in resolving this dispute. I found what he had to say of great practical assistance. Curiously, in his opening skeleton argument (and repeated in the course of his oral opening) Mr McDonnell submitted that Dr Mohan's evidence had been "provided under a misapprehension" in that he had proceeded "as if he had been instructed to give expert evidence in a case proceeding in this Court between parties whose legal relationship was and always had been governed by Indian Law rather than English Law". He submitted that it was inadmissible as being irrelevant. If this was an objection in which, by the time of his closing submissions, Mr McDonnell was continuing to persist (it was far from clear that he was) I am unable to accept it. What Dr Mohan had to say was relevant to the establishment and content of the common intention constructive trust which Father was seeking to establish. In truth, the trust served as the means by which English Law would give effect to the *Mitakshara* principles so far as they related to the ownership and management of joint family property; in other words, it was those principles which provided the trust with its content. In one respect at least Dr Mohan's explanation of the way the *Mitakshara* principles are applied in practice was, I think, open to criticism. This was whether shares in a company could be held as joint family property. I come to this later. That criticism aside I had no reason to question anything that Dr Mohan had to say on what the principles were and how they applied in practice.

83. With that brief introduction to the two experts and their reports I now turn to the relevant principles.

84. Hindu Law, meaning that branch of the law affecting a person's personal status and rights and privileges regarding property ownership, succession, inheritance, marriage, adoption and related family matters is ancient in origin, vast in range and complex in application. It applies by virtue of the person in question belonging to a particular community or group and is called the "personal law" of that person. As I have already briefly mentioned, although the expression "Hindu Law" is used, the law in question is also applied to those who are Sikhs: it is not confined to persons who are Hindus strictly so described. For this purpose Sikhism is treated as an offshoot of Hinduism. The textbooks also suggest that Hindu law applies not only to persons who outwardly profess the Hindu religion (or Sikhism), but also those of Hindu (or Sikh) descent who have not openly abjured their faith.

85. Hindu law is said to have been derived from divine revelation as recorded and interpreted in codes or institutes written many centuries ago. These in turn were the

subject of explanation and discussion in authoritative commentaries. The *Mitakshara*, which was written in the latter part of the 11th century AD, is the name given to what the textbooks describe as the most celebrated and authoritative of the commentaries on one of the principal codes, that of *Yajnavalkya*. It is the basis of the orthodox system of Hindu law which prevails in most of India, including, relevantly to this litigation, the Punjab from which, as I have pointed out, Father's and Mother's families both came and where Father was born and spent his early years.

86. Under the British administration of India judges of the courts of record recognised, defined and enforced the relevant principles by reference to the commentaries, modifying them to accord with justice, equity and good conscience. They applied the doctrine of precedent so that, with the passage of time and the existence of an increasing body of court decisions which were either binding or of persuasive authority, there was progressively less need to refer to the original codes or institutes and to the commentaries on them. This process, needless to say, has been continued by the courts of independent India. Indeed, as Dr Mohan pointed out, such is the volume of decided case law that it is scarcely necessary these days to refer to pre-Partition authority.

87. It was common ground that custom is an additional source of Hindu law. In his treatise entitled "*Hindu family Law: As Administered in British India*" by Sir Ernest John Trevelyan ("*Trevelyan*") published in 1908 and to which Mr McDonnell referred me (for no better reason so far as I could gather than that it happened to be available to him when later textbooks were not) it is stated (at page 21) that "In administering the Hindu law, the Courts are required to give effect to a custom, *i.e.* to a rule which in a particular family or class, or in a particular district, has from long usage obtained the force of law." In his report Dr Mohan said that the "general common law" (by which he meant Hindu law derived, interpreted and declared in the way that I have summarised) "has allowed for exceptions to take account of customs relating to a particular...district, or to a particular community" adding that these customs, which he referred to as customary law, "were recognised by the courts if they were not in contradiction to statute or not opposed to equity and good conscience." Although Professor Menski laid much emphasis on custom, it was not suggested that any particular custom was in point in the application of the *Mitakshara* to property acquired by Father and Jasminder. So I need say no more about it.

88. Not surprisingly, legislation has been enacted over the years which has modified, and in some respects radically altered, the operation of traditional Hindu law as set out in the *Mitakshara* and other sources and expounded by the judges. This is of some practical importance in the current dispute. This is because, while accepting that the relevant principles of the *Mitakshara* are those principles as modified by statute, for example the *Hindu Gains of Learning Act* 1930 (to which I come later although, as it happens, Mr McDonnell contended that it introduced no change of relevance to this dispute) and accepting also that decisions of the Privy Council in London (for so long as it continued to hear Indian appeals) and of the Indian courts right up to the present day are material insofar as they declare what the relevant principles have always been, Mr McDonnell submitted nevertheless that no legislation enacted after Father departed the Indian subcontinent in 1946 was material. This had the odd consequence that I was being invited by Mr McDonnell to apply to Father and Jasminder, in relation to the property they had acquired, a system of law – the

Mitakshara - which, besides being alien to English notions, is in effect ossified or frozen in content as at 1946 (several years therefore before Jasminder was born). Yet, if the Singh family had returned to and lived in independent India, the system would not or might not have applied to them in the same way. They would presumably have been subject to the law as it had evolved over the years, including in particular the changes made to it by statutory enactment.

89. As to that, it is to be noted that Indian legislation has modified the operation of these principles in certain key aspects, especially as regards the existence of so-called "ancestral property" (to which I will come shortly) as a species of joint family property and as regards the entitlement of women. Such legislation has no doubt been enacted with a view to gradually adapting, so as to accord with changing values, what might otherwise seem (to some at least) an outdated system of property ownership. I should add, nevertheless, that the application to property of the *Mitakshara* is still a very common phenomenon among joint Hindu families. Apart from those cases where that is and has been the invariable custom over the generations within the family in question there are, as Dr Mohan pointed out, those cases where for fiscal or other reasons (mostly concerned with inheritance tax and land ceiling laws) it is advantageous to the family to establish the existence of joint family property. (It is necessary to keep this in proportion: Dr Mohan estimated that of the 200 million or so joint Hindu families in India at the present time only 760,000 are above the taxable threshold.) In such cases the challenge to the existence of the conditions necessary to establish that there is joint family property and what that property comprises comes usually from the Indian Revenue authorities and, as he explained, the family in question will ordinarily take care to ensure that everything is fully documented in order, so as far as possible, to put the matter beyond doubt. It is for that reason that many of the authorities to which I was taken have involved disputes between the taxpayer and the Indian Revenue.

90. How then do the relevant principles work? In a straightforward example - I am simplifying the position and dealing with the law as it existed before the passage of amending legislation starting with the *Hindu Succession Act* 1956 – those who are from a joint Hindu family and are entitled to the joint family property comprise (assuming all are living at a given moment) a man, his sons and (if descended through the male line) his grandsons and great-grandsons. The female members of the family (whether wives, daughters or widows) are excluded. Also excluded are any persons descended through the female line. The female members are entitled instead to maintenance (and, in the case of a daughter, to a dowry on marriage) out of the joint family property until they die or leave the joint family on marriage (or re-marriage in the case of a member's widow). The entitlement to the joint family property of the male members, or coparceners as they are described, is by way of an undivided share but the share cannot be realised until what is referred to as a "partition" takes place or the membership of the coparcenary is reduced to one and there is no scope for any future increase in membership (for example, by adoption). In the meantime the number of coparceners is liable to increase as each new male member (descended through the male line) is born into the family (subject to being no remoter than the third generation from the coparcener at the top of the tree) and to reduction as each coparcener dies. This means that, short of partition, the prospective share of each coparcener is liable to fluctuate in size with each relevant birth or death.

91. I must seek to put a little flesh on those bones and elaborate on some of the concepts in play.

92. First I need to explain what is meant by a joint family property. Father's central contention in this dispute is that, among other items, the family's shares in EGL (except those held in trust) and Tetworth Hall are joint family property. Sometimes referred to as coparcenary property this is property which is subject to the family ownership regime summarised above.

93. Next I must explain what is meant by a joint Hindu family. This consists of male persons lineally descended from a common ancestor and includes their wives and unmarried daughters. Typically but not invariably the family live, eat and worship together. A daughter on marriage ceases to be a member of her father's family and becomes instead a member of her husband's family. A person may become a member of the family by adoption. The law on adoption – and its consequences – is complex and any explanation of it unnecessary for present purposes. A joint Hindu family is thus a group consisting of persons who are united by the ties of birth, marriage or adoption.

94. A point repeatedly emphasised in the authorities is the distinction between a joint Hindu family and the existence of joint family property. As Dr Mohan put it, the existence of the former does not automatically mean that the latter exists but, by contrast, it is essential that there be a joint Hindu family before joint family property can be created. In particular and importantly, a male member of a joint Hindu family can own separate or self-acquired property, namely property which is not joint family property. Equally, a member of a joint Hindu family who is also a coparcener (because there is joint family property) can own separate or self-acquired property. In this connection it is to be noted that, as it was put by the Indian Supreme Court in *Surjit Lal Chhabda v Commissioner of Income Tax* [1976] AIR 109 (at [12]):

> "A Hindu coparcenary is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property and these are the sons, grandsons and great-grandsons of the holder of the joint property for the time being, that is to say the three generations next to the holder in unbroken male descent. Since under the *Mitakshara* Law, the right to joint family property by birth is vested in the male issue only, females…cannot be coparceners..."

95. Usually, the senior male member of the family acts as its manager or "*karta*". That person is said to be *karta*. He can be another senior male member of the family. *Mayne* puts it thus (at paragraph 317): "So long as the members of a family remain undivided, as a general rule, the father of the family, if alive, or in his absence the senior member of the family is entitled, and is presumed, to manage the joint family property." *Mayne* goes on to state (in the same paragraph) that "The managing member is entitled to full possession of the joint family property and is absolute in its management. He has the power and the right to represent the family in all transactions relating to it." The manager usually holds the legal title to the joint family property. It is his duty to manage it (including, if there is one, a family business) for the benefit of the joint family as a whole, realise its income, pay the

debts and other outgoings connected with the management and expend the residue for the benefit of the family and its members. He must provide for the maintenance and education of the coparceners and their dependents, and for the costs of their marriages and other usual and proper religious observances. He may do so without regard to the prospective share of that coparcener if the joint family property were to be partitioned. He may carry on any family business in his own name without affecting the joint beneficial ownership of the other coparceners. Again I do no more than summarise a well-developed area of law. I mention the role of the *karta* because of the claim by Father that Jasminder was appointed the family's *karta* (in early 1976).

96. A point put to Dr Mohan in the course of his oral evidence was whether the shares in a company could be held as joint family property or, to put the point another way, whether it was possible for the shares in a company to be held in the names of several coparceners as joint family property. Dr Mohan said that he had never come across such a case and seemed to think that it would not be possible. In his closing submissions Mr McDonnell was able to point to two authorities (one a decision of the Madras High Court and the other a decision of the Indian Supreme Court) where shares in a company were held by coparceners as joint family property: there was no suggestion that this was not possible. Mr Croxford did not choose to respond to those authorities. I mention this matter as it was at one stage suggested that as the shares in EGL (Patentgrade as it originally was) were held by several persons and not just by Jasminder (whom Father said, but Jasminder denied, was *karta* within the Singh family) it followed that for that reason, if for no other, those shares could not be joint family property. I do not consider that to be correct as a matter of *Mitakshara* law. I find that Dr Mohan was incorrect in thinking as he did on this matter. Whether any of the shares in EGL are joint family property does not turn on a technical point of this nature.

97. Partition is the process whereby the joint family property is divided between those who are coparceners at the time of partition. Any adult coparcener is entitled to sever his interest by unequivocally requiring partition. From that moment onwards he is treated as entitled to an undivided share in the joint family property. If necessary the right to a partition can be enforced by court proceedings. A coparcener who elects to separate from the joint family and sever his interest in the joint family property cannot force a separation as between the other coparceners against their will. On a partition as between a father and his sons each takes an equal share; the sons of a deceased person take *per stirpes* the share which the deceased if alive would have taken (but as between one another they share *per capita*). On actual division the wife of the common male ancestor (or, if he is dead, his widow) takes for her maintenance a share equal to that of her sons. Until that time she has no interest in the property except her right to maintenance which continues in the meantime, unaffected by the partition. I do no more than summarise the position which has a variety of complexities. A more detailed explanation is unnecessary.

98. In these proceedings the issues involving the *Mitakshara* are not so much with the operation of the system once it is established (or accepted) that there is joint family property, for example with the powers and obligations of the person who is *karta*, or with the manner and consequences of a partition. Rather, they concern the circumstances in which, given a joint Hindu family, property becomes joint family

property at all. This was dealt with at some length by Dr Mohan but received only a passing mention by Professor Menski.

99. As Dr Mohan explained, there are (or were until the passage of the *Hindu Succession Act 1956* to which I will come briefly later) essentially three methods by which property might become joint family property. (In what follows I shall assume the existence of a joint Hindu family.) The first is (or was) the receipt of property by way of inheritance from the paternal side of the family (usually the father of the recipient). This was referred to as ancestral property. The second is the receipt of property on a partition when what the son receives forms joint family property with his sons (or becomes such if and when a son is born) but where what the father receives becomes his absolute property. The third is when what is described as "throwing in" occurs. This is where a family member intends to give up the individual (i.e. separate or absolute) character of the property and thenceforth treat it as joint family property. Dr Mohan mentioned a fourth method. This occurs by operation of the doctrine of "blending" if separate or self-acquired property has been voluntarily thrown by the owner into what was described as "the common stock" (meaning existing joint family property) with the intention of abandoning any separate claim to it. As Dr Mohan observed, however, blending is another way of looking at throwing-in although in form is slightly different and derives from a time when there was no taxation and hardly any accounts or formal records. He said that there are very few references to it in modern authority and I shall therefore say no more about it.

100. The essential sources are therefore twofold: ancestral property and property thrown into the common pot (as it is often described). (The second of Dr Mohan's various categories is really no more than a reflection of the fact that on a partition the son and his sons continue as a joint family and continue therefore as coparceners in respect of the property which comes to them on the division of assets following the partition.) What then is the part played by ancestral property?

101. Central to the operation of the *Mitakshara* in respect of joint family property until the passage of the Hindu Succession Act 1956 was the importance given to ancestral property. The following passage from page 234 of the 10th edition (1946) of *Mulla*, complete with its italicised words and phrases, explains the distinction between ancestral property and separate or self-acquired property. It also describes the scope of the coparcenary as it then existed (which happens to coincide with Father's departure from India):

> "To understand the formation of a coparcenary, it is important to note the distinction between ancestral property and separate property. Property inherited by a Hindu from his father, father's father, or father's father's father, is *ancestral* property. Property inherited by him from other relations is his separate property. The essential feature of ancestral property is that if the person inheriting it has sons, grandsons or great-grandsons, they become joint owners with him. They become entitled to it by *reason of their birth.* Thus if *A*, who has a son, *B*, inherits property from his father, it becomes ancestral property in his hands, and though *A*, as head of the family, is entitled to hold and manage the property, *B* is entitled to an equal interest in the property with his father (*A*), and to enjoy it in common with

> him. *B* can therefore *restrain his father from alienating* it except in the special cases where such alienation is allowed by law, and he *can enforce partition* of it against his father. On his father's death, he takes the property by right of *survivorship* and not by *succession*. It is otherwise, however, as to *separate* property. A man is the absolute owner of property inherited by him from his brother, uncle, etc. His son does not acquire an interest in it by birth, and on his death it passes to the son not by survivorship but by *succession*. Thus if *A* inherits property from his brother, it is his separate property, and it is absolutely at his disposal. His son, *B*, acquires no interest in it by birth, and he cannot claim a partition of it, nor can he restrain *A* from alienating it. The same rule applies to the *self-acquired* property of a Hindu. But it is of the utmost importance to remember that separate or self-acquired property, *once it descends to the male issue of the owner*, becomes *ancestral* in the hands of the male issue who inherits it. Thus if *A* owns separate or self-acquired property, it will pass on his death to his son *B* as his heir. But in the hands of *B* it is ancestral property as regards his sons. The result is that if *B* has a son *C*, *C* takes an interest in it by reason of his birth, and he can restrain *B* from alienating it, and can enforce a partition of it as against *B*."

102. Dr Mohan's evidence made clear that in the overwhelmingly agrarian India of bygone days ancestral property was the principal source of joint family property and the scope for a person to acquire self-acquired property of any significance was limited. But with changing times, the growth of the cities, an increasing urbanised middle class and the desire for greater gender equality, change was needed. This was achieved by a succession of pieces of legislation, notably the *Hindu Succession Act* 1956 and the *Hindu Succession (Amendment) Act* 2005. The 1956 Act effectively abolished the principle that property inherited by a male from his father was deemed to be joint family property (as ancestral property) in the hands of the son although it did not wholly do so. The 2005 Act amended the 1956 Act (but without affecting dispositions taking effect prior to 20 December 2004) to give daughters in a joint Hindu family (and whether married or not) the same status as that of a son. The 1956 Act provided that the interest of a male Hindu in joint family property should thenceforth be deemed to be property capable of testamentary disposition so that he might dispose of it by will. The 2005 Act extended the scope of this to intestate estates by providing that the interest should devolve by testamentary or intestate succession, as the case might be, and not by survivorship and that the property in question should be deemed to have been divided as if a partition had taken place (and with daughters taking the same shares as sons) and whether or not the deceased would have been entitled to claim partition. As I have understood the operation of these two pieces of legislation it is that by their combined effect they abolished the existence of ancestral property as a source of joint family property.

103. This brings me to "throwing-in." An understanding of how this happens is critical to these proceedings. Curiously this topic was scarcely mentioned by Professor Menski although when the principles which I am about to summarise were put to him in

cross-examination he did not quarrel with them. How does throwing-in happen and what proof of it is needed? Dr Mohan stated that "A clear intention on the part of the owner to waive his separate rights [in his separate or self-acquired property] must be established…" He elaborated on this by stating that intention alone is not enough: it was also necessary that the owner should take clear and unequivocal steps to show that the property was being thrown in so as to become joint family property. He went on to say that "a bald allegation" by a son against his father of throwing-in by the father of his (the father's self-acquired) property into the common pot "without anything more" would not be accepted by a court in India. He instanced the case of a "wayward" son seeking to "grab" the father's self-acquired property by making a false allegation of throwing-in. I understood that the same is true where the roles are reversed. "Because of the risk of abuse" he continued "the Courts in India require very strong evidence to establish an allegation of 'throwing-in' to guard against relatives seeking improperly to acquire an interest in the self-acquired property of a family member". He went on later to say that "abandonment (of individual property rights) cannot be inferred from the mere fact that other members of the family are allowed to use the property jointly with the owner, or that the income of his separate property is utilized out of generosity to support persons whom the holder was not bound to support." He continued: "An act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation. Nor can abandonment be inferred from the failure to maintain separate accounts." He went on to describe the sort of steps that are usually taken by families where, as he put it, they are *ad idem* and are seeking, for fiscal reasons, to create joint family property by recourse to throwing-in. I accept all of this as an accurate statement of the relevant law.

104. Dr Mohan made two other related points. The first concerned the presumptions which apply in this area and where in all of this the burden of proof lies. He explained that, in the absence of proof of severance, there is a presumption in Indian law that a Hindu family is joint in status, or as it was put in *Surjit Lal*, "…the joint and undivided family is the normal condition of Hindu society. The presumption therefore is that the members of a Hindu family are living in a state of union unless the contrary is established." But there is no similar presumption that the property of members of a joint Hindu family is joint family property. In that respect the burden is on the person claiming that property is joint family property to prove that fact. But once that person proves that there was sufficient joint family property from which the property in dispute could have been acquired the burden shifts to those who contend that it is separate property to establish that the property was acquired without recourse to the joint family property. The second point was that the practice of the Indian court, in a case where the existence of the joint family property is disputed, is to expect the claimant's pleaded case to set out, among other matters, "the point of time (date) and the event by which a particular property is claimed to have become family property" and that, having identified that date, "examine the conduct of the parties in the ensuing period, in particular any formal representations – positive and negative – regarding the ownership of property made by each member and for each property." He then gave examples. The gist of his evidence on the point was that the evidential burden on the person who asserts and seeks to prove the existence of joint family property is a heavy one.

105. There is one final topic that I need to mention. It concerns what was compendiously described as "fruits of learning." It is important in the light of the phenomenal

success achieved by Jasminder in building up the hotel business in EGL and, when it was almost laid low by the collapse of BCCI, in rescuing and re-building it once more. It goes to the question whether there is any good reason why, assuming a joint Hindu family and a nucleus of joint family property, the fruits of Jasminder's labours as represented by the current value of the shares in EGL could properly be treated as part of the family property.

106. Fruits of learning are income or other gains earned by a (male) member of a joint Hindu family by the practice of an occupation the training for which had been obtained at the expense of the joint family property. Before 1930 the relevant jurisprudence, culminating in the Privy Council decision in *Gokal Chand v Hukam Chand-Nath Mal* (1921) LR 48 IA 162, took a strict view of such gains: they were treated as an accretion to the joint family property and the member in question had to account for them accordingly. (In *Gokal Chand* because the person in question, while training for the ICS, had been supported out of joint family resources it was held that the income earned by him from an appointment in the ICS was property of the joint family.) The *Hindu Gains of Learning Act* 1930 was passed to reverse the effect of that decision. Section 3 of that Act provided that:

> "Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of - (a) his learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of joint funds of his family, or with the aid of the funds of any member thereof; or (b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of the family, or by the funds of any member thereof."

107. Section 2 of the 1930 Act defined "acquirer" to mean a member of a Hindu undivided family who acquires gains of learning, "gains of learning" to mean all acquisitions of property made substantially by means of learning, and "learning" to mean education and training of every kind which is "usually intended to enable a person to pursue any trade, industry, profession or avocation in life".

108. Dr Mohan explained that as a result of the 1930 Act whatever a member of the family earns or acquires with his own skills and efforts belongs to him and not to the family. He made the point that a father cannot tell his young son that when he grows up and exercises the skills he has acquired from studying and learning to earn, whatever he earns will belong to the whole family and not to him personally. He drew the court's attention to an illuminating decision of the Indian Supreme Court on the effect of the Act, *Chandrakant Manilal Shah v Commissioner of Income-Tax* (1991) 193 ITR 1 (SC). The issue there was whether there existed a valid business partnership between the *karta* of a joint Hindu family and a member of the family. The *karta* contended that there was (not least as there was a deed of partnership) while the Revenue contended (successfully in the court below) that there was no valid partnership and that the business carried ostensibly in the name of the partnership must be taken to have been conducted for the benefit of the joint family. The appeal succeeded. Of particular relevance is the following passage from the judgment of the court (at page 9). It arose in the context of a contention by the Revenue that while a member of a

Hindu undivided family (the expression used, rather than joint Hindu family, in claims by the Revenue) can, by contributing separate capital, enter into a partnership with the *karta* as regards the joint family business, he cannot do so by merely offering his skill and labour as his contribution to the firm. After commenting on the width of the term "learning" in the 1930 Act and stating that there was no reason why a partner should not be able to contribute his own skill and labour (rather than some form of cash asset) as his contribution to a partnership in return for a share of profits, the court observed that a person's skill and labour are "certainly not the properties of the Hindu undivided family but are the separate properties of the individual concerned." The judgment then continued:

> "To hold to the [contrary], we may observe, would also be incompatible with the practical, economic and social realities of present day living. We no longer live in an age when every member of a Hindu undivided family considered it his duty to place his personal skill and labour at the services of the family with no quid pro quo except the right to share ultimately, on a partition, in its general property. Today, where an undivided member of a family is qualified in technical fields - may be at the expense of the family - he is free to employ his technical expertise elsewhere and the earnings will be his absolute property; he will, therefore not agree to utilise them in the family business, unless the latter is agreeable to remunerate him therefor immediately in the form of a salary or share of profits. Suppose a family is running a business in the manufacture of cloth and one of its members becomes a textile expert, there is nothing wrong in the family remunerating him by a share of profits for his expert services over and above his general share in the family properties. Likewise, a Hindu undivided family may start running a diagnostic laboratory or a nursing home banking on the services of its undivided members who may have qualified as nurses or doctors and promising them a share of profits of the "business" by way of remuneration. This will, of course, have to be the subject-matter of an agreement between them but, where there is such an agreement, it cannot be characterised as invalid. It is certainly illogical to hold that an undivided member of the family can qualify for a share of profits in the family business by offering moneys - either his own or those derived by way of partition from the family - but not when he offers to be a working partner contributing labour and services of much more valuable expertise, skill and knowledge for making the family business more prosperous."

109. Dr Mohan expressed the view that this decision made clear that even where there is a joint family and there is a common pot from which a member of the family benefits it does not follow that what that member gains becomes part of the joint family property. The question in each case, he said, is one of fact as to what has been agreed. If the jointly owned property increases in value and that increase has been in part the result of the exercise of skill by a member of the joint family it will, he said, be a question of fact as to what the contribution is to that increase. This will be so, he said,

even if that person is the family manager or *karta*. It will be a question of fact whether it is predominantly the skills of the family member or the family property which has brought about the growth in value.

110. I have set out the relevant principles of the *Mitakshara* at some length, not only because they are novel to persons practising in our own courts and need to be explained, but also because it is relevant to understand what exactly the content is of the common intention constructive trust for which Father contends. It is to that form of trust that I now come.

The basis of Father's claim as a matter of English law

111. The *Mitakshara* principles are one thing; their applicability to property amassed by members of the Singh family in this country is quite another. As pleaded (see paragraph 4 above), and as opened before me, the basis of Father's claim was that those principles provide the content of a constructive trust whereby it was the common intention of Father, Mother and their children throughout the period when their property was being acquired that they all had beneficial interests in that property in accordance with those principles. It was contended on Father's behalf that there was no reason why the law on common intention constructive trusts as it had been settled in *Stack v Dowden* [2007] UKHL 17; [2007] 2 AC 432 and *Jones v Kernott* [2011] UKSC 53; [2012] 1 AC 776 should not be applied where it can be shown that a succession of family homes have been acquired and a family business has been created subject to a common understanding and intention shared by parents and their children. It was submitted that the trust sought to be established is not contrary to public policy, does not offend any English trust principles and is not perpetuitous since it can be brought to an end by any of the coparceners at any time.

112. Mr McDonnell took me at length through *Stack v Dowden* and *Jones v Kernott* and referred also to *Abbott v Abbott* [2007] UKPC 53; [2008] 1 FLR 1451. In *Jones v Kernott*, as in *Stack v Dowden*, the property in question was in the joint names of the parties. The question was not whether the claimant had any beneficial share but what that share was. In the present case, by contrast, none of the property in question (in so far as it has been identified) was or is held other than in the sole name of one or other of the members of the Singh family. The family's shares in EHL, other than those held in trust (as to which no claim is made), are all held, so far as material, either by Jasminder in his sole name, or by Herinder in his sole name or in the sole names of either Father or Mother. The same is true of the various homes in which the family has lived in this country starting with 25 Princes Avenue and culminating in Tetworth Hall. I was not told about other property. The practical issue therefore is whether Father is able to displace the presumption that the assets held by Jasminder in his sole name, in particular Tetworth Hall and his 5.28% shareholding in EGL, are beneficially his and his alone (or, in the case of the shares held by Herinder, beneficially Herinder's alone, as I did not understand the claim to exclude them) and demonstrate instead that the beneficial interest in them was at all times held by the nominal owner to give effect to a common intention constructive trust that they should be held, and at all material times have been and are still held, as joint family property in accordance with the relevant principles of the *Mitakshara* as I have tried to set them out.

113. In a case where the disputed property is held in the sole name of one of the parties then, as shown by those authorities and notwithstanding differences of view on the vexed topic of imputation and the role of the presumption of a resulting trust, the starting point is different: it is to decide whether the claimant has *any* beneficial interest in the property held exclusively in the name of the other person. The burden is on the claimant to establish that he has.

114. None of this was in dispute before me: Mr McDonnell accepted that the burden lay on Father to demonstrate that he and Mother and their children shared a common intention that in accordance with those principles they all shared beneficial interests (in the sense in which, under the *Mitakshara*, the male members of the joint family have any beneficial interest in the property as distinct from an expectation of a share in the event of a partition) in the property that each was acquiring. As a matter of analysis the first issue therefore is whether Father can demonstrate that he and the other (male) members of the family should have *any* beneficial interest at all in the property in question It is worth mentioning, however, that in *Geary v Rankine* [2012] EWCA Civ 555; [2012] 2 FLR 1409 to which Mr Croxford drew my attention (it was a dispute between a couple, who had previously lived together, over the ownership of a property held in the name of one of them and of the business that had been run from it), Lewison LJ pointed out (at [18]) that where the claim related to a property which had been bought as an investment rather than as a home, "the burden is all the more difficult to discharge." That observation applies with particular force to Father's claim insofar as it relates to the shares in EGL held by Jasminder or Herinder (or, for that matter, by any of the other members of the Singh family).

115. *Stack v Dowden* and *Jones v Kernott* both now put beyond doubt that, failing some express declaration or agreement in which the intention is articulated (and none is asserted in this case), the requisite common intention is to be deduced objectively from the conduct of the parties who are said to be parties to it. There is no scope for any imputation of such a common intention at this stage of the analysis. That will only arise, as *Jones v Kernott* made clear, if it is established (or is common ground) that both parties should share the beneficial interest in the property in question but the court cannot make a finding about what their common intention was as to the proportions in which the property is to be shared. (See also what was said in *Geary v Rankine* at [19].) That second stage of the analysis is not a problem in the instant case in the sense that once Father establishes, if he can, that there was a common intention that the property should be held as joint family property, the terms on which it is held (and therefore the shares to which each members of the family is entitled in the event of a partition) follow from the application of the relevant *Mitakshara* principles. That assumes either that the parties to the common intention had a clear understanding of what those principles were (so far as relevant to the property in question) or were content to accept that those principles should apply whatever those principles were even though they could not recite them.

116. At paragraph [51(3)] of *Jones v Kernott* the relevant approach to determining the existence of the common intention which the claimant alleges was described thus (quoting from Lord Diplock in *Gissing v Gissing* [1971] AC 886 at 906): "the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some

other intention which he did not communicate to the other." That was explained by Baroness Hale in *Stack v Dowden* (at [60] to [61]) as involving a "search…to ascertain the parties' shared intentions with respect to the property in the light of their whole course of conduct in relation to it". She adopted what had been stated in a Discussion Paper published by the Law Commission, namely that the approach was to be "holistic" involving "a survey of the whole course of dealing between the parties and taking account of all conduct which throws a light on the question of what shares were intended." Although spoken by reference to the second question, namely what are the shares (as distinct from whether the claimant has any beneficial interest), it is clear that in seeking to deduce whether there is a common intention that the claimant should have any interest at all in the property in a case where the property is held in the sole name of the other person the court is no less entitled to have regard to the whole course of dealing between the parties in relation to the property. That is implicit in the reasoning of both *Stack v Dowden* and *Jones v Kernott* and clear I think from the way in which Lady Hale summarised the law (at [6]) in *Abbott v Abbott* (a case where the house in question was in the sole name of the husband). The common intention can be established by showing either what the parties' intention was when the property was acquired or that they later formed an intention as to how it should be beneficially owned. As it happens, however, Mr McDonnell concentrated on the events which occurred in between late 1975 when the possibility of purchase of the Edwardian Hotel by EHL (as Surena Ltd became) first arose and the acquisition in late January 1980 by Patentgrade (as EGL was then still called) of the Vohra family's shares in EHL.

117. I should also add that there was some debate as to whether those principles apply to the creation of a family-controlled business such as EGL was and has remained. In this context I was referred to comments made by Etherton LJ in *Crossco No 4 Unlimited v Jolan Ltd* [2011] EWCA Civ 1619; [2012] 2 All ER 754 at [85] and [86] to the effect that the common intention constructive trust expounded in *Stack v Dowden* and *Jones v Kernott* (and similar cases) does not apply in a commercial context. I do not propose to go into that question beyond saying that some of the considerations which have led the courts to approach the question whether there exists a common intention with regard to the beneficial ownership of a matrimonial or similarly owned property in the manner set out in the authorities to which I have referred apply with force to a family-type claim of the kind here. The matter was not argued. It was simply assumed that the same principles apply. I consider that it was right to do so.

The pleaded claim

118. The key allegations are to be found in paragraphs 15, 24, 25, 31, 33, 44, 50 and 56 of the particulars of claim. I have summarised the claim and set out the all-important paragraph 56 of those particulars at paragraph 4 of this judgment. I need only refer in addition to paragraphs 15 and 25 which state the general position; the other paragraphs apply the statement contained in that paragraph to the various properties and shareholding interests which members of the Singh family acquired over time. First, paragraph 15:

> "Father and Mother brought up their children from infancy to regard themselves as a new Hindu joint family started by themselves and consisting of themselves and their children and

> to regard all of their savings and any property acquired or to be acquired by any member of the family as joint family property of that family. That family still exists as a Hindu joint family…"

119. Paragraph 25 pleads the consequences of the averment that any given property was acquired as joint family property. It does so in relation to certain property acquired in Father's name but is alleged to apply equally to property (notably the shares in EGL and Tetworth Hall) acquired in Jasminder's name:

> "…although the said properties and business and the income arising from time to time were at that stage in the legal ownership of Father, they were regarded and treated by Mother and Father and their children as in the joint beneficial ownership of Father, Jasminder and Herinder, subject to Mother's and Seema's rights of maintenance in accordance with the principles of the Mitakshara."

120. It is important to realise just what Father's claim amounts to and how extensive it is. It is that he, Mother and their three children formed a common intention that all of their properties and all of their savings, whenever acquired, would be subject to a joint ownership regime – as enshrined in the *Mitakshara* even if they were not aware that that was the name of the regime – which has all the complex attributes which I have earlier attempted to summarise. It is, to my mind, altogether different in degree from the usual case where the common intention is simply that the ownership of a property should be shared in some agreed or imputed proportions.

121. I can conveniently mention at this point the stance taken by Herinder to Father's claim. First, although he gave evidence on behalf of Father (and I shall be returning to that evidence later), he took no active part at the trial. His defence admitted most of the factual matters alleged in the particulars of claim. In particular he admitted the central allegation set out in paragraph 15 above. As against that admission he took issue with a key component of Father's case, set out in paragraph 50 of the particulars of claim, that the Singh family "all continued to regard…Edwardian Group Limited…as being joint family property" in the *Mitakshara* sense. His pleaded position as to that was that the family continued to regard the business "as a family business" and "as being in a general sense owned by the Singh family." He made no admissions (and reserved his position) as to the composition of any joint family property at any stage or as to the existence of any common intention constructive trust. Before me Mr Thompson emphasised that the shares in EGL held on various trusts "fell outside" any joint family property and that, as was the case, Father did not make any claim in respect of such shares. He mentioned that although the intended section 994 claim (see paragraph 68 above) involved different allegations there was "some potential overlap" in that the intended section 994 claim would assert the existence of a quasi-partnership (between, at the least, Jasminder and himself). What was not resolved, and was certainly not explained, was how Father's allegation that the shares held personally by Jasminder and Herinder were "joint family property" sat with Herinder's intended section 994 claim in so far as it related to the shares in EGL which he continued to hold in his own name. I return to the status of Herinder's shares later in this judgment.

The witnesses

122. It is appropriate that I set out my impressions of the various witnesses who gave oral evidence before me. I shall also summarise what was said by those whose evidence was not challenged. I start with Father and Mother and those who gave evidence in support of the claim.

Father and Mother: their health and other problems

123. Father and Mother were cross-examined over several days. They were both in very indifferent health at the time. Father had suffered a significant stroke on 21 March 2013 and had spent several months in hospital until he had recovered sufficiently and the necessary alterations and other arrangements made to enable him to resume living at Tetworth Hall. He is now very frail, has a carer on hand around the clock to attend to his needs and suffers from very poor mobility (relying on a wheelchair) and recurrent tiredness. Mother had suffered a heart attack that September. Fortunately, following her discharge from hospital she had been generally well. She is able to get around but needs crutches. She has other ailments associated with her advancing age.

124. These medical problems occasioned a major practical difficulty. The medical evidence before the court indicated that, although suffering from slurred speech and some mild cognitive impairment, Father continued to have a good insight into the trial process, had the mental capacity to make decisions and was able to understand, retain and weigh appropriately information given to him. But there was a well-founded fear that giving evidence in a courtroom in central London where he would be without the rest and other facilities which were to hand at home would prove over-tiring for him resulting in impaired attention and worsening speech disfluency such that the quality of his testimony would be compromised. It was suggested that the court move to Tetworth Hall to take his evidence and Mother's as well.

125. It became quickly evident that for a variety of reasons that would be impractical. Instead, it was arranged that the court would convene at one of EGL's West End hotels, the Mayfair in Stratton Street, for the duration of his and Mother's evidence, that the two of them would be provided there with a suite of rooms and whatever medical and other care was needed (and a chance to settle in before they came to give evidence) and that the court would adjourn for as often and for so long each day as was needed to ensure that they did not become unduly tired or discomfited during the course of giving their evidence. A conference room at the hotel was set up as a temporary courtroom and other facilities made available to accommodate the needs of all who were in attendance. In the event it was necessary to take frequent breaks whenever it became apparent that Father's concentration was lapsing and reassemble when he had had a chance to get some sleep and refresh himself. Mother showed no similar signs of fatigue when she came to give evidence. Nevertheless it took the best part of five days to complete their evidence even though, all told, their oral evidence did not last more than about two and a half normal court days. I very much doubt that the quality of Father's evidence (or Mother's) would have been any better if it had been given at Tetworth Hall. It hardly needs adding that the court is extremely grateful for the trouble taken by the hotel to provide this facility.

126. There was another other problem with Father's and Mother's evidence. Their witness statements were in polished English. They contained no suggestion that the

statements had been read over to them or translated into their mother tongue. It was indicated, however, that the services of someone to translate would be needed when they came to give their evidence. Accordingly, they were both provided with an interpreter to enable them properly to understand in their native Punjabi what it was that was being put to them. Father suffered from mild deafness. To allow for this the seating arrangements ensured that when giving evidence Father and Mother were near to Mr Croxford so that they were well able to hear clearly the questions which he put to them. Moreover, Mr Croxford, whose voice carries well in any case, went to great pains to keep his voice up and to speak slowly and clearly. It became quickly evident that, when he wanted to, Father could reply in English, albeit of a somewhat broken and, as the medical evidence had warned, slurred nature, and could well understand the questions put to him without the need for a translation. Indeed, despite my asking him to reply in Punjabi in the expectation that he would find that easier, Father persisted for most of his evidence in replying in English. Mother likewise.

Father

127. A recurrent theme of Father's answers to the questions put to him in cross-examination about documents which he had apparently signed (on some he would acknowledge the signature to be his and on others he would deny its authenticity), was almost invariably either an absence of any recollection of the document or simply a denial that he had signed it. At times this inability was genuine; on other occasions, however, it was obvious that he was unwilling to deal with the document or other matter about which he was being questioned either because he did not want to or because he lacked the mental energy to do so. Overall, I had the strong impression that for the most part he was distancing himself from the events about which he was being asked (except on a few occasions when he chose to rouse himself, usually to berate his treatment by Jasminder, and express himself forcefully on this or that topic, often in terms irrelevant to the matter in hand) and was unwilling or unable to confront what it was that the document or other matter apparently revealed.

128. Father's distancing of himself from the detailed events of this dispute was part and parcel of a larger problem. This was his denial of any knowledge of the contents of the two witness statements in his name and bearing his signature, the first dated 21 December 2011 (served in response to Jasminder's summary judgment application) and the second, which was very largely the same as the first, dated 14 June 2013. The second statement was put forward as his evidence-in-chief. Although he identified his signature on them as his own, he was adamant that he had not read, or had read to him (whether in English or in Punjabi or in Hindi), either statement before signing it. He said the same about the particulars of claim. There was an added difficulty about the particulars: this was that another person had signed the accompanying statement of truth, a Mrs Saraswati Dave. All of this obviously put in issue the extent to which those statements and the particulars could be said to represent his evidence. It meant that, together with his unwillingness to engage with what was being put to him in cross-examination, the court was being offered little or nothing that could be said to represent his evidence.

129. It was to overcome this problem that I permitted Mr McDonnell to call Mrs Dave. It seems that she had been present when Father and Mother had signed their witness statements. It was she who had signed the statement of truth (as an employee of the firm of solicitors then acting for Father) attached to the particulars of claim. She

struck me as an honest witness who was trying her best to be helpful. Her problem was that she had not expected to give evidence and whether for this reason or for some other she seemed at times to be in something of a muddle over what exactly she had done and when. Matters were not helped by the fact, as it emerged in the course of her cross-examination, that although she was a legal executive in the employment of the solicitors who had acted for Father until early August 2013, her short witness statement had not been drafted by her. It contained statements which she had to qualify under cross-examination and was inconsistent with attendance notes which were later disclosed. There was a problem with the attendance notes when it emerged that those dated 7 February 2011 (and which it was initially assumed were contemporary with the events they described) had been put together only three or four days before Mrs Dave gave her evidence. Her excuse was that she had composed the notes in reliance on a contemporaneous note. She did later produce what I was told was the contemporary note but I was left with some doubt as to whether even that was so. I acquit Mrs Dave of any intention to mislead: it was plain that the problem was one of general confusion on her part and that anyone setting out to mislead would not have gone about it in quite so disorganised a way. There were other problems about the circumstances in which Father's first witness statement had come into existence on which I do not need to dwell. Father's second witness statement which, as I have mentioned, was tendered as his evidence-in-chief was signed by him about three months after he had suffered his stroke. Father was still in hospital at the time. Mrs Dave had called on him in hospital about a month after he had had his stroke to take him through his first statement with a view to expanding and updating it for the trial (although as it happens the changes are few and slight). At one stage of her cross-examination Mrs Dave said that when she attended on him on that occasion Father was alert while at another she said that he was extremely slow and that she therefore had to read the statement to him in Hindi twice. In the event it was on another visit to him in hospital that Mrs Dave secured Father's signature to the second witness statement. This was on 14 June 2013, two months after her earlier visit. She said that on that occasion she read each paragraph of the statement to him in English and Hindi and that he approved the statement and then signed it.

130. The general drift of Mrs Dave's evidence and other material before the court was that Father's first witness statement had been carefully put together by his legal team (including Mr McDonnell) over a period of months following interviews with Father and the others and that, as far as one can judge, it represented what the legal team understood to be what Father would say. It was obvious that it was in terms that reflected the language skills of those who had put the statement together rather than of Father whose statement it purported to be. As the second statement followed very largely the first the same comments apply to that statement as to the first. The difficulty for the court has been in assessing the extent to which the statements truly represented what Father knew and believed and wished to say and, no less importantly, the extent to which their contents could withstand rigorous questioning. This essential task of the court was not assisted by being assured by Mrs Dave that Father had approved the two statements or that it was the product of painstaking interview. It is notorious that a person may in complete good faith come to believe that this or that happened, particularly when being asked to recall matters long removed in time, or that with the passage of time events, long past, come to take on for the person claiming to recall them a meaning and significance which at the time they occurred they simply did not bear, while others are either forgotten or simply

overlooked. Nor is reliable recollection assisted by the kind of passions aroused in a dispute of this nature. Not the least of the problems caused by witness statements which are the result of question and answer in the course of interview rather than the unprompted *ipsissima verba* of the maker is the extent to which what is written is the product of suggestion. Cross-examination can usually expose what is true and reliable recollection and what is not. Given his unwillingness to engage with the questions put to him by Mr Croxford this was simply not possible in the case of Father's evidence. As a result his oral evidence was virtually valueless; his written statements where they dealt with matters going to the root and substance of the common intention constructive trust were scarcely less so.

131. This had two consequences. First, I do not feel able to place any reliance on matters which are a matter of dispute between him and others except where there is other reliable evidence on the point. The second, which flows from the first, is where the statements set out unparticularised assertions, such as the averment in paragraph 15 of the particulars of claim that Father and Mother brought up their children from infancy "to regard all of their savings and any property acquired or to be acquired by any member of the family as joint family property of that family" (an allegation which is repeated several times in the pleading by reference to identified assets) or the statement in paragraph 25 of his second witness statement challenging as untruthful a denial by Jasminder (in his witness statement) that he ever recalled being told by Father or Mother or any other family member that "they regarded our family to be living as a 'joint Hindu family' in the sense that it was understood and agreed between us that all of the property which any of us acquired in our lifetime was to be held as Joint Family Property" or (in the same paragraph) that there had ever been "any agreement or understanding between him and me or anyone else in the family to that effect": it is simply not possible, and I am not willing, to accept those assertions as evidence without a great deal of detail to support what is said. Another similar example is the response given (and signed by Father) to a request for an explanation as to why there was no mention of what was referred to as the "Joint Family Property principle" on various occasions in 1998 and 1999 when discussions took place regarding the revocable declarations made in connection with the family trusts and when Father's and Mother's pensions were topped up. The response, which is illuminating for the light it sheds on the vagueness of his evidence on this key question, is a non-admission that there was no mention in the course of such discussions. Instead of stating when or where or by whom such mention was made, the response relies on little more than surmise and assumption. Thus:

> "it is highly likely that it was mentioned directly or indirectly since it has always been Father's and Mother's attitude to their Family business. Father and Mother always regarded their family as a Joint Hindu Family and brought up their three children to believe in and observed the principles of that institution; and until those principles were repudiated by Jasminder in response to their letter of 3 November 2010 and this Claim, they assumed that their children did continue to believe in them and observe them. That assumption underlay and was reflected in their day-to-day dealings with their children (including Jasminder). They never had any reason to raise them or rely on them in an argumentative way in their

> dealings with him because they always trusted him to be guided by those principles in the performance of his duties to manage the Family Property as *Karta*. But Father has no doubt that the assumption on the part of himself and Mother that Jasminder believed in and was guided by those principles must have been obvious to Jasminder and to any other participant in the discussion referred to who understood them."

132. Another difficulty about Father's evidence was its reference to expressions such as *Mitakshara* and *karta* (the latter also appears in the letter of 3 November 2010 which Father and Mother signed). The following is a good example taken from paragraph 28 of Father's second witness statement:

> "…the customs of the joint Hindu family, which are observed by Sikhs, are underpinned (as I understand it) by ancient religious texts, like the *Mitakshara*, which pre-date the founding of Sikhism as a military sect of Hinduism. Those texts, however, are not familiar to ordinary people but are referred to by scholars or lawyers who are debating difficult points. Ordinary Sikhs or Hindus just take the principles of the joint family for granted; and they understand them because even if they are not being observed or practised at any particular time by their own family, they will always have friends or relations who are observing or practising them."

133. The contents and mode of expression of that paragraph seemed a very, very long way from the language and utterances, such as they were (and whether in English or as translated into English), which issued from Father in the course of his cross-examination. He told me that he had never heard of the *Mitakshara* when he was in India or Kenya and it was far from clear when and in what circumstance he was introduced to the expression after he came to this country. It seems likely that this only happened in the course of this dispute. I can usefully mention at this stage that Jasminder's evidence was that until he received the letter of 3 November 2010 he had never come across the expression *karta* and that when he read it in the letter he asked Amrit if she knew what it meant and when she said that she did not they went on to Google to find out. I find that entirely credible. It is credible not least because Mother said in cross-examination that she first learned about it "in the last few years". Seema said that she had not heard the expression (until these proceedings). Herinder also said that until the current dispute arose he knew nothing about *Mitakshara* concepts and that until issues arose about his shareholdings in EGL he "never gave much thought to the ownership of property such as the family home or the hotel business". Nor had he heard the term "undivided" family.

134. In his written evidence Father makes several references to the person who is appointed the family *karta*. It emerged in the course of the evidence of Mrs Dave that Professor Menski had to explain to Father what the expression meant. This happened at a meeting on 7 February 2011 which was several weeks after the letter of 3 November 2010 was written in which the expression first appears. It may well be, and I am willing to accept from what I was later told, that the meaning had been explained to him by Professor Menski at a rather earlier date when the letter of 3 November was drafted and before he and Mother signed it. Be all that as it may, the

meaning and significance of the expression did not stick with him, notwithstanding its repeated appearance in his witness statements (and also in the particulars of claim and the signed response to the request for further information), as became clear when he was being cross-examined. He stated that the expression was not one which was used in the Singh family and that he did not know what it meant. Nor, it seems, was any equivalent expression used in the family. (After a break in his evidence he was able to refer to the expression because over the interval Mother had explained it to him.) He even went so far as to deny using it in his witness statement (although it is clearly there). Mother too accepted that the expression was probably not used in the Singh family.

135. The use of the expression *karta* (rather than some other more general word) is highly significant because, as Mr Croxford submitted, it is a technical expression in the field of Hindu property law and carries with it what Mr Croxford described as "the panoply of joint Hindu property." Its appearance in Father's (and Mother's) witness statements might therefore be taken to indicate that this was an expression which, going back many years, they used and understood and which for that reason would or might have been familiar to their children. No less significantly, its use might be relied upon to support their claim that this was a family that was familiar with and had adopted the custom of joint family property. Its appearance served only to heighten the need for the most careful examination by the court of just what Father and Mother did know and say and just how they had conducted themselves over the years.

136. In their written closing submissions Mr Croxford and Mr Lightman described Father's witness statement as, in material respects, a "construct" rather than an account by Father of what he could recall. They said that the "voice" of that statement was not his. That seems to me to be a very fair way of putting the matter. It is because the voice is not Father's and it was simply not possible to elicit in the course of his oral evidence just what his recollection was and the extent to which he was adopting as truthful the statements which carried his signatures that I cannot place any reliance on that evidence except to the limited extent mentioned above.

Mother

137. Mother's evidence was different only in that, although she too was in indifferent health, she was better able physically to respond to what was put to in the course of her cross-examination. She seemed less prone to fatigue than Father. Any concerns that I might have had that, for cultural reasons connected with her gender and upbringing, she was to any degree put-upon by either Father or Jasminder were soon allayed. When in the course of her cross-examination she wanted to, she could express herself forcefully. I had the impression that she was a person of strong views and was not afraid to give voice to them.

138. It was unclear from what Mother told me whether and to what extent she had read and understood her witness statement. Mrs Dave said, and I accept, that when she attended on her on 14 June 2013 she read to Mother every paragraph of the statement in both English and Hindi. It was on that occasion that Mother signed the statement. But, in her oral evidence, she was vague about when it was that Mrs Dave had read it to her and had no clear recollection of the occasion. She appeared to have no recollection of its contents. Mother repeated several times her understanding that, as she put it, "everything we had was joint" but when asked by Mr Croxford why, if that

was so, she had not said so when she had a meeting with Chandrika Shah to discuss her personal financial affairs or why particular transactions had occurred (which he identified) which suggested that all was not joint, she disclaimed all knowledge of the matter and simply declined to engage with the line of questions.

139. She was vague about how she came to refer in paragraph 41 of her statement to Jasminder being appointed by Father to act as the family's *karta*. (According to the statement this was when the Edwardian Hotel was acquired which was in 1976 although the statement refers to 1974.) At one stage in her evidence she claimed to understand from what she learned at school (incorrectly if this is indeed what she learned) that it was generally used for the eldest male child of the family but had no real understanding as to what being *karta* involved, even though she too had used the expression in her own witness statement. She later said that she came to hear of the expression, or its variant "*karta dharta*" (meaning the person who deals with everything, and the expression she preferred to use), from either Professor Menski or Mrs Dave and that, as she put it, "whatever was put in front of me, what came to my mind, I signed." This may explain the following paragraph of her statement: it follows the reference to Jasminder being appointed *karta*:

> "That is why our share of the Edwardian Hotel was put into Jasminder's name. He was holding it as our family's *karta* on behalf of himself, my husband and Herinder. Nobody in our family or the Vohra family would have considered any other possibility at that time. The suggestion that our family's share actually belonged to Jasminder would have seemed ridiculous to everyone concerned. All the legal arrangements were handled by Jasminder with my brothers. But I am quite sure it never occurred to them that anything which Jasminder put in his name belonged to him rather than our family (that is to say, my husband, Jasminder and Herinder as owners with me and my daughter and future daughters-in-law having our own rights as the women of the family)."

140. This was emphatically not Mother speaking. Given her disavowal of the use of *karta*, her claim to have no knowledge of property transactions and her concern to distance herself from the contents of her witness statement, I am left in the dark as to what in her statement was genuine recollection (I accept that some of the details of her early life would be from her recollection) and what was "construct" and in truth the voice of another. As with Father I can place no reliance on Mother's witness statement except where what she has to say is either not a matter of dispute or there was some other reliable evidence on the point. Her oral evidence, aside from casting very serious doubt on the extent to which her witness statement represented what she recalled and understood, did little if anything to advance Father's claim.

Father's and Mother's evidence: observance of appropriate professional standards

141. Before passing to the evidence given by other witnesses, I need to deal with one further matter. In their written closing submissions Mr Croxford and Mr Lightman were critical of the manner in which, as they understood events, the witness statements of Father and Mother had been produced. There was more than a suggestion that professional guidelines in the preparation of those statements had not

been observed. The criticism was pursued, albeit briefly, in the course of Mr Croxford's oral closing. Three weeks after I had reserved judgment Mr McDonnell sent me (and Mr Croxford and his team) a 20 page written submission headed "Response by John McDonnell QC to criticism on behalf of 1st Defendant" together with an appendix and various attachments. The response was a mixture of narrative and submission. The narrative sought to explain at some length the circumstances in which Father had come to make his witness statements, how those statements were genuinely and reasonably understood by those involved to be what he, Father, understood and wanted to say, and the role in all of this of, among others, Professor Menski (including the circumstances in which he had prepared his witness statement) and of Mr McDonnell himself. The submissions were designed to show that the matter had been handled with complete propriety. Mr Croxford and his team criticised this belated attempt to introduce new material. They submitted that it was wide of the mark in that the criticism which they had levelled concerned the reliability of Father's and Mother's evidence in the light of what was known about how it had been collected and found its way into their statements. They said that they felt it to be neither appropriate nor necessary to engage with it any further.

142. I consider it undesirable that counsel should feel it necessary to explain to the court in such detail how he and others had involved themselves in the preparation of the witness statements of their client and his wife. I think it very unfortunate that the unusual circumstances of this claim should have resulted in such close involvement by counsel in these matters although, from what is said in the Response, I can understand how this came about. Rather than reconvene the trial to have the matter argued and, if need be, tested in cross-examination I have taken at face value all that Mr McDonnell has set out by way of further narrative. And I have not felt it necessary to come to any view on whether professional guidelines were all duly followed. I have simply assumed that they were.

Seema

143. Seema gave evidence. She had been born in Meerut (in India). This came about because Father and Mother were there on holiday at the time. She spent her childhood in Tanganyika and Kenya. For three years in her early childhood she lived with Mother's eldest brother, Anoop, and his wife at their home in Nairobi. At the time Father, Mother and Jasminder were in Tanganyika. She followed Jasminder to this country, arriving in August 1972. She was 19 at the time. She came with her cousin, Guddi (a Vohra cousin) to study for her 'A' levels. She went on to study accountancy. She married in 1979. She and her husband, Deepak, live in Stamford, Connecticut. They have lived in the USA since they married. She comes regularly to this country to see the rest of her family.

144. It was plain from her cross-examination that Seema knew very little about the Singh family's financial and property-owning arrangements. For example, until she married and was asked to resign, she did not know, or had not given her mind to the fact, that for two years she had been a director of Patentgrade, a position to which she must have assented. She knew nothing about the way that company was run or of its financial affairs. This is not meant to be critical of her although I might have expected that as someone who had studied accountancy she might have known a little more of what was happening and of the duties which lay on her as a director. The fact of the matter is that she took no interest in the company, no doubt because she had no

financial interest in it. The general tenor of her evidence was that, just as with the Vohras, the Singh family lived as a joint family. She said that she was brought up to understand that she would inherit nothing and that what the family owned would go to the male members. She could not be more specific than that. There were various references in her evidence to property being joint but she claimed no knowledge of Hindu property law and, as I have mentioned, had not heard of the *Mitakshara*. She obviously believed strongly that Jasminder had treated Father badly and that from a loving brother he had become selfish and uncaring. I do not doubt that she felt strongly about this. I consider, and it is not necessary to go into any detail, that she was mistaken in thinking that Jasminder was not looking properly after Father and Mother.

145. I do not need to dwell further on her evidence, not least because Mr McDonnell did not refer to it at any length in his closing submissions. This was, no doubt, because, like Mother's, it did not advance Father's claim to any material degree. Overall I had the impression that Seema was not an altogether impartial witness. She did not impress me as being as fair in what she had to say as Herinder was. It is to his evidence that I next turn.

Herinder

146. He gave evidence in response to a witness summons served on him by Father's solicitors. He would not otherwise have taken any part in these proceedings. He made clear that he adopted a passive position in relation to Father's claim: he did not oppose it but did not wish to advance any arguments in support of it. He came across as a fair and honest witness.

147. In paragraph 12 of his witness statement he explained that he had largely admitted Father's claim and the factual allegations in it not because he had first-hand knowledge of the relevant matters but "because I trust Father and am prepared to accept that his recollection of events is likely to be fair and accurate." He explained that Father's claim fitted with his "very general understanding" – based on what he had been told by others – "that we did things 'for the family' and that Jasminder was head of the family." He felt that Father and Mother ought to have "a fair share of the wealth that has been built up by the family so that they can afford different living arrangements of their choice." Under cross-examination he accepted that Jasminder had made substantial money available to them and had taken steps to meet their needs, both in the way of staff assistance and the offer to them of alternative living arrangements if that was their wish.

148. In his witness statement he explained that, having come to this country when he was only seven, he was unable to say anything of significance about the family's life in Kenya. He said that from a relatively early age he understood that "the family ran its business affairs together with Jasminder taking the lead." He understood that in Sikh and Hindu families one person would be head of the family and, as such, would "take the lead in representing the family to the outside world." Jasminder, he said, was that person. He was not referred to as *karta*, which was a word he did not then know, but as *ghar ka vada ha* which, translated from the Punjabi, means the elder of the house or family. He regarded Jasminder as the "father figure" in the family but this did not detract from his respect for and deference to Father. He said that it was Jasminder who, with Father's and Mother's assent, took responsibility for his (Herinder's)

education, including the fact that he studied to be a chartered accountant. He qualified as such in 1992 and married Alka (who had been born in India) two years later.

149. Herinder said that prior to this dispute he knew nothing about concepts of *Mitakshara* law (or for that matter constructive trusts) and that, until his dispute arose with Jasminder over his shares in EGL, he had not given much thought to the ownership of property such as the family home or the hotel business. He assumed that title to Tetworth Hall was in Jasminder's name. He accepted that he declared no interest in it in his tax returns. "I viewed it as a 'family home' in which in some way as a member of the family I had an interest" was how he put it. He added, however, that he would not have been able to say what that interest was or whether it was an interest that the law would recognise.

150. He said that the family would refer to themselves as a "joint family" (he had not heard of the expression "undivided family" until very recently) which he understood to mean that the family "presented an image of togetherness and closeness to the outside world and acted broadly together in business." Typically, he said, the family lived together and operated one main business. He said that he grew up in the expectation that he would be involved in the family business. In cross-examination he said, when asked about his separate shareholding in EGL, that he was "encouraged to think about everything as the collective Singh family pot." Although he accepted that he had signed documents showing that he loaned money to Jasminder and Father he said that, despite having done so and even though as a chartered accountant he would have understood the significance of such matters, he did not in fact see them as loans. He signed because he was asked to and trusted those who asked him to do so. He said that he treated the money as "family money."

151. As I have mentioned (see paragraphs 61 to 68 above) tensions arose between him and Jasminder in relation to the affairs of EGL. These tensions, which may yet result in separate proceedings, are not material to this dispute except that, as Herinder confirmed, by early 1999 (see paragraph 57 above) it had been agreed that there should be a greater separation of interests as regards the Jersey trusts. This, he said, led to Jasminder executing a memorandum of wishes in respect of the Jersey trusts for Herinder and his family and resulted in him (Herinder) regarding his own shareholding and the shareholdings of those off-shore trusts – the Herinder Jersey trusts - as owned by him and by the trusts in question and not "for the family." He explained how his differences with Jasminder led to him acquiring his own home – in Putney – and moving out of Tetworth Hall in September 2004. (I have earlier explained how this was financed and, in particular, the extent to which Jasminder contributed towards the price paid by Herinder for his new home.)

Saraswati Dave

152. I have already referred to her evidence and I need say no more.

Jasminder and his witnesses

153. I come now to Jasminder and the witnesses who gave evidence in support of his defence to these proceedings.

Jasminder

154. In addition to his witness statement in support of his summary judgment application Jasminder made a second witness statement specifically in support of his case for the purpose of the trial of the preliminary issues directed by Newey J. It added to his earlier witness statement in several respects. His cross-examination, which lasted three days, concentrated very much on the events of his upbringing and early years in this country and on the circumstance in which Father had provided financial assistance towards the start up of EHL and, later, of Patentgrade (before it was renamed EGL). This therefore was about events which had occurred 35 and more years ago. The documentary material was skeletal: Jasminder was being asked to recall largely undocumented events of his early and mid-twenties. There was to my mind something very unreal about this. It appeared to me that Jasminder sought to give an honest and, as far as he was able, a complete account of these events. For the most part his evidence came across as trustworthy and reliable. On occasions I had the impression that what he was saying owed rather more to what he thought must have happened – to reconstruction therefore – and that he was doing so with an awareness of the significance of what he was saying to the issues in play at this trial, than to genuine recollection. In coming to my findings I have made allowance for this. Much of what I have set out above regarding the background to Father's claim and the events leading to these proceedings has been derived from Jasminder's first witness statement which, for the most part, is an entirely factual account of events based upon the available documentation. I deal with Jasminder's oral evidence in so far as it is necessary to do so when I come later to those parts of it which go to the points on which Father relied in seeking to establish his claim.

Amrit

155. Jasminder also relied on evidence given by Amrit. She was only cross-examined on an incident involving Mother. It related to the preparation of some food. She had no recollection of it and it was not, I think, of any relevance to this dispute. Her witness statement was unchallenged and I have no reason to question its veracity in any respect.

156. According to that statement Amrit was born and grew up in India. She was from a Sikh family but explained that her family had what she described as "a fairly modern and relaxed approach to religion" which was seen as "more a social affair than a solemn duty." She described Jasminder's approach to religion as similar to her own and that it stood in contrast to the much more traditional outlook on life and religion of Mother and Father. She said that she and Jasminder (and their children who attended secular schools) would rarely go to the Sikh temple other than for family occasions or important festival days. She mentioned that when she and Jasminder first met (which, as it happens, was in Japan in 1983 where she was then working) he "knew more about Christianity than the Sikh religion, having attended Christian schools." They married in London later that year.

157. She said that the decision to buy Tetworth Hall was hers and Jasminder's and that they left it to Father and Mother and Herinder to decide whether they wished to come and live with them and did not consult them over the move. She said that she did not concern herself with the detailed arrangements over the shareholdings in EGL and knew only in very general terms that Jasminder, Father, Mother and Herinder owned

shares in it. She said that in all the time she had known Jasminder she had never heard mention by anyone of joint Hindu property, or anything similar, and had no knowledge of any discussion within the family of joint ownership of family property or of Jasminder being a family manager or *karta*. Indeed, she said, even in India she had never heard the term used. She said that when first told of the claim she had to use Google to find out what it meant. She recalled calling friends in India to ask them if they had heard of joint Hindu property or knew what *karta* meant and was told that it was an arrangement used in India for tax purposes.

Inderneel

158. He is the eldest of Jasminder's and Amrit's four children and their only son. He was born in this country, is now aged 29, is married and is the father of a daughter born last July. He and his wife and baby daughter live at Tetworth Hall. He works as the Commercial Development Manager of EGL. He provided a witness statement on which Mr McDonnell did not wish to cross-examine him. In that statement he said that he had a very close relationship with Father and Mother (his grandparents) and spent much time with them as he was growing up. He also said that he had a close relationship with his uncle, Herinder. He described himself and his parents and siblings as a "not particularly devout Sikh family" which participated in the major festivals "but no more than that." Like his father, Inderneel did not wear the turban and had cut his hair.

159. He said that until he read Father's claim he was not aware of the concept of joint Hindu property under which, as he understood it, the adult males of the family (including himself therefore in the case of Father's male descendants in unbroken male descent) jointly own the family property. Nor, so far as he was aware, had the role of *karta* or family manager ever been discussed within the family. More particularly, no-one had ever suggested to him that he was a joint owner of any family property or that any family member held his or her assets for the joint benefit of others.

Vijay Wason

160. He was and had since 1986 been EGL's Company Secretary. His involvement with EGL's business went back to June 1979. He challenged Father's statements where they said that Father did not understand English well enough to follow documents which he signed and that he signed documents without understanding what he was signing because Jasminder asked him to sign them. He said that he often took documents or cheques for Father to sign and did not recall an occasion when Jasminder was present. He said that on the occasions that he asked Father to sign a document relating to EGL business or saw him signing a document he had no doubt that he understood what he was being asked to sign. He said that Father always looked at the contents, or asked for an explanation of the contents, of the document that he was being asked to sign. More generally, he said that Father always took an interest in what was going on in the business and that he and Father had frequent and sometimes lengthy discussions about business matters, in both English and Punjabi. According to Mr Wason, Father did not appear to have any difficulty understanding what he was being told and would ask questions which demonstrated that he had indeed understood. There was no material challenge to any of this and I have no reason to question its veracity.

Chandrika Shah

161. Chandrika Shah supplied two witness statements. She was a partner in the accountancy firm of Shah Dodhia (recently incorporated so that she is now a director) which has audited EGL's financial statements for many years (now jointly with KPMG LLP). Satish Shah is her co-partner (and now a co-director) in that practice. Satish was also a co-partner (and is now a director) of Chamberlains who are tax planning specialists. More importantly to these proceedings, she is the person who since 1983 has advised members of the Singh family in relation to their personal affairs. She advised Father and Mother until January 2008. She continues to advise Jasminder. This has included advising them on their income tax returns. She has advised Herinder as well. Chamberlains has provided the Singh family with tax planning advice for very many years. She worked on the purchase by Jasminder of Tetworth Hall in 1989 and dealt in particular with various loans to Jasminder from family members (funded largely from dividend income) and others which enabled him to carry out the purchase and refurbishment of the property. She was heavily involved with the restructuring of EGL in 1993 following the collapse of BCCI. Together with Chamberlains she was also involved in the discussions which took place in 1998/99 leading to the revised memoranda of wishes and revocable declarations in respect of the Jersey trusts. I have set out the relevant events at paragraphs 57 and 58 above.

162. Ms Shah was only briefly cross-examined. This was mostly on matters unconnected with her witness statements which accordingly went largely unchallenged. As she had advised Father and Mother personally, she was unwilling to go into what had passed between them and her or make disclosure of the notes she took at her meetings with them or of the letters that she sent them until she was released by them from any duty of confidentiality. Fortunately this was eventually forthcoming and she was able to make the relevant disclosure and supplement an earlier witness statement and thus go into her dealings with and advice to Father and Mother. Ms Shah was a wholly honest witness and I regard her evidence to be entirely reliable. I found what she had to say to be of importance to the issues I have to decide. Her evidence went chiefly to the extent to which Father and Mother understood the various transactions into which they entered, and the instructions which they gave, relating to the disposition of their property.

163. In an unchallenged passage from her first witness statement Ms Shah stated the following:

> "16. In all the years in which I have worked for the Singh family and EGL I have never heard any of them mention the concept of Joint Hindu Property or suggest that such a concept or anything similar applied to their affairs. Before I became aware of these proceedings it had never been suggested to me, whether by a members of the Singh family or by anyone else, that assets which Jasminder held in his own name were to be regarded as being in the joint ownership of Jasminder, Herinder and Mr Singh. Until I became aware of Mr Singh's claim I had never heard of the term "*Karta*".

> 17. The advice I gave over the years to Jasminder, and to the other members of the Singh family, was given on the understanding that the legal and beneficial ownership of the assets held by each family member was to be determined in accordance with normal English legal principles and not by reference to the concept of Joint Hindu Property or anything similar. That understanding is reflected, in particular, in the documents and correspondence which I prepared for Jasminder and members of his family regarding their tax affairs."

164. In her second witness statement Ms Shah said that her firm prepared the personal tax returns for Father and Mother from at least 1985/86 to 2005/06. She said that the information on which her firm relied in completing those returns was provided to her by Father and Mother directly or via Vijay Wason and occasionally by Herinder and, where it related to EGL, by EGL. She said that Father and Mother signed their returns and that "we would have advised them to check carefully that the contents of those returns were correct in the usual way." She referred in particular to declarations of domicile by Father dated 2 February 1988 and 22 July 1989 which her firm prepared. Ms Shah believed she would have discussed with Father the contents of those declarations and taken the information from him in relation to them because "only Mr Singh would have known the necessary historic details." Insofar as she was able to recall events she believed that Jasminder had no involvement in the preparation of them.

165. Ms Shah related how in 1999 Father and Mother raised concerns regarding their own financial position. It led, she said, to the meeting she had with them on 23 June 1999 of which at the time she made a detailed note. I have summarised what happened at paragraph 58 above. The note was in evidence. According to the note Herinder, Mr Wason (see above) and her co-partner Satish Shah were present and at a later stage of the meeting Jasminder joined them. As the note which Ms Shah took indicates – and I have no reason to doubt its accuracy - the meeting discussed the tax problems caused by a large cash distribution to Father from the Patentgrade pension scheme. There was a need to revive the scheme, and restore the payment, in order to regularise the position with the Inland Revenue whose re-approval of the scheme would be necessary. It was clear from her note that Father took part in the discussion and raised various points. Among them, indeed it was his main concern, was his wish to have a fund of between £500,000 and £600,000 in his name so that (as the note put it) "he could do what he wanted with the cash and it would give him security if he didn't get on with his sons' families." The note continued: "Mrs Singh [i.e. Mother] re-inforced this view saying that the concerns were primarily because of what they see happening to other families…" The note later recorded, after Jasminder had arrived, that as the pension monies Father would receive would be around £200,000 he would personally give him the balance of £300,000 in a tax-efficient manner or as a gift." The note stated that Father agreed that he would return the pension scheme monies. This was to enable Shah Dodhia to proceed with the application to the Revenue. A few days later, on 1 July 1999, Ms Shah had what she described as a follow-up meeting with Father. Once again Mr Wason was present. She made a note of that meeting as well. The note recorded that Father "wanted no loans or trusts; he wanted absolute control of funds with no call back." Ms Shah stated, and the note records, that she broke off to speak to Jasminder – I infer by telephone as he was not shown as attending the

meeting in person - who agreed that Father should have the balance of the funds simply gifted to him to use as he saw fit. Ms Shah said that it took some time to obtain Revenue approval of the scheme's revival and authorisation of the lump sum payment to Father, that she wrote to Father and Mother in November 2000 to report progress and confirm that together with the lump sum payment from the scheme Jasminder would provide a top-up payment to bring the overall payment to £500,000. In her witness statement Ms Shah noted that during her dealings with Father and Mother, Jasminder and Herinder throughout this period no suggestion was made that any of them "had any right to be maintained out of jointly held family property or joint Hindu property or anything of that sort."

166. Ms Shah said that Father and Mother both made wills in 1986 although she personally was not involved. I have covered this at paragraph 60 above. She said that in late 2000 or early 2001, following the discussions regarding their pensions and the need for a personal fund of £500,000, Father and Mother instructed her firm and Chamberlains to prepare new wills for them. She said that she believed that the need for new wills was first discussed with them at a meeting at their home in November 2000. She believed that the notes she made on that occasion (which she produced) accurately recorded the provisions which they wanted for the £500,000 cash sum they were to receive and the personal shares which they held in EGL. She believed that the wills were drawn up by Chamberlains to whom she sent the instructions and that the wills were those sent by her to Father and Mother for signature under cover of a note on a compliments slip dated 1 August 2001 although she did not recall signed copies of the wills being returned to her. Copies of the draft wills and the compliments slip were in evidence. She said that during the discussions she had with Father and Mother regarding the preparation of their new wills "neither mentioned the concept of Joint Hindu Property". She said that she took her instructions from them and that Jasminder had no involvement.

The experts

167. I have already referred to their evidence. I need say no more about it.

Application to the facts: matters inconsistent with Mitakshara principles

168. Against that statement of the relevant principles both of English law as regards the way in which the claim is grounded and the *Mitakshara* as regards the content of the common intention constructive trust I come to the application of those principles to the facts as I have set them out.

169. The first and striking thing to note is that I was not shown a single document out of the voluminous quantity disclosed which assumed that any property that was being acquired was a joint family asset. There was not one which could really only be understood on the basis that the family, including Jasminder in particular, treated some item of property as beneficially owned, not by the person who held the legal title to it (in the case of the various Singh homes) or in whose name it was held (in the case of the shares from time to time held in EGL or, before that, in EHL), but collectively by Father and his male descendants in shares fluctuating with the number of them alive at any time. This was as true of the property held by Jasminder as it was of the property held by Father. This is not to say that I would necessarily have expected to see a document referring in terms to the *Mitakshara*. It would perhaps

have been unrealistic to expect to see any although, as I have mentioned, his two witness statements both make use of the (in this context) technical expression *karta*. So does the letter of 3 November 2010 which he and Mother signed. But I would have expected to see the parties, and Father in particular, conduct their affairs on a basis consistent, and consistent only, with the *Mitakshara* which Father was at pains, both in his witness statements and in his particulars of claim, to emphasise was the basis on which all in the family were at all times accustomed to act. There were a very few documents which at first reading were consistent with the family subscribing to the *Mitakshara* in their property dealings *inter se.* Perhaps the best example – it was one to which Mr McDonnell took me in the course of his opening – was the letter written on his behalf by Jasminder's solicitors which I have set out in full at paragraph 65 above. When set in context, however – Jasminder's opposition to Verite's resignation as a trustee of the Herinder Jersey trusts born out of a concern not to fragment the family's holdings – the letter is entirely explicable. Moreover, it was a solicitor's letter. It would have been surprising, although not impossible, if the solicitor who drafted it had done so mindful of and with an eye to the application of the *Mitakshara*. Nothing I have seen or heard suggests that those advising Jasminder had the slightest notion of the *Mitakshara* or the way it operated until after the matter was first raised in the letter dated 3 November 2010 (set out in full at paragraph 71 above) which pre-figured the bringing of these proceedings.

170. The second point is that without exception none of the witnesses had heard of the expressions *Mitakshara* or (in its technical sense) *karta* before these proceedings began or, perhaps more tellingly, could recall a single occasion when there had been any discussion of the concept of joint family property. This is particularly noteworthy in the case of Chandrika Shah: she after all was dealing with and taking instructions from Father and Mother in relation to their personal financial affairs. She was involved when Jasminder acquired Tetworth Hall. She was not only ignorant of the concept of joint family property but in her advice to members of the family she proceeded on the basis that normal English legal principles applied. This can only mean that if Father had any consciousness of the principles of joint family property applying to a family such as his own he kept silent about it in his dealings with those most intimately concerned, namely his two sons and his grandson, Inderneel. He also made no mention, or forgot to mention, this important matter to the person advising him (and Mother) in relation to their personal financial affairs. It also explains why, as they made clear, the others were wholly unaware of the principles in accordance with which, as Father would have it, they were accustomed or supposed to act.

171. The third point is there were before the court documents evidencing dealings or setting out wishes which were inconsistent with any understanding by Father, let alone any common intention shared by him and Jasminder, that the property was, however vaguely expressed, to be dealt with in accordance with *Mitakshara* principles. I give the following instances.

172. First, Father, Mother, Jasminder and Herinder all held shares in EGL. Father accepted, and none of the other witnesses suggested otherwise, that each family member held and owned shares exclusively in his/her own right. (I am ignoring at this point the shares which were settled in trust.) Separate beneficial ownership of shares in a company is inconsistent with those shares being joint family property even if, disagreeing with Dr Mohan on this point, shares in a company are capable of being

joint family property. That a female should hold and beneficially own any such property is also inconsistent with the *Mitakshara* principles as they existed in 1946 (and for some years after that date). Year after year Directors' Reports of Patentgrade (and, as it became, EGL) disclosed the shares each director held as part of his declaration of interests. These included the shares held, inter alia, by Father and Mother for so long as they remained directors. It is far-fetched to suppose that, insofar as they related to members of the Singh family (there were outside directors as well), these declarations are to be understood as relating to interests subsisting as joint family property in the sense understood under *Mitakshara* principles. It is instructive that where shares were held by a director as a trustee (i.e. where he held them on trust for others) the declaration makes that clear; there is no such qualification by reference to any notion of joint family property affecting any of the shares held in the names of members of the Singh family. More generally there is no good reason why, if the shares were joint family property, they should have been parcelled out between members of the family in the way that they were. It would have been sufficient, even if it would not have been necessary, if the shares had all been held by Jasminder as *karta* (if Father is right and that was his role after 1975). Consistently with the assumption that the shares held by each member of the family (other than in trust) were his personal property alone was that dividends paid to shareholders were declared in returns to the Revenue as the income of that person.

173. Second, Father and Jasminder made a joint statement of the assets which each owned as at 31 December 1981 (in the case of Father the statement was of assets owned by him and Mother). The statement was provided to the Revenue in connection with an enquiry which was then underway. Jasminder's assets included the shares then held by him in EHL and Patentgrade and the then family home at The Stables in Bushey. Father's and Mother's consisted of the shares they then held in Patentgrade. Jasminder and Father each certified that the items listed comprised a complete statement of his/their assets as at that date. It is difficult to accept those certificates as accurate if in truth the assets in question were all joint family property and other assets existed which had not been declared, namely the shares in Patentgrade held by Herinder, which were no less joint family property.

174. Third, Father and Mother, with the advice and assistance of Chandrika Shah, made returns of income to the Revenue. At no stage was it suggested to Ms Shah by either of them at any stage of her dealings with them that any of their income derived from, and was itself therefore, joint family property. Ms Shah throughout was wholly ignorant of the concept and proceeded on the assumption that the income in question was that of the taxpayer providing the return.

175. Fourth, Father, Mother, Jasminder and Herinder all made wills the existence and dispositive provisions of which, insofar as they dealt with assets which are now said to be joint family property, are not to be reconciled with *Mitakshara* principles as they existed prior to 1956. Father and Mother executed mutual wills on 11 March 1986. I have already set out (at paragraph 60 above) what the dispositive terms were of those wills. They were put to Professor Menski in cross-examination. He eventually agreed that giving one tenth of one's estate to the children of a daughter who, because she was married, was no longer a member of the family for *Mitakshara* purposes was fundamentally inconsistent with the testator being concerned to deal with joint family property. The same is true of the wills which Shah Dodhia and Chamberlains drafted

for Father and Mother in accordance with their instructions in late 2000 or early 2001. The material terms are also set out at paragraph 60 above. Those drafts dealt specifically with the shares which Father and Mother each held in EGL. That they felt able to give such instructions is inconsistent with those shares forming part of joint family property. (Professor Menski agreed in the course of his cross-examination that it was "questionable" for someone who was not *karta* to be alienating joint family property by will.) The terms of Jasminder's will executed on 3 December 1998 are likewise inconsistent with any adherence by him to *Mitakshara* principles: he plainly thought that he was free to deal with his property, including Tetworth Hall, as he pleased. I have set out the terms of that will at paragraph 56 above.

176. Herinder made a will on 6 May 1994 and another on 3 December 1998. By the earlier of those two wills, executed at a time when his only valuable asset was his shareholding in EGL, he set up a will trust in favour of his wife, any family he should later have and various others. The will trust paid no regard to *Mitakshara* principles. Cross-examined about these provisions, Professor Menski accepted that disposing of shares in this manner was a wholly irregular thing for a coparcener (if such Herinder was) to be doing. His later will was more specific in that it dealt in terms with his shares in EGL by gifting them in trust for his wife, children (of which by then he had one, a son) and their spouses (in both cases, regardless of gender). This too was inconsistent with those shares being joint family property.

177. Fifth, in January 1989, after taking specialist tax and estate planning advice in the course of 1988, Father and Mother settled most of their shares in EGL on the terms of the UK trusts. The circumstances are set out at paragraph 47 above. Those trusts did not in any way reflect adherence to *Mitakshara* principles. It is clear from the evidence of Chandrika Shah, who was involved at the time, that Father's (and Mother's) decision to establish the UK trusts was made deliberately and knowingly in that they acted upon the specialist advice which they received. Indeed, they went further: they altered the proportions in which the shares should be held in that they decided that a greater proportion of their shares should be held for the benefit of Herinder and his family than for Jasminder and his family. The shares settled upon the terms of the UK trusts reflected this decision to give more to Herinder than to Jasminder.

178. Sixth, in May 1993 the Jersey trusts were established. At paragraphs 50 to 54 above I have described the relevant circumstances, starting with the First Gulf War in 1990 and collapse of BCCI in June 1991 leading in turn to EGL's crisis in fortune, EGL's subsequent bank rescue and the creation and issue to the banks of convertible preference shares, the grant in Jasminder's favour of options over the bulk of those shares and the settlement in May 1993 of those options by means of the Jersey trusts and the subsequent exercise of those options. I have also set out (at paragraph 57 above) the later steps taken to ring-fence 22% of the Jersey trusts for the benefit of Herinder and his family. From start to finish there was never any suggestion in the whole course of those events that joint family property was at stake or that the creation of the Jersey trusts and the exercise of the options and other share dealings had anything to do with, or was in any way an implementation of rights arising under, *Mitakshara* principles.

179. Seventh, on or about 31 October 1993 and again on 17 May 1994 Jasminder made declarations setting out his assets. In both declarations he included among his assets a holding of 423,632 shares in EGL and Tetworth Hall. He could only have done so if he had thought that these assets were beneficially his own. At the time that he made those declarations there is nothing to suggest that Jasminder was at loggerheads with Father or with any other member of the Singh family. He would have had no motive for misrepresenting the truth. It was not suggested in Jasminder's cross-examination that he was being untruthful in what he disclosed as his own assets.

180. Eighth, it is, to say the least, odd if the family's assets were in any event held as joint family property that Father (and Mother) should have been concerned about their financial security and therefore have been anxious to have for their own use a sum of £500,000 (which was eventually made available to them). This episode is dealt with at paragraph 58 above. It is significant that in the note that Chandrika Shah made of her meeting with Father on 1 July 1999, she referred to Father's wish to have "absolute control" of the £500,000.

181. Ninth, on 11 April 2001 Father and Mother made the declaration which is set out in full at paragraph 63 above. Mr Croxford and Mr Lightman made three submissions about this document each of which has force. The first was that the declaration was premised on Jasminder owning outright and as his own the assets held in his name and expressed the hope that Herinder might be similarly advantaged. The second was that the statements made setting out what they had done for Jasminder and their wishes for Herinder are inconsistent with any notion of a joint Hindu family enjoying joint family property. The third is that the fact that Father and Mother were making this declaration without reference to Jasminder and were intending, without reference to Jasminder, to allocate for Herinder's benefit 22% of the shares in EGL held in the Jersey trusts is at odds with the case that Jasminder was and had for many years been the family's *karta*. It is also to be noted that Father took the opportunity provided by the statement to make clear his "wish to declare certain matters which are important to my wife and me, and central to the ethics, understandings and principles which underlie the way in which I have always tried to operate within the family". Given that statement it is to say the least odd that there is no mention of anything which might be understood as an indication of observance of *Mitakshara* principles. Here at least was the occasion on which to proclaim adherence to them. He did not.

182. Tenth, in the dispute between Jasminder and Herinder which has culminated in a threat by Herinder to launch unfair prejudice proceedings against Jasminder based on allegations of a "quasi partnership" in relation to the management of EGL and his wish, among other relief, to obtain beneficial ownership of a significant portion of EGL's assets and share buy-out orders there has been no suggestion that the shares held by Jasminder (or other members of the family) in EGL are in any event joint family property in which, as a coparcener, he (Herinder) is entitled to share. Indeed, it might be thought that Herinder might do better simply by seeking partition or by joining with Father in seeking that relief. He does not. Nor does Father seek to challenge Herinder's claim by maintaining that it is inconsistent with the shares in question being joint family property or is unnecessary.

183. Eleventh, the evidence of Chandrika Shah of her dealings over very many years with Father and Mother in relation to their personal financial affairs (as summarised in paragraphs 161 to 166 above) shows that at no stage was she told, or given in any way

to understand, that their financial affairs were to any degree constrained by the principles of the *Mitakshara*. On the contrary, as she stated, she gave her advice to them on the basis that ordinary English legal principles applied. At no stage, it seems, did Father say or do anything to alert her to the possibility that this assumption on her part was or might be wrong.

184. Twelfth, it is clear that Jasminder believed that Tetworth Hall belonged beneficially to him alone. That was his clear evidence. The trouble taken to document various loans to him by Father, Mother and Herinder at the time of the purchase are not to be reconciled (or, at the very least, are not readily reconcilable) with that property being joint family property. It is odd too that if Jasminder was *karta* it was felt necessary for such matters to be the subject of documented loan arrangements. Even odder is that on 22 July 1999 Father felt able to make a declaration to the Revenue in which, among other matters, he gave Tetworth Hall as his address and stated that he lived there with his son "who owns the property". That statement was made in answer to a printed question asking for the "capacity (for example, owner, tenant…)" in which he occupied his address. If Tetworth Hall was joint family property Father was entitled to occupy it as one of its joint owners and, what is more, had as much right to do so as Jasminder. Chandrika Shah believed that Tetworth Hall belonged to Jasminder. Amrit's unchallenged evidence was that the selection of the area where Tetworth Hall is located as a place in which to live and the decision to purchase that particular property were made by her and Jasminder alone. None of this sits easily with the notion that in truth Tetworth Hall was acquired as joint family property.

185. Thirteenth, if at all times the Singh family assets were intended to be dealt with in accordance with *Mitakshara* principles, it is strange that this was never mentioned to Amrit and striking that, although a coparcener, the fact of his entitlement was never communicated to Inderneel. Their evidence to this effect was unchallenged.

186. In his witness statement Father sought to confront the obstacle to his claim posed by any apparent inconsistencies deriving from what he might have signed or assented to from time to time. In the case of what appeared in company accounts, he stated that these were not matters with which he was ever concerned and that he "always left such matters to Jasminder and trusted him implicitly as *karta*…and as a qualified accountant." In the case of the trusts that were established (which, by their terms, pay no regard to these principles) he said this:

> "74. In the first place, the Trusts were prepared by professional people who took their instructions from Jasminder on behalf of the family. In some cases the professional people involved communicated directly with my wife and me and attempted to explain the documents they were preparing. But neither of us understand English well enough to follow that sort of explanation or understand such documents. We trusted Jasminder to be acting in the best interests of the family; and we understood that Trusts were often utilised to reduce the burden of tax on family companies.
>
> 75. In the second place, Jasminder has a domineering personality. My wife and I try not to contradict him in front of third parties (particularly company staff and professional

> advisers) because we are ashamed when he publicly and violently rebukes us in front of them, which he is prone to do. And until we decided that we must seek to partition the family we have always signed everything which Jasminder wanted us to sign."

187. There was a similar theme in Herinder's evidence:

> "33. I understand that there is some dispute as to whether Father and Mother would usually sign documents presented to them by Jasminder, without reading or questioning them. When I was present, that was my general experience. Sometimes the purpose of the document would be mentioned, but it was not usual for Father or Mother to ask questions. I would sometimes ask questions if asked to sign documents (particularly once I had started working in the business). I would not usually do this out of any desire to question Jasminder, but mostly out of curiosity. Often I too signed documents which I was asked to sign by Jasminder without reading them or asking questions either - Jasminder was very sensitive about people questioning his authority and the decisions he was taking. He would often interpret anyone asking questions as showing mistrust or disloyalty, and could become very offended. This was at a time when I trusted him to do the right thing for the family."

188. There was a comment to like effect in Seema's witness statement. She said that

> "If Jasminder asked me to sign documents I would have done so without reading or understanding them; he was in charge of the family's financial affairs and we trusted him to do whatever was best, in particular whatever was tax efficient."

189. I am quite willing to accept that there were occasions when Father and Mother, and Herinder and Seema also, signed documents which were placed before them for signature without reading or understanding them. I am not willing to accept that this happened on every occasion. I am not willing to accept that this happened in the case of documents placed for signature by persons such as Chandrika Shah. While I would be very surprised if Father or Mother understood every phrase or clause of, for example, the wills that they signed (and Jasminder candidly accepted that there would have been documents which, unaided, Father would not have understood) I am satisfied that, with suitable explanations from advisers and others, Father had the capacity to understand the substance of what he was being asked to sign and that he was usually diligent in seeking to read (in English) and understand the documents with which I have been concerned when they were placed before him for approval and signature. To reach any other conclusion would mean rejecting the unchallenged evidence of Chandrika Shah and Vijay Wason going to this issue. It would also run contrary to the picture I have of Father in his earlier days (before his recent illness) as a vigorous man intent on making his way in the world both for himself and his family and taking a lively interest in company and family matters. In short, I do not accept that Father invariably signed documents without understanding or trying to

understand them, simply because Jasminder or some other person in authority asked him to do so.

Application to the facts: "throwing-in"

190. Although he undoubtedly owned property there was no evidence, let alone any which would satisfy the burden of proof and strength of evidence required in such matters to which Dr Mohan referred (at paragraphs 103 and 104 above), to indicate that Father ever "threw in" any of his property into some common pot so as to constitute it joint family property. Moreover, as Mr Croxford pointed out, Father does not even allege that he did: there is no mention of any throwing-in either in the particulars of claim or in his witness statement. Nor did Mother, Seema or Herinder suggest that this had happened.

191. For example, the particulars of claim alleged that 25 Princes Avenue, which Father acquired in June 1972, was regarded as "part of the family property". But there was no evidence to suggest that this became joint family property as a result of some act of throwing-in by Father. At the time of this purchase he was in Kenya and Jasminder, in this country, was still studying accountancy. In the same vein is paragraph 24 of the particulars of claim. This alleges that the acquisition by Father of 82 Stamford Hill (consisting of the Post Office and shop business with a flat above) shortly after he and Mother had come to live in this country was, together with the rest of the sale proceeds of the property and business in Kenya and 25 Princes Avenue, "regarded by Father, Mother and their children as family property of the Singh family in the customary sense explained above." Beyond this assertion (supported by the general statement of truth at the end of the pleading) and an assertion in paragraph 38 his witness statement that "it must have been obvious to [Jasminder] when he first lived there [at 25 Princes Avenue] that it belonged to male members of the Vohra family through their company Chrysanta Ltd" as part of their joint family property "and that when we bought it…we intended it to be the first English investment of our family in exactly the same way", there is nothing to indicate how this came about and what acts are relied upon to say that it did.

192. Indeed, the impression conveyed by the particulars of claim was that it was sufficient to bring *Mitakshara* principles into play if it could be shown that the family in question lived as a joint Hindu family. It was as if there was simply no need to demonstrate, over and above the existence of a joint Hindu family, that joint family property came into being, either by reference to its existence as ancestral property or by some act of throwing-in. This apparent elision of the two separate requirements, the need for which the authorities go out of their way to make clear (see paragraph 104 above), is apparent in the following passage from the particulars of claim:

> "10. A family living as a joint Hindu family in accordance with the *Mitakshara* ideally (though not invariably) live and worship together and the beneficial ownership of the family property is treated as belonging jointly to the male members of the family in being from time to time…"

193. There is no attempt to explain how the joint male ownership of the family property comes about. That it does appears to be assumed simply from the fact that the family lives as a joint Hindu family and there is "family property". This same elision of the

two requirements appears even more clearly in the comment appearing in Father's witness statement (at paragraph 25) where he accuses Jasminder of not telling the truth when he claimed not to recall "being told by me or his mother or any other member of his family that they regarded our family to be *living as a "joint Hindu family" in the sense that it was understood between us that all of the property which any of us acquired in our lifetime was to be held as Joint Family Property…*" (emphasis added).

The case at the end of the day

194. What then is left? In their written closing submissions Mr McDonnell and Mr Burkitt chose to ignore, or very largely to ignore, the various factors – the absence of any documentary support for the claim, the strong contra-indications, the absence of discussion or even mention within the family of the principles underlying the *Mitakshara*, let alone the use by anyone of language associated with the coparcenary system, the unawareness on the part of others that such a system might be in play, the absence of anything that would amount to throwing-in in the sense and manner described by Dr Mohan – which I have enumerated above. Instead they concentrated on what happened in late 1975 and early 1976 when EHL acquired the Edwardian Hotel with the aid of £30,000 provided by Father and Jasminder was allotted 333 shares in that company. They submitted that a common understanding "either existed or is to be imputed" to Father, Mother and Jasminder that these transactions should be for the benefit of themselves, Seema and Herinder as a joint Hindu family. They submitted that the same was true when 53 Spencer Road was purchased (in May 1977), Patentgrade was set up (in June 1977) and 6 Collingham Road was acquired by Patentgrade (in September 1977). They submitted that if they were right about the rights accruing to the family on the Edwardian Hotel transaction "it would have been natural to acquire Patentgrade/Collingham Road and 53 Spencer Road on the same basis". They submitted that in these circumstances the money invested by Father would already be joint family property and that it would be "immaterial" how the shares of Patentgrade would be distributed. They described the exclusion of Seema and inclusion of the 10 year-old Herinder as shareholders as being "redolent of an underlying joint family philosophy". They submitted that nothing in the subsequent story was inconsistent with a constructive trust to give effect to their "notion of the joint family."

195. In short, as I followed the submission, the events which established the constructive trust were the circumstances in which, with Father's financial assistance, EHL was enabled to acquire the Edwardian Hotel coupled with the acquisition in Jasminder's name of one third of the shares in that company. All else flowed from those transactions.

196. The relevant facts concerned with the acquisition by EHL of the Edwardian Hotel and Jasminder's acquisition of 333 shares in that company are summarised at paragraphs 29 and 30 above. The £30,000 contributed by Father towards the overall £316,000 cost of the hotel was shown in EHL's accounts as a loan. Subsequent accounts show that the loan was repaid. There is nothing in the records to suggest that the shares allotted to Jasminder were other than his own.

197. It was the fact that Father advanced this money that took centre stage in the submission that Jasminder's shareholding in EHL was in truth for the benefit of the

Singh family and that it became and remained joint family property. In so far as the submission relied on what Father or Mother were willing to do or intended or expected or understood, the only supporting basis in their evidence was the following passage from Father's second witness statement:

> "49. …the Edwardian Hotel represented the biggest investment the Vohras had yet made in England. They would never have left it to Satinder and Jasminder, who despite their cleverness were the two boys of their respective families who had been at school together in Nairobi not so long ago, whereas Anoop was close to my age. My Vohra brothers-in-law actually proposed it in late-1975 as an investment by the two families. The suggestion that I would be lending our £30,000 to Jasminder to be his investment in EHL would have seemed ridiculous to all of us in 1975, whereas the fact that our family's shares would be in Jasminder's name as our *Karta* seemed entirely natural."

198. According to the little documentary evidence that was available there was no question of any loan to Jasminder; Father's loan was to the company, EHL. The acquisition of the hotel was largely funded (to the extent of £159,500) by a secured loan provided by BCCI. Of the £142,000 balance that was needed £69,000 came from the Vohras, £43,000 from Mr Gulhati and £30,000 from Father. These sums were shown in EHL's books as loans to it. In due course they were repaid. In the case of Father, the £30,000 which he had lent was repaid when he withdrew that amount from his director's loan account with EHL so that, with other monies, he could lend money to Patentgrade when that company acquired 6 Collingham Road in the course of 1977. Moreover, Jasminder paid for his own shares in EHL. As reflected in his loan account with that company, he made loans to it. In his witness statement Father sought to distance himself from all of this as the following passage shows:

> "56. The treatment of our £30,000 in EHL's accounts and the other details in paras 18 and 19 and 24 to 26 of Jasminder's Witness Statement were not matters with which I was ever concerned. I always left such details to Jasminder and trusted him implicitly as *Karta* for our family and as a qualified Accountant. I knew that complicated arrangements involving companies might be useful or necessary for business or tax purposes; I did not regard such details as affecting the underlying reality that all of the property in his name or under his control as our *Karta* was our joint family property."

199. As a director Father approved those accounts. They are not to be reconciled with what he now claims. It is also worth repeating that when he came to give evidence it emerged that until this dispute arose and he first made his claim Father had never used the expression *karta* and had to have it explained to him.

200. Mother too mentioned this transaction in her witness statement. She too disclaimed all knowledge of the expression *karta* (and of her statement) when she came to be cross-examined. This, nevertheless, is what she said in that statement about this transaction:

> "40. In about 1974 my brothers proposed to my husband a joint investment with them and our friends, the Gulhatis, in a Hotel in Harrington Gardens, near South Kensington. They had started investing in property for furnished lettings in that area a few years earlier. The Hotel in Harrington Gardens was Channi's idea; but it was proposed that Satinder and Jasminder should manage it, and Jasminder was keen to do that so that he could live in the Hotel instead of the Post Office. We invested through a company of my brothers which had its name changed to 'Edwardian Hotels Limited"; and the Hotel was called 'The Edwardian Hotel'. We still use the name 'Edwardian' today.
>
> 41. That was when Jasminder was appointed by my husband to act as our own family's *karta*. He was qualified or intending to become qualified as an accountant, he spoke English much better than us (we still habitually speak Punjabi) and my father had appointed Anoop to be *karta* of his family.
>
> 42. That is why our share of the Edwardian Hotel was put into Jasminder's name. He was holding it as our family's *karta* on behalf of himself, my husband and Herinder. Nobody in our family or the Vohra family would have considered any other possibility at that time. The suggestion that our family's share actually belonged to Jasminder would have seemed ridiculous to everyone concerned. All the legal arrangements were handled by Jasminder with my brothers. But I am quite sure it never occurred to them that anything which Jasminder put in his own name belonged to him rather than our family (that is to say, my husband, Jasminder and Herinder as owners with me and my daughter and future daughters-in-law having our own rights as the women of the family)."

201. As developed in their closing submissions the case advanced by Mr McDonnell and Mr Burkitt turned on conversations which, in the course of his cross-examination, Jasminder said had taken place about the matter between Father and Kughi Vohra (one of Mother's Vohra brothers) and between himself and his parents, in particular Mother, and separately between himself and Kughi. Much emphasis was placed on passages in his cross-examination in which Jasminder was asked to recall what it was that he had said to Father and Mother about the funding Father was to provide (the £30,000 as it turned out). At one point Jasminder agreed (when this was suggested to him) that "it was a relatively big investment for them" and volunteered that "it was a very serious number for them". He also volunteered that "it was make or break of (*sic*) them". He was asked about the steps taken to record Father's cash contribution and how it came about that the 333 shares were issued to him (Jasminder). He was asked to recall whether he had spoken to Kughi Vohra about the matter or whether this was something that had been agreed between Father and Kughi. It was put to Jasminder that it was inconceivable that Father and Mother would have lent their money interest free and unsecured to what was effectively a start-up company unless they were "acquiring the beginning of… a joint family property belonging to themselves and [Jasminder] and their younger son." Jasminder disagreed. He said

that the investment was a loan to EHL, it was to give him "a break" (i.e. to enable him to take advantage of a career opportunity) and that the shares which he was issued (and for which he paid) were to be his own property. He rejected any suggestion that he accepted them on any other basis, for example as family manager.

202. Founding themselves on such meagre material Mr McDonnell and Mr Burkitt submitted that any conclusion other than that this was a family investment would mean that the transaction was of no benefit to Father and Mother and that they were risking what to them was a very substantial sum "for nothing". They placed reliance on the fact, which was undisputed, that there was never any suggestion that interest would be payable on the sums lent to EHL by the three parties involved or that they should be secured. They pointed out that the only benefit to those who lent those sums would be if they were entitled to share in the income and profits of EHL and if the shares were structured so that notwithstanding the disparity between the three loans the rights to manage the company and share in its profits were held in three equal parts. They submitted that it was "inconceivable" that Father and Mother would have risked their savings in return for a share in the management and profits of EHL going to Jasminder alone, leaving them with "nothing but a hope that their money would one day return intact" or that the Vohras who had arranged the details of the transaction with Father and Mother in the absence of Jasminder would have permitted them to enter into so "irrational a transaction". That was the essence of the submission.

203. I see nothing inherently irrational in Father (and, insofar as she had any share of it, Mother) lending money interest-free and unsecured to a start-up company such as EHL and allowing Jasminder to reap any benefit from this investment through his shareholding in the company. Jasminder said that they were willing to do so to give him a start in the world of business. It is perfectly natural for parents to wish to do this for one of their children, especially (in those days) in the case of a son. If Father had been able to demonstrate that the £30,000 which he provided came from joint family property – some common pot – and that this was made clear to Jasminder at the time of the investment of that money the claim would have had more force. But, as I understood it and as I think the evidence indicated, the £30,000 came in part from the sale of 25 Princes Avenue and in part from a loan raised on the security of the Post Office. There was no suggestion that these were joint family properties and certainly no evidence to indicate, if they were, how that had come about. As I have mentioned, there was no evidence, and no plea of any kind, that Father ever "threw in" any property.

204. Nor do I see anything significant in the fact that EHL was a new company and that the loan was unsecured and interest-free. It was Jasminder who pointed out that his parents had confidence in the commercial ability of the Vohras who, after all, were Mother's brothers and had had past dealings with them going back to their shared lives in Kenya. In short, Father trusted the Vohras and their business judgment and had good reason to do so. So there was nothing particularly unusual about lending on such apparently risky terms. In any event, in so far as any part of Father's case sought to rely on what the Vohras collectively were willing to do or what they must be taken to have intended or expected or understood I am simply not prepared to reach any finding on a disputed matter of this kind in the absence of any evidence from any of them.

205. In the light of the evidence of how Father's £30,000 was actually treated in EHL's accounts and the fact that the shares in EHL were taken by Jasminder in his own name (and with no suggestion in EHL's accounts or elsewhere that he held them in trust) I am not willing to come to the conclusion about the nature of this transaction which Father invites me to reach. Moreover there is a very considerable element of unreality in the court having to examine events which occurred almost forty years ago in order to assess the merits of a claim, based entirely on those events, which was advanced for the first time in late 2010, where the minimal surviving documentary evidence provides no support for the claim but rather points against it and where the claim depends very largely on statements of an entirely general nature which the claimant and his wife have since disowned. The unreality was made all the greater when, faced with such setbacks and such unhelpful documentary survivals from the past, I was asked to place weight on the nuances of language used by Jasminder when attempting to reconstruct, if not actually to recall, half-remembered conversations which are supposed to have taken place all those years ago. In short, it struck me that Mr McDonnell and Mr Burkitt were seeking to make bricks out of precious little straw.

206. What then of the circumstances in which Patentgrade was set up and 6 Collingham Road was acquired? Jasminder said that he saw the chance to acquire 6 Collingham Road as an opportunity primarily for his parents but also for himself. He said that he regarded the acquisition as "a big thank you" for them having given him "a start". He said that this was how he put the matter to his parents, mainly to Father. He did not accept either that Father would have viewed it as an investment for the family or that he would have relied on him to deal with it as the family manager.

207. As with the allotment to Jasminder of 333 shares in EHL and Father's provision of the £30,000 towards the price EHL had to pay to acquire the Edwardian Hotel in 1975, there was very little in the way of surviving documentation which deals with these transactions. On this occasion shares (in Patentgrade) were allotted to others in the family and not just to Jasminder: he, Father and Mother were each allotted 30 shares in the company and a further 10 were allotted to Herinder. There is nothing to suggest that these shares were not intended to be beneficially owned otherwise than by their respective holders. There is nothing to explain why if they were viewed as joint family property the shares were distributed in this way, not least why 30 of them should be allotted to Mother, and no explanation why, if Jasminder was the family *karta* (as Father and Mother both say that he had by then become), the shares were not all (or substantially all) held by Jasminder. In his witness statements (for what evidential value it may have) Father had only this to say about the establishment of Patentgrade and the acquisition by it of 6 Collingham Road:

> "62. Regarding our own family company, Patentgrade Ltd, which later became…EGL. Jasminder untruthfully represents the original investment by EGL in 6 Collingham Road as an investment by himself in which he offered me an opportunity to join, despite the fact that our initial investment in EGL was not (according to him) "family money" but £9,750 from him and £58,150 from me.
>
> 63. In fact it was viewed by all of us at the time as another family investment, this time just for our own family rather than a joint venture with the Vohras. The finance from BCCI was

> obtained thanks to my friendship with IK Patel: and the figures and shareholdings in paras 32 and 38 to 42 of his Witness Statement are again based on a Note and Schedule said to have been made at the time by our Accountants, who were presumably acting on Jasminder's instructions…
>
> 65. The allegation in para 31 of Jasminder's Witness Statement that he saw the holiday flats business at 6 Collingham Road as an opportunity to relieve me and my wife of the burden of running the Post Office is yet another distortion. The truth is that I wanted to get back into the sort of business I had in Kisumu; and my wife and I both worked very hard at first in the holiday letting business in Colling[ham] Road and later in our family's Hotel business.
>
> 66. In fact Jasminder had comparatively little to do with 6 Collingham Road."

208. It is noteworthy that Father does not suggest in those passages that any particular discussion with Jasminder occurred about the transaction. He is able to say no more than that the investment by Patentgrade in 6 Collingham Road was "viewed" by everyone in the family "as another family investment". In one sense so it was in that the shares were distributed among each of them except Seema. What the statement fails to explain is why the shares were so distributed and what was said or done at the time to bring home the fact, if fact it was, that the monies used to acquire the investment were "thrown in" by Father and Jasminder (from whom they came, other than what was borrowed) so as to become joint family property.

209. In her witness statement Mother had just this to say about this transaction:

> "45. Meanwhile [when Jasminder went to the USA after the sale of the Edwardian Hotel and returned ill with jaundice] my husband and I found a new investment for our own family round the corner from the Edwardian Hotel at 6 Collingham Road where the Taneja family (who we had known in Kenya) were selling a building suitable for a holiday lettings business. My husband knew from our experience in Kenya that he and I could run a business like that well; and he sold the Finchley house and the Post Office to raise the money and borrowed the rest from BCCI through Patel Sahib. £10,000 was put towards a new family home at 53 Spencer Road, Wembley; and that was put into Jasminder's name as karta.
>
> 46. I believe 6 Collingham Road was the first investment of a new company just for our family which was provided for us by Dodhia & Co, the firm of accountant friends of Jasminder…"

210. It will be noticed that Mother again refers to a step taken in Jasminder's name because he was *karta*.

211. In their written closing submissions Mr McDonnell and Mr Burkitt pointed to a passage in the course of Jasminder's cross-examination in which he agreed that at the time the shares in Patentgrade were being allotted he spelled out that they would be held as separate property by each of them. He appeared to repeat this when the matter was put to him again a little later. He could not explain why, if he was ignorant at the time of the notion of joint family property (as distinct from separately owned property), he felt the need to spell this out. It was suggested to him that he was being dishonest in saying that he had said this and that the reason why he had felt the need to say so was because, contrary to his denials, he was aware at the time of the concept of joint family property and that that was how, in the understanding of the Singh family (including himself), a family investment such as this (and the earlier shares which he had acquired in EHL) should be held. Jasminder denied that this was so.

212. Having carefully reviewed this part of Jasminder's evidence I am of the view that he was going beyond honest recollection at this point. I am of the view that he was doing so in his anxiety to make clear that the shares in question were the shareholder's own property and not joint family property as he had since come to understand the concept. To be fair to him he did so in answer to a question by Mr McDonnell in which he was asked if he had spelled out to the others that the shares would be their separate property. This was the only significant point in Jasminder's evidence where I thought that he was consciously venturing beyond either genuine recollection or an honest attempt to reconstruct what he thought had occurred. That said, I am none the less unable to accept that any common intention existed at this time between Father (with or without Mother) and Jasminder that the shares in Patentgrade should be treated by them as joint family property or that, in some way, they, Mother and Herinder should be taken to have "thrown in" their respective shares so that they became joint family property or that Father and Jasminder did so in relation to what each lent to Patentgrade to set it up and enable it to acquire 6 Collingham Road.

213. There is even less in the evidence to suggest that this was the understanding in relation to 53 Spencer Road. All that Father had to say about this purchase and the later purchases of the house in Bushey and of Tetworth Hall was that Jasminder's management of the family finances "included the acquisition of our successive family homes where we all lived together as the joint Hindu family are supposed to do", that Jasminder arranged for the three properties to be registered in his own name, that that was "perfectly normal according to our understanding of the position of family *Karta*" and that he and Mother regarded each of those properties as joint family property. Mother had nothing to add to this.

214. Mr McDonnell and Mr Burkitt did not feel it necessary to advance any submissions in respect of events subsequent to the establishment of Patentgrade and its acquisition of 6 Collingham Road. It was common ground that the subsequent growth of EGL (as Patentgrade became) following the buy-out first of the Gulhati interest and then of the Vohra interest in EHL and the later acquisition of Jasminder's shareholding shares in that company was the result of good management and helpful bankers. They submitted that nothing in the story thereafter was inconsistent with a constructive trust to give effect to their notion of the joint family, namely "a male coparcenary, maintenance and dowry for Seema, maintenance and widow's benefits for Mother, and a right for any male coparcener to divide at any time." I do not agree. For the

reasons set out the facts are wholly inconsistent with the existence of the claimed constructive trust.

Conclusion

215. At the end of the day the question is whether Father has demonstrated that as between himself and Jasminder there existed an understanding that any property which they or either of them acquired would be held as joint family property. As the authorities show the requisite intention is to be deduced objectively from the conduct of these two persons and this involves a survey of the whole course of dealing between them, taking into account any conduct which throws light on the question. Carrying out that wide-ranging survey I am unable to find that there was such an understanding.

216. There is this further point. This is that if there was an understanding that all of the assets acquired by the Singh family should be joint family property, it would be difficult to resist the inference that Jasminder was being dishonest when he professed his ignorance of the concept of joint family property and said that what he held in his own name he believed that he owned personally. Having listened and watched carefully as he was cross-examined before me, I did not detect any sense that he was being untruthful about these matters. I accept that the claim, first advanced in the letter dated 2 November 2010, that he held his shares and Tetworth Hall as joint family property came as a complete surprise to him (and Amrit). If, as I find, he never conducted himself in a manner which might have suggested to Father (and any other) that he was holding any property as joint family property or that he had assumed and was acting out the role of *karta* (in the manner described by Dr Mohan if he had been so appointed) Father's claim cannot get off the ground, whatever Father's beliefs about these matters might at any time have been.

217. Finally, it is worth pointing out that, as explained earlier, Father did not in any event claim that any of the shares in EGL which are held in trust (whether pursuant to the UK trusts or to the Jersey trusts) were joint family property. His claim, so far as it related to shares held in EGL, was confined to shares personally held. Indeed, his particulars of claim made no mention of the various trust holdings. In his second witness statement he sought to justify this stance by stating that:

> "…we are not challenging the Trusts. Both the English Trusts and the Jersey Trusts were made by us with the full knowledge of Jasminder and Herinder, who we regard as joint owners with me of the family property. As I understand it, we three as joint owners were and are entitled to dispose of the joint family property as we please. And while I must make it clear that I am not conceding that the Trusts are beyond challenge, the fact remains I am not challenging them in these proceedings."

218. Dr Mohan stated (in answer to a question from myself) that what he described as "partial partition" could occur whereby some but not all of the joint family property ceases to be jointly held. Such partial partition requires, he said, the assent of all of the adult coparceners at the time of partition.

219. Applying that approach to the shares in EGL put in trust into one or other of the UK and Jersey trusts it is possible to imagine that, as the then adult coparceners, Father,

Jasminder and Herinder might have agreed that, by allowing them to be settled upon trust, the shares should cease to be joint family property. This presupposes that the shares were previously joint family property and, I think, that the three of them knew this to be so – which is the very question I have had to decide. It is at this point that the contention runs into difficulties in that there was no suggestion in Father's (or Mother's) evidence that any of this was discussed at the time. There is nothing in the documentary material before the court that this was in any way mentioned or in people's minds. Father's emphasis was on implication from the circumstances. But the only circumstances relied upon were that the trusts were established and that Father, Jasminder and Herinder were all willing participants in their establishment.

Result

220. I answer the first of the three preliminary issues in the negative: there was at no material time a common understanding of Father and Jasminder that any property acquired and legally owned by Father, Jasminder and Herinder, or any of them, would be subject to a common understanding that the concept of Joint Hindu Property as alleged in paragraphs 9 to 12 and 15 of the particulars of claim applied to it. It follows that the second and third issues do not arise. It also follows that the claim fails and the action must be dismissed.

221. I should add that even if I had thought that when originally established Patentgrade became joint family property I would not have accepted that all of its subsequent growth in value was to be treated as joint family property. On my understanding of the relevant *Mitakshara* principles a strong case could be made for saying that much of that increase in value was attributable to Jasminder's acknowledged skill and business acumen in building up EGL, especially after it almost went into insolvent liquidation in the aftermath of the First Gulf War and the collapse of BCCI. This raised the difficult question of the extent to which such growth in value is to be regarded as the fruits of Jasminder's skills and efforts rather than as a result of the ordinary or natural increase in the value of the business. The topic is discussed at paragraph 109 above. In view of my conclusion that there is no foundation in any event for saying that any of the Singh family's property was ever joint family property subject to the *Mitakshara* I do not need to go further into the point.

The application to amend

222. On Day 5 of the trial, which was a Monday, Mr McDonnell indicated a wish to amend the particulars of claim and add a fourth preliminary point to the three that were before me. He also sought to amend the order for expert evidence by including "Indian domicile" as a further topic to be covered by the experts. The proposed amendment to the pleadings was the addition of the following paragraph (as paragraph 57):

> "Further or alternatively, those principles and customs constitute the personal law of the Singh family because they are and were at all material times all domiciled in India and under Indian law (which is the law of their domicile) Hindus and Sikhs take the laws and customs governing their present or future families and family property with them when they migrate to places where different laws and customs prevail."

223. The proposed additional preliminary issue was formulated as follows:

> "further or alternatively, whether the principles of Joint Hindu Property governed all or any of the property of the Singh family as pleaded in paragraphs 10-12, 15, 25 and 33 of the Particulars of Claim because at all material times they have been domiciled in India."

224. It was not appropriate to deal with the matter there and then because, for the reasons explained earlier, the court had convened at the Mayfair Hotel to hear the oral evidence of Father and Mother and it was important, given their state of health, that their evidence and the regime for them to take frequent rests should not be interrupted and also because Mr Croxford and his team had only had sight of the proposed amendment and new preliminary point minutes earlier. The matter was left to be dealt with when a suitable time could be found. Later the following day Jasminder's solicitors served on Father a request for further information in relation to the proposed amended plea. The covering letter requested a response by no later than 10am that Thursday. In the event the response ("the Response") was not forthcoming until late on the Sunday.

225. So far as material the Response explained that the phrase "principles and customs" referred to in the proposed amendment was meant to be "a compendious expression to indicate the nature of the Hindu family system." It identified the principles as those referred to in paragraph 56 of the particulars of claim (essentially the principles of the *Mitakshara* set out above). The Response helpfully set out those principles. It explained that "the personal law of the Singh family" was "the personal law which affected [Father] on the date that he left India for Tanganyika" (i.e.1946), that his personal law became Mother's when she married him (in 1950), that it became the personal law of their three children upon the birth of each of them (but in the case of Seema only until she married) and that the Singh family now extended to Jasminder's and Herinder's wives (on their respective marriages) and to their children (both male and female). It identified the property in question as "any property acquired by any family member directly or indirectly through the use or investment of family property and any such property held by any family member in any country to which that person had migrated." Paragraph 10 of the Response helpfully summarised the essence of the new plea:

> "The Claimant's case is that as a consequence of their Indian domicile and the fact that they are [Sikhs] the Singh family have rights and obligations *inter se* which would be enforced in India as their personal law and that this Court can and should enforce those rights and obligations in respect of the Singh Family's property in England because they are not inimical to any principle of English law and could readily be enforced on the alternative basis of constructive trust if that be established."

226. At the conclusion of Herinder's evidence in the course of Day 11 of the trial (a week after the wish to amend had been first mentioned in court) I heard the application. By then Father, Mother and Seema had all completed their evidence. The application was opposed. Argument lasted approximately a full day following which, in a very short ruling, I refused it. So the trial continued on the pleadings in their unamended form;

there was no additional preliminary point and there was no extension to the scope of the expert evidence. In refusing the application I stated that I would set out in detail my reasons for doing so. This I now do. I do so in detail because of the importance of what was at stake in my decision.

227. It will be apparent from the terms of the proposed amendment that fundamental to the new way of advancing Father's case was that the parties were and remained domiciled in India. This, it was argued, had the consequence that Father and therefore Mother (from the time she married Father) and their children (from when they were born) are each to be taken to have become subject to the system of personal laws that sprang from that domicile, among which was the *Mitakshara* affecting property, and that each carried that system and continued to be bound by it wherever he/she happened thereafter to be.

228. The basis for the contention was debated before me. It was said to be founded upon a principle of Indian law as confirmed in two leading authorities to which I was taken. As it happens both were decisions of the Privy Council. One was an Indian appeal and the other on appeal from East Africa but treated as an Indian Appeal.

229. The first in time was *Abdurahim Haji Ismail Mithu v Halimbai* (1914-15) LR 43 IA 35, an appeal from the Court of Appeal for Eastern Africa but which was reported, as a footnote observes, "as being for practical purposes an Indian appeal." The case was concerned with a sect of Muslims called Memons who converted from Hinduism several centuries earlier but who retained their Hindu law on matters of succession as a customary law both in Sindh, where they were originally located, and later when they moved to and settled in Kutch (or "Cutch" as the report spelled it). In the middle of the 19th century some of them migrated from Kutch to Mombasa in East Africa where they settled. The issue was whether on the death intestate of one of them succession to his property was governed by Hindu law, as the appellant contended, or by "Mahomedan" law (which is how the report described it) as the respondent contended. If the respondent, who was the deceased's widow, was correct she would take an eighth share of her late husband's estate; if it was Hindu law she would be entitled to no more than maintenance during her widowhood. The issue arose because of the evidence given by the appellant to the effect that although some members of the Memon community in Mombasa had in particular instances adopted the Mahomedan rules of succession other intestate estates had been and were being dealt with among the community upon the basis of Hindu law. The respondent, by contrast, adduced evidence of succession being dealt with according to Mahomedan law. The appeal failed with the result that succession was to be dealt with in accordance with Mahomedan law. The judgment was delivered by Viscount Haldane in the course of which (at page 41) he said this:

> "Where a Hindu family migrate from one part of India to another, prima facie they carry with them their personal law, and, if they are alleged to have become subject to a new local custom, this new custom must be affirmatively proved to have been adopted, but when such a family emigrate to another country, and, being themselves Mahomedans, settle among Mahomedans, the presumption that they have accepted the law of the people whom they have joined seems to their Lordships to be one that should be much more readily made. All that has

> to be shown is that they have so acted as to raise the inference that they have cut themselves off from their old environments. The analogy is that of a change of domicil on settling in a new country rather than the analogy of a change of custom on migration within India. The question is simply one of the proper inference to be drawn from the circumstances. "

230. The other appeal to which I was referred was *Balwant Rao v Baji Rao* (1920) LR 47 IA 213. This was an appeal from the Court of the Judicial Commissioner, Central Provinces. It concerned a Brahmin called Bapuji whose ancestors lived in the (then) Bombay Presidency. He died in 1868 while on a pilgrimage leaving immovable property in the Central Provinces. He was succeeded by his daughter who entered into possession of the property. She died 21 years later. The daughter's sons sought to set aside disposals made by her of the immovable property. The suit giving rise to the appeal, tried as a test case, concerned one of the disposals and was between the daughter's sons and the purchaser from the daughter of the immovable property in question. The Judicial Commissioner reversed the decision of the court below which had been to the effect that the daughter had an absolute interest in the property and was therefore free to dispose of it. The Commissioner found that the deceased had not had an exclusive domicile either in Berar (where succession was governed by the law prevailing in the Bombay Presidency) or in the Central Provinces (where he had died) and held that the succession was therefore governed by the law prevailing in the Central Provinces where the property was situated. This was to the effect that the daughter had had no more than the limited interest of a Hindu widow and that her disposal of it had been invalid. The Privy Council allowed the purchaser's appeal. The judgment was delivered by Lord Dunedin. After noting that the quality of the right which a daughter takes who inherits immovable property from her father had been variously determined in different parts of India he said this (at page 219):

> "Now it is absolutely settled that the law of succession is in any given case to be determined according to the personal law of the individual whose succession is in question. It is well put by Mr Mayne in para. 48 of his Hindu Law, where he says: "Prima facie any Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu law recognised in that province…But this law is not merely local law. It becomes the personal law, and part of the status of every family which is governed by it: consequently, where any such family migrates to another province governed by another law, it carries its own law with it"…Now it is certain that Bapuji did not originally live at Chikni, the place where he was actually living when he started his pilgrimage in the course of which death overtook him. He was an immigrant. What law did he bring with him? Of course, if nothing is known about a man except that he lived in a certain place, it will be assumed that his personal law is the law which prevails in that place. In that sense only is domicil of importance. But if more is known, then in accordance with that knowledge his personal law must be determined; unless it can be shown that he has renounced his

> original law in favour of the law of the place to which he migrated."

231. The argument, as it unfolded before me, assumed that the principles set out in those authorities represented the law which this court would apply in a case where it was contended that persons resident in this country but domiciled in India were governed by another system of law in relation to their rights and obligations *inter se* as regards the beneficial ownership of items of property held by or in the names of one or more of them. The only qualification to this was that the system of law should not be inimical to any principle of English law.

232. In arguing for the amendment (and thus for the additional preliminary point to be tried at the hearing and for permission to adduce supplementary expert evidence) Mr McDonnell drew my attention to the most recent authority on the jurisdiction to amend, namely *Swain-Mason v Mills & Reeve* [2011] EWCA Civ 14; [2011] 1 WLR 2735, especially at [68] to [74], which emphasised the need to strike a fair balance in deciding whether to allow or refuse a late amendment to plead a new case. I was also taken to *Worldwide Corporation Ltd v GPT Ltd*, (unreported) 2 December 1998; [1998] CA Transcript No 1835 which is referred to in *Swain-Mason*. In *Andrew Brown v Innovatorone Plc* [2011] EWHC 3221 (Comm), to which I was also referred, Hamblen J summarised, at [14], four factors which, he said, are likely to be in play when deciding where to strike the fair balance mentioned in *Swain-Mason*: "(1) the history as regards the amendment and the explanation as to why it is being made late; (2) the prejudice which will be caused to the applicant if the amendment is refused; (3) the prejudice which will be caused to the resisting party if the amendment is allowed; (4) whether the text of the amendment is satisfactory in terms of clarity and particularity."

233. Taking each of the four factors mentioned in the passage from Hamblen J's judgment in *Andrew Brown* Mr McDonnell submitted that neither side's expert had been instructed that the parties were domiciled in India because neither side was aware that domicile could be relevant. He submitted that it was only when he and the others advising Father came into possession of the full volume of the current (16th) edition of *Mayne* on Day 4 of the trial that they became aware of the point. (Until it arrived from India they had been furnished only with extracts from older editions of that textbook and the index to *Trevelyan* has no mention of domicile.) He submitted that it was pardonable that down to the time that the full volume of *Mayne* reached them "a point so obscure" had been overlooked. He submitted that, as regards the second of the four factors, prejudice would be caused to Father in refusing the amendment, unless the case he wished to advance was obviously bad, because it was an alternative, free-standing ground on which he would have a chance of succeeding. As to the third of the four factors he submitted that there would be no significant prejudice to Jasminder in allowing the amendment as no adjournment or other disruption to the trial would be involved and no additional evidence would be required apart from brief supplementary evidence by the experts and this would not add significantly to the trial. A short supplementary report by Professor Menski had been supplied to Jasminder's team so they would have adequate time before Dr Mohan came to give evidence to look into the point and consider what Professor Menski had to say about it and, if he wished, prepare a supplemental report dealing with it. Mr McDonnell pointed out that Dr Mohan had prepared his report on the

assumption that the parties were domiciled in India which was the very basis on which the alternative case was founded. It therefore seemed hard to think that Jasminder would need to adduce much if any additional expert evidence. He submitted, in respect of the fourth factor, that the amendment was satisfactory in terms of clarity and particularity, not least because very full responses had been supplied in answer to the Request. He submitted that the court should therefore permit the amendment and, having done so, permit the addition of the further preliminary issue and the admission of the further expert evidence.

234. On the substance of the new way of advancing Father's case, he submitted that English law was quite capable of giving effect to the principles of the *Mitakshara* as it applies to the members of the Singh family without having to rely on the existence of a common intention constructive trust. The property in issue was held by Jasminder as owner of it in law but, so it would be argued, subject to an obligation to the other coparceners and the female members of the family, all deriving from the law of their domicile, to apply those principles in his dealings with the property. That Jasminder is and has at all times been so subject was, he submitted and so it would be argued, because persons domiciled in India are subject to certain personal laws (dealing with succession and the like) which, it is presumed, they carry with them when they migrate to another part of India where different laws and customs governing such matters may prevail, and even when they migrate abroad. In the case of the Singh family the personal laws in question were those to which Father became subject in his childhood and early teens while living with his family in India and which he carried with him to Tanganyika in 1946. They remained with him when he married Mother in 1950, not least as she came from a Sikh family where the personal laws were, materially, the same. The presumption that the same laws and customs remain when a person who is subject to them migrates to another locality is open to rebuttal on proof of adoption at some stage by the person in question of the laws and customs of the new locality. Although this would be a matter of evidence there was nothing to suggest in the case of the Singh family that they abandoned those laws and customs. He submitted that the laws and customs are those of the person's domicile at the time of his migration; later changes to those laws and customs are to be ignored. He referred in this regard to *Mayne* (16th edition) at pages 78 to 87 and to the decisions in *Abdurahim* and *Balwant Rao*. He submitted that the core of the matter was the proper inference to be drawn as regards the continued applicability of the laws and customs of the place of domicile where there is migration from one country to another. He submitted that, looking at the matter from the viewpoint of English conflict law, those decisions, if applied by analogy, suggested that members of a Hindu or a Sikh family coming from India to the United Kingdom should be treated as having brought with them their native laws of succession and the like and that the question of fact to be considered would be whether when or after coming to this country they had abandoned those laws and customs in favour of those applying generally in this country.

235. He submitted that English law would approach the matter in the same manner. The fact that the family had lived for many years in Kenya should not make any difference in principle. Indeed, he submitted that the courts in this country had had no difficulty in the past in giving effect to an overseas law or custom of a personal nature not different in principle from the laws and customs in play in the instant case. In this connection he referred to *Phrantzes v Argenti* [1960] 2 QB 19 and *Shahnaz v Rizwan*

[1965] 1 QB 390. In *Phrantzes v Argenti*, but for the inability of the English court to give relief consistent with her claim, the right of a daughter against her father, both Greek nationals, to be paid a dowry to which on her marriage in this country she was entitled under Greek law but which the father was refusing to provide was held to be of a nature which the English court would recognise. In *Shahnaz v Rizwan* the claimant, who had been married in India in accordance with Mohammedan law, was successful in this court in establishing against her ex-husband, following the valid dissolution of their marriage, a right to be paid deferred dower. The right was one to which she was entitled in accordance with Mohammedan law on the death of her husband or on their divorce.

236. Mr McDonnell accepted that it would be open to Jasminder to show that his family had given up the culture and practices in which Father and Mother had been brought up and had brought up their children but the evidence on the question whether they had was very much before the court anyway. Indeed, he said, it was difficult to imagine what further evidence Jasminder might wish to adduce on the matter and it would be mere opportunism on his legal team's part to suggest that the evidence on the point would or might be substantially different.

237. Attractively though the argument was developed, I considered that it was too late in the trial to advance this new and different way of putting Father's case. Although Mr Croxford criticised the adequacy of the proposed new pleading I would not have refused the application on that ground. Where he had good grounds for opposing the application was that, as it seemed to me, the new case altered the whole emphasis of the trial and, as Mr Croxford submitted, called for legal and factual enquiries of a nature different from those pursued in the course of trial preparation on the case as hitherto pleaded. As to this Mr Croxford submitted that the existing trial preparation, not least the disclosure that had taken place, the evaluation of that disclosure and preparation of witness statements, had not dealt with matters of domicile or the circumstances in which it could be argued that Jasminder, or for that matter Father, had given up their personal law, even assuming in the case of Jasminder that his personal law had ever included acceptance of the system of laws enshrined in the *Mitakshara*. I saw the force of those submissions. Short of adjourning the trial to enable the new case to be fully examined by Mr Croxford and his team, I accepted that Jasminder would have been seriously prejudiced in having to deal with the matter as the trial proceeded and be in a position to call whatever evidence was needed to meet the case. Adjourning the trial at the stage it had reached was a step which, given the nature of the litigation – not least the strong emotions within the Singh family that this dispute had engendered, the unfortunate publicity which it had attracted and the obvious need to bring the matter to a resolution as speedily as possible - I was not willing to contemplate and to which Jasminder was unsurprisingly opposed.

238. I say that the new case altered the whole emphasis of the trial because on the basis of the way that his case had hitherto been pleaded the onus had been on Father to establish the common intention constructive trust upon which his case depended. The effect of allowing the amended plea to go forward would have been to throw the burden of proof on to Jasminder. This is because the new case, as pleaded, depended simply on demonstrating that Father was at all material times domiciled in India and that, on her marriage to him, Mother, and, on their respective births, Jasminder, Seema and Herinder all acquired Indian domicile. Coupled with evidence of the

personal laws and customs to which, he claimed, Father became subject as someone born into a traditional Sikh family in rural India and at all times domiciled in that country, the new case would have thrown on to Jasminder the task of demonstrating either that, in the events that had happened, the domicile of some or all of the family members had ceased to be that of India (even if, in the case of Jasminder, it had once been) or that domicile was irrelevant to what if any system of personal laws and customs continued to govern members of the family even if at one stage it might have been said that they included those of which the *Mitakshara* forms a part. Interestingly the Response itself made the point that the personal law of the Singh family relied on by reason of their Indian domicile did not give rise to a common intention constructive trust as the two cases were "conceptually and legally different and independent even though they lead to the same practical result."

239. This difference of approach was not simply one of form. Mr Croxford set out the further enquiries that would be needed. In the first instance he and his team would need to examine far more closely than had hitherto been necessary just what the basis had been for members of the family to have claimed and to continue to claim that they were domiciled in India. That they had claimed an Indian domicile for fiscal reasons was not in question. Perhaps there might be a need to revisit that. In any event, there would be a need to enquire into the question whether, when coming to this country, Father and Mother really carried with them the personal law which, let it be assumed, they acquired at birth or (in Mother's case) when she married Father in Kenya in 1950 and, if not, to what extent they continued to do so. That would have necessitated re-calling to the witness box Father, Mother, and, very possibly, Seema and Herinder since their cross-examination had not dealt with such matters. And it would have been necessary to consult with Dr Mohan to explore with him the circumstances in which Indian jurisprudence maintains that a person domiciled in India carries with him his personal law wherever he goes. Ultimately the matter would be a question of English law but the extent to which current Indian jurisprudence regards such matters as dependent on domicile or whether other matters come into play would or might be material to consider. For what it is worth it seemed to me in the course of argument that domicile of origin is at most an indicator of the personal law to which a person in Father's position might subscribe but by no means the sole determinant. Ultimately the matter would seem to turn on the person's cultural origin which might be quite different from his domicile. It is to be noted that in the passage quoted above from the judgment in *Abdurahim* Lord Haldane referred to domicile (in that case a change of domicile) as providing no more than an analogy to be followed in determining which law applied. In the passage quoted from *Balwant Rao* Lord Dunedin emphasised the limited role played by domicile in the ascertainment of someone's personal law.

240. At the time of the application Dr Mohan was in India and contact with him to discuss the legal implications of the proposed new case (viewed as a matter of Indian law) had not been possible. It was unclear whether he would have time to consider the matter before he was due to give evidence. Requiring Jasminder to respond to the new case in the course of the trial where his team were fully engaged in dealing with the claim as it stood was unreasonable and risked putting him at an unfair disadvantage.

241. I was also far from persuaded that any good reason had been shown why this point had arisen so late in the day. Professor Menski certainly seems to have been aware of

the portability of this area of the law on Hindu and Sikh migrants to places beyond the shores of India. In paragraph 66 of his witness statement he drew attention to the fact that the Singh family had no longer any "immediate and direct connection with the Indian legal system, given that the centre of their life has for many years been in East Africa and, more recently, in the UK." And then, in paragraph 67, after noting that "the traditional principles of joint Hindu family law continue to be an important aspect of current Indian law" he went on to say that "these principles also exert a powerful influence on the perceptions among Hindu and Sikh individuals today, potentially anywhere in the world." He made a very similar point in paragraph 34 of his report. In his proposed supplemental report he even went so far as to say that "there is clearly overwhelming and strong evidence throughout the relevant literature, both in anthropological work and in legal treatises, that among Indian, whether they be Hindu, Sikh or Muslim, the personal law travels with the person wherever he/she goes" adding that this was not just confined to movement within India itself "but also an increasingly accepted fact in overseas Hindu and Sikh communities, notably in East Africa and in the United Kingdom." The position therefore appeared to be that although the facts were there for all to see, and the position in law expounded in legal and other literature, the significance of the point had simply not dawned on those advising Father, including, it would seem, Professor Menski. In these circumstances no good explanation, beyond oversight, had been offered as to why the application had come so late.

242. Although the matter was only briefly discussed in the course of argument, another reason why it appeared to me quite inappropriate to accede to the application concerned the very basis of the new way of putting the case, namely that Father and, through him, Mother and their children had all acquired a domicile in India. In the case of Jasminder and his siblings this could only be on the basis of Father's domicile being Indian at the time when each was born. There was no suggestion that any of them had subsequently acquired a domicile of choice in that country. At the most, so far as the evidence went, they (or some of them) had done no more than visit that country; they had never lived there and there was no evidence that they had any intention of making it his/her permanent place of abode. All the evidence pointed to an intention that the United Kingdom should be and remain the family's permanent place of abode.

243. This brought into focus Father's claim to have a domicile in India. I was unable, as the argument developed, to see how that could be. It is quite true that he had been born in what was then British India but, with Partition, the area he (and for what it is worth Mother's family) had come from had become Pakistan. British India as such had ceased to exist. He had no more connection with the area of what became independent India than he had with what is now known as Bangladesh. My understanding of the relevant jurisprudence is that with the division into two of what was previously one single country (meaning a territory subject, under one sovereign, to one body of law) the domicile of origin of a person attaches to the new country in which is found the area in which that person lived or whence had had come. The example of the division of Ireland springs to mind. If that view is right it would follow that Father's domicile at the time of the births of Jasminder and his siblings, assuming that he had not acquired a domicile of choice in some other country in the intervening period, had become Pakistan. And if that is right I find it hard to accept that Father did not subsequently acquire a domicile of choice in, for example, this

country and even if he did not, even harder to accept that Jasminder did not. Relevant to this is that in the course of the earlier evidence my attention had been drawn to a statement signed by Father and made to the Inland Revenue in this country. It was dated 22 July 1999 and was concerned with Father's domicile. In it Father admits to a domicile at the date of his birth in what is now Pakistan and then, in answer to the question "what changes, if any, took place in your father's domicile during your minority?" he states "During Partition, he [a reference to Father's father] moved to Meerut, Uttar Pradesh, India and remained domiciled in India." But by then, August 1947, Father had already attained his majority. In this connection, as Dr Mohan was later to confirm, a person domiciled in British India (the same provision applied to independent India) attained his majority at the age of 18. As Father was born on 10 January 1927, it follows that he had attained his majority in January 1945 at a time when he was still living in British India. What changes there may have been thereafter to his father's domicile would appear to be irrelevant.

244. It may well be that my understanding of the law was (and is) mistaken and that it was open to Father to choose to have his domicile in independent India and that he did so choose, or that there was some legislative provision which resulted in him acquiring a domicile in independent India. I say no more than that this subject seemed to me to raise issues which, at the very least, would call for careful examination and submission. It would have been wrong to require Jasminder and his team to address these matters and be in a position to call whatever evidence might be needed to deal with them on the hoof as the trial proceeded, and no less wrong to adjourn the trial to enable them to be explored at more leisure with a view to the trial being re-fixed for some inevitably much later date.

245. It was for those reasons that I was not willing to allow the application.

A footnote

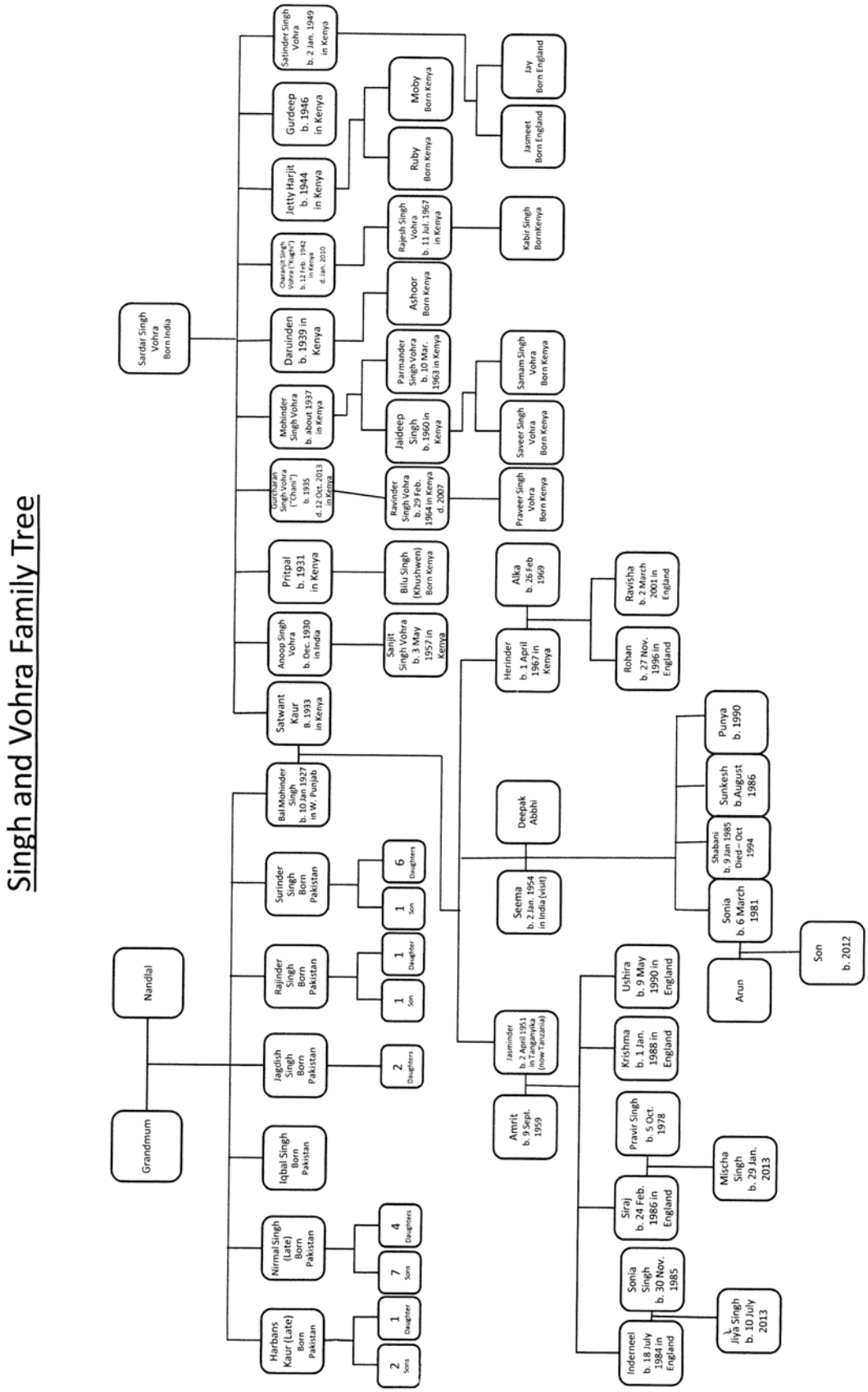
246. Although I have rejected Father's claim it by no means follows that I regard him or Mother as having in any way acted dishonestly in making it. On the contrary, they struck me as having advanced this claim in all good faith believing it to be well founded. The root of the difference between them and Jasminder was caused by their very different upbringings and, as a result, their very different perceptions. Father's as I have explained was in rural British India, an age away both in time and nature from Jasminder's; Mother's upbringing in Kenya was scarcely less removed. For good or ill they arranged for Jasminder to be educated at Christian Mission schools in East Africa and then for him to complete his education and pursue a professional qualification in this country. Almost from the time that he arrived in the UK, Jasminder abandoned the turban - the most striking outward symbol of a male Sikh - and cut his hair. It is also perhaps worthy of mention that, although within his family he spoke Punjabi, Jasminder told me, and I accept, that he was unable to read the script in which that language or, for that matter (although it is different in form), Hindi is written. Jasminder may therefore have been born and brought up as a Sikh but he was non-observant as regards outward appearances and evidently unconcerned to familiarise himself with the written form of the vernacular language in which conversation within the family was conducted. In his witness statement he said, and reinforced this in the course of cross-examination, that he took little interest in the religious side of Sikhism. He mentioned in particular that, although there was a

prayer room in the family home at Tetworth Hall, it was for the use of his parents. In his second witness statement he said (without challenge) the following:

> "…from the moment I arrived in England as an adult I have lived my life predominantly in accordance with English law and custom. While I remain a Sikh by birth and background I am not and have never been a particularly religious man and given the Christian schools I attended and the fact I completed my education in England, I do not consider religion to have been a significant influence in my upbringing or in the development of my personal beliefs and values. My own immediate family (my wife and children) are similarly not particularly religious. My visits to the Gurdwara or temple are limited to a few times a year on the occasion of a major festival or family event such as a wedding. In contrast, my Father has always adopted a more traditional approach and unlike me is a regular visitor to the Gurdwara."

247. The fact that the Singh family were a joint Hindu family in the sense that they lived under one roof and shared their lives, pursued a business very much as a family enterprise and went to pains to ensure, at least until Jasminder and Herinder fell out over the running of EGL and the current dispute arose, that each member of the family (in the case of Seema until she married) took part in it does not mean that the assets of that business and any other "family" wealth were joint family property in the sense in which that expression has been used. The principles of the *Mitakshara*, as I have endeavoured to show, require much more than that if a coparcenary is to be established. The fact that Father has sought to invoke those principles through the medium of the English law concept of the common intention constructive trust has not meant that there is any shortcut to their application in this case.

248. At the end of the day Father's case has rested on inference, namely that the Singh family which he and Mother created (and his family at the time of his upbringing in the Punjab) were joint or undivided, just as the Vohras were, that he and Mother brought up their children to observe traditional Sikh customs and that dealing with property in the traditional way – as joint family property – was part of that upbringing and observance of those customs. Indeed what seemed to underlie Father's case, and the support for it provided by Mother, Seema and Herinder, was if anything that nothing specific was ever said about the matter and that it was more an unspoken assumption that that was how they would regard the property which they might acquire. I am unable to find that such an assumption would suffice on a proper understanding of the manner in which the *Mitakshara* operates. Equally, I am unable to find that, in the absence of any dealings or events or conversations or other evidence, there is anything like the material needed to justify a finding that a common intention existed that that is how property coming to or earned by Father, Jasminder or Herinder would be beneficially owned. As I have already mentioned, there are a variety of transactions and other documented statements which contradict the existence of the common intention which Father alleges and must prove.


Singh and Vohra Family Tree
Grandmum
Nandlal
Harbans Kaur (Late) Born Pakistan
2 Sons
1 Daughter
Nirmal Singh (Late) Born Pakistan
7 Sons
4 Daughters
Iqbal Singh Born Pakistan
Jagdish Singh Born Pakistan
2 Daughters
Rajinder Singh Born Pakistan
1 Son
1 Daughter
Surinder Singh Born Pakistan
1 Son
6 Daughters
Bal Mohinder Singh b. 10 Jan 1927 in W. Punjab
Satwant Kaur B. 1933 in Kenya
Anoop Singh Vohra b. Dec. 1930 in India
Sarjit Singh Vohra b. 3 May 1957 in Kenya
Pritpal b. 1931 in Kenya
Bilu Singh (Khushwen) Born Kenya
Sardar Singh Vohra Born India
Satinder Singh Vohra b. 2 Jan. 1949 in Kenya
Jay Born England
Jasmeet Born England
Gurdeep b. 1946 in Kenya
Moby Born Kenya
Jetty Harjit b. 1944 in Kenya
Ruby Born Kenya
Charanjit Singh Vohra ("Kaka") b. 12 Feb. 1942 in Kenya d. Jan. 2010
Rajesh Singh Vohra b. 11 Jul. 1967 in Kenya
Kabir Singh Born Kenya
Darvinden b. 1939 in Kenya
Ashoor Born Kenya
Mohinder Singh Vohra b. about 1937 in Kenya
Parmander Singh Vohra b. 10 Mar. 1963 in Kenya
Jaideep Singh b. 1960 in Kenya
Samam Singh Vohra Born Kenya
Saveer Singh Vohra Born Kenya
Gurcharan Singh Vohra ("Chani") b. 1935 d. 12 Oct. 2013 in Kenya
Ravinder Singh Vohra b. 29 Feb. 1964 in Kenya d. 2007
Praveer Singh Vohra Born Kenya
Alka b. 26 Feb 1969
Ravisha b. 2 March 2001 in England
Rohan b. 27 Nov. 1996 in England
Hemnder b. 1 April 1967 in Kenya
Deepak Abbhi
Seema b. 2 Jan. 1954 in India (visit)
Jasminder b. 2 April 1951 in Tanganyika (now Tanzania)
Amrit b. 9 Sept. 1959
Punya b. 1990
Sunkesh b. August 1986
Shabani b. 9 Jan 1985 Died – Oct 1994
Sonia b. 6 March 1981
Arun
Son b. 2012
Ushira b. 9 May 1990 in England
Krishma b. 1 Jan. 1988 in England
Pravir Singh b. 5 Oct. 1978
Siraj b. 24 Feb. 1986 in England
Mischa Singh b. 29 Jan. 2013
Sonia Singh b. 30 Nov. 1985
Inderneel b. 18 July 1984 in England
Jiya Singh b. 10 July 2013

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