

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: January 18, 2011
Judgment Pronounced on: January 21, 2011

+ **CS(OS) No. 2172/2003**

KIRPAL KAUR

.....Plaintiff

- versus -

RAM SINGH & ORS.

.....Defendants

Advocates who appeared in this case:

For the Plaintiff: Ms. Kamlesh Mahajan

For the Defendants: Mr. Mahesh Choudhary and Ms. Rakhi
Ray

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

V.K. JAIN, J

1. This is a suit for partition and declaration. The plaintiff is the daughter-in-law of defendant No.1, being the widow of his late son Ripudaman Singh. Defendant No.2 is the son of defendant No.1, whereas defendants 3 & 4 are his daughters. It is alleged in the plaint that defendant No.1

had two brothers namely Prem Singh and Dayal Singh and one sister namely Smt. Har Kaur. One of his brothers, namely Dayal Singh, expired and share of his property is being used by his legal heirs, whereas his sister Har Kaur has relinquished her share in favour of the legal heirs of Dayal Singh. The remaining agricultural land is alleged to be jointly owned by defendant No.1 Ram Singh and his brother Prem Singh. It is further alleged that in the year 1954, defendant No.1, out of the funds received from the agricultural land purchased the plot bearing No.45, Sant Nagar, East of Kailash, New Delhi, on which he constructed two rooms and kitchen, bathroom etc. in the year 1957-58. It is also alleged that in the year 1980-82, it was decided to reconstruct the entire property afresh as the husband of the plaintiff who had left for Kuwait in the year 1978-79 used to send money regularly to his parents. The amount sent by the husband of the plaintiff to defendants 1 & 2 is stated to be Rs.6,56,035/- (approx.). The plot at Sant Nagar, according to the plaintiff, was reconstructed out of the funds received from her husband and the income received from agricultural land situated in Punjab. The first floor of the property is occupied by defendants 1 and 2 whereas

second floor is occupied by the plaintiff. The basement and the ground floor have been let out by the tenants from whom rent is being received by defendant No.1.

2. It is also alleged that defendant No.1 had purchased a plot of land in Saini Farms in the name of the husband of the plaintiff. The plot was sold by defendant No.1 who gave only Rs.1,82,000/- to her husband while the balance amount of Rs.6,00,000/- was distributed amongst defendants 1 to 4 and the wife of defendant No.2.

3. It is further alleged that disputes arose between the husband of the plaintiff and the defendants when he returned from Kuwait and due to intervention of relatives and well wishers, it was decided that the basement, ground floor and second floor of Sant Nagar property will devolve upon him and the rent will also be paid to him. The husband of the plaintiff expired on 6.1.2000.

4. The plaintiff has now sought partition of agricultural land at village Jahgirpur, property No.45, Sant Nagar, East of Kailash, New Delhi, and the agricultural income. Though the plaintiff had also claimed partition of kothi No.56, Giani Zail Singh Nagar, Ropar, Haryana, this Court vide order dated 15.4.2004 found that Giani Zail

Singh Nagar was self-acquired property of defendant No.2.

5. The suit has been contested by defendant No.1. It is alleged in the written statement that in a civil suit filed by him the plaintiff has admitted that plot at Sant Nagar was the self acquired property of the defendant No.1 and the only plea taken in that suit was that the construction on the plot was raised using the funds provided by the husband of the plaintiff. It is also alleged that the plaintiff and her husband had opted out of joint family and the ancestral property and had taken more than their share when they sold a plot at Saini Enclave for a sum of Rs.6 lakhs and appropriated the sale proceeds for their own purpose, though it is plaintiff's own case that plot at Saini Enclave was purchased by defendant No.1 in the name of her husband. It is also alleged that the plot of land bearing No.45, Sant Nagar, New Delhi was purchased by defendant No.1 by his own funds in the year 1954 when the husband of the plaintiff was only 7 years old. The plot at Sant Nagar was constructed in two stages. During first stage, the ground floor was constructed in the year 1957-58 by defendant No.1, using his own funds and this fact has also been admitted by the plaintiff in the written statement filed

by her in the suit instituted by defendant No.1. According to defendant No.1, on his retirement from Ministry of Defence in September, 1980, he completed the construction on plot No.45 at Sant Nagar, New Delhi, by using his retirement fund for this purpose along with the loans taken from relatives, friends and Sahara Investment and Finance Company. Regarding the agricultural land in Ropar, it has been alleged in the written statement of defendant No.1 that the aforesaid ancestral land was divided between him, his two brothers and one sister and during that division a piece of land measuring about 8 kanals and 18 marlas situated in Village Patial, District Ropar came to the share of defendant No.1 in the year 1972. The land was given on Batai for cultivation and defendant No.1 used to get about 50 sears of wheat in May and 30 sears of maize in October every year out of the produce on that agricultural land, which used to be consumed by the family. No cash amount was received by defendant No.1 in respect of cultivation rights. It is also alleged that the plot at Saini Enclave, which defendant No.1 purchased in the name of husband of the plaintiff was sold by the husband of the plaintiff for Rs.6 lakh out of which Rs.1,82,500/- was received by way of bank draft and the

balance amount of Rs.4,17,500/- was received by him in cash. The cash received on sale of the plot at Saini Enclave was kept by the plaintiff in a locker with Punjab National Bank, Nehru Place, New Delhi. In a meeting held on 28th September, 1986, a family arrangement was worked out whereby it was decided that the plaintiff and her husband would keep the sale proceeds received from Saini Enclave plot but would not be entitled to any share in the agricultural land at Ropar nor will they claim any right in the self acquired dwelling house of defendant No.1 at Sant Nagar.

6. The following issues were framed on the pleadings of the parties:-

- (i) Whether the suit is maintainable in its present form?
- (ii) Whether the properties, as mentioned in paragraph 24 of the plaint other than the property situated at Kothi No.56, Giani Zail Singh Nagar, Ropar, Haryana are joint family properties?
- (iii) Whether the Plaintiff is entitled to claim partition and 1/5th share in the properties mentioned in paragraph 24 of the plaint other than the property situated at Kothi No.56, Giani Zail Singh Nagar, Ropar, Haryana?
- (iv) Whether the property bearing No.45, Sant Nagar, East of Kailash, new Delhi has been constructed out of joint family funds or out of funds received by

Defendant No.1 from the late husband of the plaintiff, Shri R.D. Singh?

(v) Relief.

ISSUE NO.(i)

7. This issue was not pressed during arguments. The issue is decided against the defendant.

ISSUE NO.(iv)

8. The plaintiff has come in the witness box as PW-1 and has produced one more witness Mr. Manmohan Singh, who has been examined as PW-2. Defendant No.1 has come in the witness box as DW-1 and defendant No.2 Mr. J.P. Singh has been examined as DW-2.

9. In her affidavit by way of evidence, the plaintiff has stated that in the year 1954, defendant No.1, out of the funds received from agricultural land, purchased plot No.45, Sant Nagar, new Delhi on which two rooms, kitchen and bath room etc. were constructed in the year 1957-58. She further stated that her husband Mr. Ripudaman Singh, who left for Kuwait in the year 1978-79 and was working there as a driver, used to send money regularly to his parents and copies of the cheques/demand drafts in favour of defendant Nos. 1 and 2 are exhibits PW1/2(Colly). She

further stated that a total sum of Rs.6,56,035/- was sent by her husband to defendant Nos. 1 and 2, which was acknowledged vide writing exhibit PW1/3 which is in the hand of defendant No.1. She further stated that thereafter defendant No.1 raised construction at Sant Nagar plot from the funds received from her husband and the income received from agricultural land in Punjab and he is receiving Rs.30,000/- per month as rent from that house. She also stated that when her husband returned from Kuwait and asked about the money which he had sent from Kuwait as also about his share in the land, defendant No.1 severed all his relationship with him. He also filed a suit for possession and damages against her. She further stated that due to intervention of relatives and well wishers, it was decided amongst the family members that the basement, ground floor and second floor of the property at Sant Nagar shall devolve upon her husband and rent will also be given to him, as his share.

10. PW-2 Manmohan Singh claims to be a friend of husband of the plaintiff. According to him, he along with the husband of the plaintiff had gone to Kuwait to work as drivers and both of them used to stay together in the same

room. He stated that money was regularly sent by the husband of the plaintiff to defendant Nos.1 and 2 and sometimes to the daughters and wife of defendant No.1. He further stated that about Rs.5,00,000/- - 5,50,000/- were sent by the husband of the plaintiff to his father, brother and other family members while working in Kuwait.

11. In his affidavit by way of evidence, defendant No.1 Ram Singh has stated that the agricultural land at Village Patial, Ropar belonged to his father Late Shri Prabhu Dayal, who died in 1971. Since they were three brothers and one sister, he inherited $\frac{1}{4}$ of the ancestral property, admeasuring 8 Kanal 18 Marlas in Village Patial. Being in Government service, he hardly could have attended to the said land for cultivation or otherwise and, therefore, had given it on Batai to workers, who cultivate on crop sharing basis. He used to get about 50 sears of wheat in May and 30 sears of maize in October every year as $\frac{1}{2}$ share from the workers who were cultivating on crop sharing basis. The produce received from those workers used to be consumed in the house by the family including the plaintiff and her family. According to him, he never received any amount in cash for giving cultivation rights to those works as the land

admeasures less than 1 acre.

12. As regards property at 45, Sant Nagar, New Delhi, defendant No.1 stated that it is his self acquired property and the land underneath the property was purchased by him in the year 1954 vide sale deed dated 22nd March, 1954 for a sum of Rs.400/-, from his own funds. At that time, the husband of the plaintiff was only 7 years old. He further stated that construction on the plot of land at Sant Nagar was raised by him from his own funds in two stages. During first stage, ground floor was constructed by him in the year 1957 when the husband of the plaintiff was only 10 years old. On his retirement on 30th September, 1980, he reconstructed the aforesaid property using his retirement benefits, gratuity and loan taken from M/s Sahara Deposits and Investments (India) Ltd., his own savings, borrowings from friends and relatives and using old building materials obtained by demolishing the old structure, which he had raised in the year 1957. He has also proved the receipts whereby payment was made to M/s Sahara Deposits and Investment (India) Ltd and the same are exhibits DW-1/5 to DW-1/18. He also stated that the husband of the plaintiff Shri R.D. Singh did not contribute any amount either

towards purchase or construction of property No.45, Sant Nagar, East of Kailash, New Delhi and that at the time when the construction was on progress between October, 1980 and December, 1981, Shri R.D. Singh himself was in the process of setting himself in Kuwait and did not have sufficient funds to contribute. He had taken a loan for purchasing the air tickets for going to Kuwait in the year 1978 which he repaid during the period 1979 to 1982. He further stated that on return of Shri R.D. Singh from Kuwait, he gave full account of the small amount, which he had transferred from Kuwait to India and the same is exhibit PW1/3 having been filed by the plaintiff herself. According to him, the entire sale proceeds from sale of plot No.178, Saini Enclave, New Delhi, which he had purchased in the name of Shri R.D. Singh, was retained by the plaintiff and her husband. The cash received by them was kept in a locker with Punjab National Bank. He further stated that a meeting was arranged on 29th September, 1986 to sort out the issues between the parties and during that meeting it was settled that the plaintiff and her husband would keep the sale proceeds of Saini Enclave plot but will not have any share in the agricultural land or in his other properties.

13. Defendant No.2 J.P. Singh has come in the witness box as DW-2 and has supported the case set up by defendant No.1. He has further stated that his father had inherited 1/4th of the ancestral agricultural land at Village Patial admeasuring 8 Canal and 18 Marlas which was given for cultivation by others on Batai basis. His father used to get about 50 sears of wheat in the month of May and 30 sears of maize in the month of September every year as his 1/2 share out of the total agricultural produce. The remaining 1/2 share used to be retained by the workers, who were cultivating the land. The agricultural produce, which the defendant No.1 used to receive as his share, was used to consume by the family including the plaintiff and her family. No amount in cash was received by his father for giving cultivation rights to the workers.

As regards property at 45, Sant Nagar, New Delhi, he stated that this is owned exclusively by his father and is his self acquired property. He further stated that the sale proceeds of plot No.178, Saini Enclave, which defendant No.1 had purchased in the name of husband of the plaintiff, were retained by the husband of the plaintiff and the cash received by them was kept in bank locker No.606 in the

joint name of the plaintiff and her husband with Punjab National Bank, Nehru Place, New Delhi. According to him, in order to sort out this issue, a meeting was arranged between the parties on 29th September, 1986 wherein it was decided that the plaintiff and her husband would keep the sale proceeds of Saini Enclave Plot but would not be entitled to any share in the agricultural land in Village Patial and in other properties of his father.

14. The case of the plaintiff as set out in the plaint is that plot No.45 at Sant Nagar, East of Kailash, New Delhi was purchased by defendant No.1 out of the funds received from the agricultural land. However, in the written statement filed by her in the civil suit, which the defendant No.1 had filed against her seeking possession of the second floor and part of ground floor of House No.45, Sant Nagar, New Delhi, she did not claim that the plot of land on which this property was constructed was purchased by defendant No.1 Ram Singh using the income from agricultural land. The only plea taken by her was that the construction on the plot was raised using the money sent by her husband from Kuwait. Thus, the pleadings in the previous suit contain an admission of the plaintiff that as far as the plot on which

the building has been constructed is concerned, it was purchased by defendant No.1 from his own funds. Even otherwise, there is absolutely no evidence to prove that any part of the agricultural income was used for purchase of the aforesaid plot. The father of the defendant No.1 died in the year 1971, whereas the plot at Sant Nagar was purchased in the year 1954. It is extremely unlikely that defendant No.1, who was in government service at the time he purchased this plot would be getting any part of the agricultural income in the life time of his father, particularly, when the land was held in the name of his father. Admittedly, the sale deed of plot No.45 at Sant Nagar, New Delhi stands in the name of defendant No.1. The onus was on the plaintiff to prove that the income from agricultural land was utilized for purchase of this plot. The onus placed on the plaintiff was rather heavy considering the fact that the title deed of the plot stands in the name of defendant No.1. The plaintiff has, however, not produced any evidence, which would prove that defendant No.1 was receiving any agricultural income in the life time of his father and had used any part of that income for purchase of plot No.45 at Sant Nagar, New Delhi. It would be pertinent to note here that the

plaintiff herself can have no personal knowledge in this regard since at the time this plot was purchased in the year 1954, she was not married to the son of defendant No.1, who was a child at that time. It has also come in the deposition of defendant No.1 that the aforesaid plot was purchased for a consideration of Rs.400/-. Since defendant No.1 was in government service at that time it was not at all difficult for him to arrange this amount from his own savings, as he was getting salary of about Rs.200/- per month at that time and Rs.400/- would be only his salary for two months. In fact, during her cross-examination, the plaintiff was not able to deny the suggestion that the plot was purchased by defendant No.1 from his personal funds. I, therefore, have no hesitation in holding that the plot on which property bearing No.45, Sant Nagar, New Delhi has been constructed by defendant No.1 was purchased by him from his own funds without using any agricultural income for this purpose.

15. As regards construction on the aforesaid plot, it is not in dispute that the initial construction on the plot was raised in the year 1957-58. There is no evidence to prove that defendant No.1 was receiving any agricultural income

at that time. His father was alive at that time and the agricultural land stood in his name. The plaintiff can have no personal knowledge as regards source of the funds used for raising construction in the year 1957-58 since she was not even married to the son of defendant No.1 at that time. Therefore, the plaintiff has failed prove that defendant No.1 was getting any agricultural income or that any part of the income from agricultural land was utilized for raising construction on plot No.45, Sant Nagar, New Delhi in the year 1957-58.

16. As regards the construction raised after the retirement of defendant No.1, it has come in the deposition of defendant No.1 that on his retirement he had received Rs.1 lakh towards his retirement benefits. The total amount spent on construction at Sant Nagar house was Rs.1,42,000/- as stated by defendant No.1 and there is no evidence to controvert this part of his deposition. It has come in the deposition of defendant No.1 that he had taken a sum of Rs.30,000/- from M/s Sahara Deposits and Investments (India) Ltd. Exhibits DW-1/5 to DW-1/18 are the receipts whereby loan taken by the defendant No.1 from M/s Sahara Deposits and Investments (India) Ltd. was paid

by him in instalments. Considering the amount of about Rs.1 lakh received by defendant No.1 as his retirement benefits and amount of Rs.30,000/- taken by him as loan from M/s Sahara Deposits and Investments (India) Ltd., it is highly unlikely that any substantial amount out of the money received by him from the husband of the plaintiff was utilized for construction of House No.45, Sant Nagar, New Delhi between October, 1980 and December, 1981. Though there is evidence of defendant No.1 having received money sent by the husband of plaintiff to him from Kuwait, there is no evidence to prove that the money sent by him was utilized for raising construction that was raised between October, 1980 and December, 1981. The plaintiff has admitted that at the time her husband was working in Kuwait, she and her children were being looked after by defendant No.1. The money, which the husband of the plaintiff sent to defendant No.1 from Kuwait, could well have been utilized towards meeting their expenses.

17. Defendant No.1 received Rs.10,000/- vide Exhibit P-1, Rs.3000/- vide Exhibit P-2, Rs.3500/- vide Exhibit P-3, Rs.7000/- vide Exhibit P-4 from the husband of the plaintiff. A perusal of Exhibit P-5, which is a document filed

by the plaintiff herself, show that out of total sum of Rs.1 lakh received by defendant No.1 from the husband of the plaintiff, a sum of Rs.82,650/- was left with defendant No.1. Receipt of this amount was admitted by defendant No.1 in the previous suit between the parties.

18. As regards receipt of Rs.7000/-, it has been claimed by defendant No.2 that he had booked a scooter for the husband of the plaintiff and this amount was received towards that purpose. As far as PW-2 is concerned, though according to him about Rs.5,00,000-Rs.5,50,000/- was sent by the husband of the plaintiff to defendant No.1 from Kuwait, he does not claim to have personally delivered that much amount in cash or by draft etc. to defendant No.1. Thus, though the plaintiff has failed to prove that her husband had sent more than Rs. 6,00,000/- to defendant No.1, as claimed by her, the fact remains that some amount was definitely received by defendant No.1 from the husband of the plaintiff and going by Exhibit P-5, which is a document in the hand of defendant No.1 and has been filed by the plaintiff herself, this amount appears to be Rs.1,00,000/- out of which Rs.17350/- were given to the plaintiff leaving a sum of Rs.82650/- with defendant No.1.

As noted earlier, there is no evidence to prove that this amount was utilized by defendant No.1 for raising construction of House No.45, Sant Nagar, New Delhi between October, 1980 and December, 1981.

19. Even if it is assumed that the amount of Rs.82650/- received by defendant No.1 from the husband of the plaintiff was utilized by him for carrying out construction at property No.45, Sant Nagar, New Delhi between October, 1980 and December, 1981 that by itself did not entitle the husband of the plaintiff to a share in the property No.45, Sant Nagar, New Delhi. Since the plot on which this house has been constructed was purchased by defendant No.1 from his own funds, use of the funds provided by the husband of the plaintiff towards construction raised on that plot would be regarded either as a gift or a loan of that amount by the husband of the plaintiff to defendant No.1. If the plot of land on which the construction is raised is purchased by a person solely from his own funds, mere use of the funds provided by another person, without anything more does not make the person, whose funds are used for raising construction, a co-owner of the building which is constructed using his funds.

Immovable property worth more than Rs.100/- can be transferred wholly or partly, only by executing a registered document such as Sale Deed, Transfer Deed, Exchange Deed, Gift Deed and Relinquishment Deed. The ownership of such an immovable property cannot be transferred from one person to another person either under an agreement between them or by use of funds of another person by the owner of the land underneath the building, for the purpose of raising construction thereof. If a person wants to transfer his ownership in a building to another person, either wholly or partly, he must necessarily execute a Sale Deed, Transfer Deed, Exchange Deed, Gift Deed, Relinquishment Deed or another document evidencing transfer of ownership from hi to the other person and such document needs to be compulsorily registered.

20. As regards agricultural income, the case of defendant No.1 is that he was not receiving any cash from the workers, who used to cultivate the agricultural land on crop sharing basis and whatever agricultural produce he was getting from the workers used to be consumed by the family. No evidence except her bald statement has been produced by the plaintiff to prove that any agricultural

income used to be received by defendant No.1 in respect of the land inherited by him in Village Patial, District Ropar. No cultivator of the land has been produced by her to prove that he was making any cash payment to defendant No.1 in lieu of cultivation rights given to him. Though this is also the case of the plaintiff that brother of defendant No.1 was cultivating the land on his behalf, no evidence has been produced by her to prove this claim. No one from the village where the land is situated has been produced to prove that it used to be cultivated by the brother of defendant No.1 on his behalf. No evidence has been produced to prove that the brother of defendant No.1 used to make any payment to him in respect of the agricultural land. No evidence has been produced to prove that any agricultural produce obtained from the land in Village Patial used to be sold by defendant No.1. During her cross-examination, the plaintiff has admitted that the produce received from the agricultural land used to be consumed by the family. In fact, in the previous suit, the plaintiff has also admitted that the agricultural land used to be given on crop sharing basis. Thus, the plaintiff has failed to prove receipt of any agricultural income by defendant No.1. However, assuming

that defendant No.1 was receiving some agricultural income and had utilized that amount towards construction raised at property bearing No.45, Sant Nagar, New Delhi that by itself would not confer ownership rights in the property on any of his family members, who were entitled to a share in the agricultural land.

21. For the reasons given in the preceding paragraphs, the issue is decided against the plaintiff and in favour of defendant No.1.

ISSUE NOs. (ii), (iii) & (v)

22. In view of my finding on issue No.4, the dispute between the parties remains only with respect to ownership of agricultural land in Village Patial, District Ropar and the income derived by defendant No.1 from that land since there is no evidence of defendant No.1 owning any immovable property other than the land in Village Patial and House No.45, Sant Nagar, New Delhi. As regards agricultural income, the evidence produced on record shows that no income was derived by defendant No.1 from the agricultural land, which used to be given for cultivation on crop sharing basis and the produce received from which used to be consumed by the family.

23. Admittedly, the agricultural land in Village Patial was inherited by defendant No.1 from his father, after his death. The question of law which arises for consideration is as to whether the husband of the plaintiff acquired any share in the aforesaid agricultural land merely by virtue of his being a son of defendant No.1. Section 8 of Hindu Succession Act, which deals with succession of the properties left by a male Hindu dying intestate is relevant in this regard and reads as under:-

General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter –

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

24. According to Mitakshara Coparcenary Law, a male acquires by birth an interest in the joint or coparcenary property. They are the sons, grandsons and great grandsons

of the holder of the joint properties (three generations next to the holder in unbroken male descent).

25. Under the traditional Hindu Law, where a son ("S") inherits the separate property of his separated father ("F"), his son's son ("SS") gets a right by birth in the said ancestral property. A new coparcenary is formed with "S" as the head of the family and as a fresh stock of descent with his son "SS". This system now stands abrogated by virtue of section 8 of the Hindu Succession Act read with section 4 of the said Act. The separate properties of his father "F" inherited by his son "S" in which his son "SS" has no right by birth.

26. Under the provisions of Hindu Succession Act, **Section 4** of the Act provides that *save as otherwise expressly provided in the Act, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in the Act and any other law in force immediately before the commencement of the Act shall cease to apply to Hindus in so far it is inconsistent with any of the provisions contained in the Act.*

27. In **Commissioner of Wealth Tax v. Chander Sen** AIR 1986 SC 1753, Supreme Court noted that the moment a son is born; he gets a share in the father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or by inheritance from the father but on the mere fact of his birth. Normally therefore whenever a father gets property and from whatever source, be it separate property or not, his son has a share in that and it will become part of the joint property of the son and grandson and other members who form joint Hindu family with him.

Considering the changes effected by the Hindu Succession Act as also the implication thereof the Court inter alia held as under:

In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean

that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son etc.

The express words of Section 8 of The Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased

son cannot be ignored.

The principle evolved in **Chander Sen (supra)** was further reiterated by Supreme Court in **Yodhishter v. Ashok Kumar [1987] 1 SCR 516** and **Commissioner of Income Tax v. P.L. Karuppan Chettiar [1992] 197 ITR 646 (SC)**.

28. In another situation which can be contemplated is wherein the property belonging to the father has been partitioned. In such a scenario, when a divided son or daughter has got the property belonging to their father in a partition, whether it is ancestral or self-acquired property of the father, they become absolute owners of their respective shares and they can deal with the properties exclusively excluding their sons. The son of a divided son does not get right from his father by birth who is excluded by virtue of Section 8 of the Hindu Succession Act and he cannot become a coparcenar in the property in question.

Since defendant No.1 acquired agricultural land in Village Patial as his self acquired property, the husband of the plaintiff had no right, title or interest in it nor is the plaintiff entitled to a share in this land.

29. However, during the course of arguments, the

learned counsel for defendant No.1 stated that without admitting any legal right of the plaintiff in the agricultural land in Village Patial, District Ropar, Punjab, defendant No.1 is ready to give 1/5th share in that land to the plaintiff. In view of the statement made by the learned counsel for defendant No.1, the plaintiff can have 1/5th share in the aforesaid land.

ORDER

In view of my findings on the issues and the statement made by the learned counsel for the defendant No.1 that defendant No.1 is ready to give 1/5th share in the agricultural land in Village Patial to the plaintiff, a preliminary decree for partition is hereby passed, holding that plaintiff has 1/5th share in the agricultural land, admeasuring about 8 kanals and 18 marlas, which is held by defendant No.1 in Village Patial, District Ropar, Punjab. It will be open to any party to the suit to apply for appointment of a Local Commissioner to suggest appropriate mode of partition of the aforesaid agricultural land in Village Patial, District Ropar, Punjab. If there is a equal impediment in division of the aforesaid agricultural land by metes and bounds, the Local Commissioner will

also suggest a proper mode to suitably compensate the plaintiff in this regard. Decree sheet be prepared accordingly.

(V.K. JAIN)
JUDGE

JANUARY 21, 2011
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