

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.35 of 2023

Smt. Debjani Gope

.....Appellant

V e r s u s

Shri Nirendra Chandra Ghosh & Anr.

.... Respondents

For Appellant (s)	:	Mr. S.K Jha, Adv.
For Respondent(s)	:	None

HON'BLE MR. JUSTICE S.D PURKAYASTHA

Order

28.11.2023

Heard Mr. S.K. Jha, learned counsel appearing for the appellant.

The appellant filed Title Suit (Partition) 10 of 2021 in the court of the learned Civil Judge (Sr. Division), Khowai, Khowai District against her father (the respondent No.1) and brother (the respondent No.2) for partition of suit land asserting that late Manindra Chandra Ghosh and late Suresh Chandra Ghosh were two brothers and she is the granddaughter of said Manindra Chandra Ghosh. Late Suresh Chandra Ghosh died issue less and thereafter, after the death of said two persons, the appellant, her father and brother became the coparceners by the operation of provision of Section 6 of the Hindu Succession Act, 1956, for short the Act. Her allegation is that her father, the respondent No.1 started selling different portion of ancestral property depriving her and to enrich her brother and after such fraudulent sales, only 3.47 acres is lying in the joint stock. Therefore, she prayed for partition of the suit land claiming her share to be 1/3rd therein and also claiming compensation from the share of the respondents for the land sold by the respondent No.1 to the detriment of the appellant and to the benefit of the respondent No.2. She also prayed for decree of rendition of accounts and for permanent injunction restraining the respondents from creating any third party interest in the suit land.

The trial court vide order dated 20.12.2022 rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure on the basis of a petition submitted by the respondents holding that the parties are governed by Dayabhaga School of

Hindu Law and during the lifetime of the respondent No.1, the plaintiff cannot demand for partition of ancestral property.

The order dated 20.12.2022 was challenged in Title Appeal No.01 of 2023 in the court of the Addl. District Judge, Khowai, Khowai District and said court expressed the similar view in its order dated 12.10.2023 and dismissed the appeal. The said order of the first appellate court is under challenge in this second appeal.

Mr. Jha, learned counsel submits that in view of the amended provision of Section 6 of the Act, the daughter of coparceners shall by birth become a coparcener in her own right in the same manner as the son and therefore, she is entitled to 1/3rd share of the joint stock but to deprive her from her legitimate right over the property and in other way to give undue benefit to his son, the respondent No.1 has been selling different portion of land of the joint property and again by purchasing some other new lands in the name of the respondent No.2 elsewhere.

Mr. Jha, learned counsel submits that there are substantial question involved in the appeal that amendment of 2005 of the Act has practically abrogated the difference between Mitakshara law and Dayabhaga Law entitling the appellant 1/3rd share in the property and in view of the same, the judgment of the first appellate court is perverse.

Mr. Jha, learned counsel also refers Para-71 of a decision of the Hon'ble Supreme Court in **Arunachala Gounder (Dead) by LRs. versus Ponnusamy and others**, reported in **(2022) 11 SCC 520** wherein it was observed that *the 1956 Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. The 1956 Act lays down a uniform and comprehensive system of inheritance and applies, inter-alia, to persons governed by the Mitakshara and Dayabhaga Schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri Laws.*

The second reference which was made by Mr. Jha, learned counsel, is another decision of the Hon'ble Supreme Court in **Vineeta Sharma vs. Rakesh Sharma**, reported in **(2020) 9 SCC 1**, wherein Para-85, it has been observed as under:

"85.The right to claim partition is a significant basic feature of the coparcenary, and a coparcener is one who can claim partition. The daughter has now become entitled to claim partition of coparcenary w.e.f. 9.9.2005, which is a vital change brought about by the statute. A coparcener enjoys the right to seek severance of status. Under sections 6(1) and 6(2), the rights of a daughter are pari passu with a son. In the eventuality of a partition, apart from sons and daughters, the wife of the coparcener is also entitled to an equal share. The right of the wife of a coparcener to claim her right in property is in no way taken away."

Section 6 of the Act was in the following language before the Amendments 2005 was brought into force:

6 Devolution of interest in coparcenary property. — When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a *Mitakshara* coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the *Mitakshara* coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

***Explanation 1.*-For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim petition or not.**

***Explanation 2.*- Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.**

After such amendment, the following is the position of sub-section (1) of Section 6 of the Act:

6 Devolution of interest in coparcenary property. —

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

Therefore, from the aforesaid amendment of 2005 (w.e.f. 09.09.2005) it is clear that birth right of the daughters in a family governed by Mitakshara law (emphasis added) was introduced in coparcenary property and based on the same, the suit was filed by the present appellant.

At present Hindu Law comprises of 2(two) schools i.e. Mitakshara and Dayabhaga Schools. Benares, Mithila School; Maharashtra or Bombay School (Western India) and Dravida or Madras School (Southern India) are the 4(four) minor schools under Mitakshara School (Ref : *Mulla Hindu Law 21st Edition, page-58 (reprint in 2014)*). Dayabhaga School generally prevails in Bengali speaking states of Bengal and Assam (*Mulla Hindu Law, ibid, page-72*). In Tripura also the Bengalis are guided by Dayabhaga Schools of law unless contrary is shown and therefore, Section 6 of the Act, 1956 dealing with coparcenary property is not applicable to the parties and nothing could be shown by the appellant that she is guided by Mitakshara School of law or that it is a coparcenary property.

Considering thus, it appears that no perversity was committed by the courts below by passing the above said orders and therefore, there is no substantial question of law involved in this appeal requiring admission of the

same. The appellant has misconstrued and misapplied the provisions of Section 6 of the Act while lodging the claim.

As a corollary, the second appeal is not admitted and therefore, the same is dismissed.

Interlocutory application(s), if any, stands disposed of.

JUDGE



SATABDI DUTTA

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