



CGHC010256992016

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 84 of 2016

Judgment Reserved on 24.07.2026

Judgment Pronounced on 16.10.2026

Judgment uploaded on 16.10.2026

1. Dular S/o Nanku Sahu, Aged About 72 Years R/o Village Dhangaon, Police Station Navagarh, Tehsil Bemetara, District Bemetara, Chhattisgarh, Chhattisgarh.

2. Shatrughan S/o Dular Sahu, Aged About 37 Years R/o Village Dhangaon, Police Station Navagarh, Tehsil Bemetara, District Bemetara, Chhattisgarh Defendants, District : Bemetara, Chhattisgarh.

... Appellants/defendants

versus

1. Smt. Dulara Bai (**Died**) Through Legal Heirs- As Per Hon'ble Court Order Dated 22-09-2023.

1 (a) Parvati D/o Jaitram Sahu Aged About 45 Years W/o Thanu, R/o Village Semariya (Banshapur), Tahsil And District Bemetara, Chhattisgarh.

1(b) Narayan Sahu S/o Jaitram Sahu Aged About 43 Years R/o Village Chamari (Khandsara), Tahsil And District Bemetara, Chhattisgarh.

1(c) Maya Bai D/o Jaitram Sahu Aged About 41 Years W/o Jaggu, R/o Village Chamari (Khandsara), Tahsil And District Bemetara, Chhattisgarh.

1(d) Mansharam S/o Jaitram Sahu Aged About 40 Years R/o Village Chamari (Khandsara), Tahsil And District Bemetara, Chhattisgarh.

1(e) Sohadra Bai D/o Jaitram Sahu Aged About 38 Years W/o Govind, R/o Village Semaraiya (Banshapur), Tahsil And District Bemetara, Chhattisgarh.

1(f) Mahesh Kumar S/o Jaitram Sahu Aged About 36 Years R/o Village Chamari (Khandsara), Tahsil And District Bemetara, Chhattisgarh.

1(g) Amarika D/o Jaitram Sah Aged About 34 Years W/o Gulab, R/o Village Jevara, Tahsil Thankhamhariya, District Bemetara, Chhattisgarh.

Respondents/Plaintiffs

2. Heman Bai W/o Satish Sahu, Aged About 39 Years R/o Village Dhangaon, Police Station Navagarh, Tehsil and District Bemetara, Chhattisgarh

3 - The State Of Chhattisgarh, Through Its Collector Bemetara, District Bemetara, (C.G.)

Respondents/Defendants

{Cause title as taken from CIS}

For Appellants	:	Mr. Bharat Rajput, Advocate
For Respdts Nos. 1(a) to 1(g)	:	Mr. Shobhit Kotha and Mr. Rajendra Kumar Advocates.
For Respd. No. 2	:	Mr. A. D. Kuldeep, Advocate.
For Respd. No. 3	:	Mr. J. P. Tiwari, Panel Lawyer.

{Hon'ble Mr. Justice Sachin Singh Rajput}

CAV JUDGMENT

This is defendants' Second Appeal filed under Section 100 of Code of Civil Procedure, 1908 (henceforth "CPC") against the impugned judgment and decree dated 07.01.2016 passed by District Judge, Bemetara, District Bemetara (C.G.), in Civil Appeal No. 01-A/2013 affirming the judgment and decree dated 09.07.2012 passed by 2nd Civil Judge, Class-II, Bemetara (C.G.), in Civil Suit No. 34-A/2012 decreeing the suit of the plaintiffs.

2. The facts necessary for disposal of this appeal in short are that original plaintiff Smt. Dulara Bai instituted a suit for declaration of title, partition and separate possession before the Civil Judge Class II, Bemetara, District Bemetara (C.G.) as referred to above. Original plaintiff Smt. Dulara Bai and defendant Dular happen to be real sister and brother. The above-stated relief was claimed in respect of the suit property which is described in the

Scheduled "A" appended with the plaint consisting of Khasra No. 11 area 7.120 hectare situate at village Dhangawn P.H. 11, Tahsil Bemetara, District Durg. The suit property was recorded in the revenue record in the name of the father of the plaintiff namely Nanku Sahu who passed away on 15.09.1980. The civil suit was filed against the defendants Dular (brother of the plaintiff), Shatrudhan (son of Dular) and Hemin Bai wife of Satish Sahu i.e. son of Dular. According to the plaint, the parties are Hindu and they are governed by Mitakshara school of Hindu Law. It has been pleaded that plaintiff along with private defendants being successors of Nanku Sahu are having share in the suit property according to Hindu law. After the death of Nanku Sahu, his son Dular (defendant) got the suit land recorded in his name in revenue record so as to affect the right and share of the plaintiff. According to the plaintiff, the said mutation proceedings are void and illegal from the beginning itself because the proper procedure was not followed for the same. The plaintiff thereafter filed an appeal challenging the mutation order passed by Tahsildar before Sub Divisional Officer, Bemetara. When in the month of April, 2007 the original plaintiff demanded her share from defendant No. 1 in the suit property, he refused the same, which led her to institute the civil suit.

3. The suit was resisted by the defendant No. 1 by filing written statement wherein it was pleaded that after the death of their father later on their mother, the plaintiff had received gold and silver ornaments from defendant No. 1 in partition in presence of the Community members, and thus she relinquished her right over the suit property and does not have any right to receive any share therein. It has been further pleaded that the defendant No. 1 has perfected his title over the suit property by way of adverse possession and that the suit property has subsequently been partitioned amongst the defendants.

4. The defendant No. 4 (daughter-in-law of original defendant Dular) has also filed written statement stating that the plaintiff has relinquished her right over the suit property after receiving the gold and silver ornaments on the death of her parents. Defendant No. 2 did not file any written statement and remained *ex parte* before the trial Court.

5. Learned trial Court initially framed three issues followed by three additional ones for determination which are given below:-

“Issues

1. Whether the defendant No. 1 is the sole owner of the land shown in Schedule “A” of the plaint situated in village Dhangaon P.H. No. 11, Tahsil Bemetara, District Durg ?
2. Whether the plaintiff is entitled to get half share in the land mentioned in Schedule “A” appended with the plaint in partition?
3. Relief and cost?

Additional issues

4. Whether Shatrughan and Heminbai are necessary parties in the case?
 5. Whether the plaintiff relinquished her rights by giving a statement to her kinsmen about giving up her rights in the land left behind by her father Nanku after partition of the property left by her mother and father after their death ?
 6. Whether the claim of the plaintiff has become barred by the principle of adverse possession as defendant No. 1 has been in the cultivating possession of the agricultural land in question for more than twelve years ?”
6. Learned trial Court on assessment of evidence available on record, decided the issue No. 1 in “Negative”, issue No. 2 in “positive, issue Nos. 5 and 6 in “negative”. Eventually, it decreed the suit of the plaintiff to the effect that she is entitled for partition and separate possession over half portion of the suit land shown in Schedule “A” appended to the plaint. Being aggrieved

by the judgment and decree dated 09.07.2012 passed by learned trial Court, the defendant Nos.1 and 3 preferred first appeal under Section 96 of CPC before the first appellate Court, which came to be dismissed by the impugned judgment and decree dated 07.01.2016. Hence this second appeal.

7. This Court on 04.04.2016 admitted this appeal on the following substantial questions of law :-

“A. Whether the learned courts below erred in law in applying the section 6 of amended Hindu Law of Succession (2005) as the succession had opened on 15.01.1980 on the date of death ?

B. Whether the learned courts below erred in law in not applying the law of Hindu Succession Act particularly Section 6 of the Act of 1956, as it was prevailing on the date of opening of succession?”

8. Learned counsel appearing for the appellants/defendants would submit that the civil suit was filed in the year 2007; that father of plaintiff as well as defendant No. 1 had already passed away on 15.09.1980 and the amendment in Section 6 of Hindu Succession Act was incorporated in the year 2005 and, therefore, the learned Courts below have committed an error of law in applying the provisions contained in Section 6 of the amended Hindu Succession Act for the reason that the succession has already opened on 15.01.1980 on the date of death of father of the plaintiff and defendant No. 1. He further submits that the daughters became entitled for share in the coparcenary property in the year 2005 only, the plaintiff is not entitled for her share in the suit property as the succession had already opened on the death of his father in the year 1980. He further submits that evidence available on record also suggest that original plaintiff had already relinquished her right over the suit property and has filed civil suit only after knowing the fact that

the suit property has been duly partitioned amongst the defendant No. 1 and his sons. He further submits that the evidence goes to show that the suit was filed by the plaintiff only for the reasons that she was not being properly respected by the defendants. He submits that things have already been settled between the parties with the passage of time, and therefore the substantial questions of law so framed may be answered in favour of the appellants/defendants.

9. Counsel for the respondent No. 1/plaintiff while relying on the judgment of the Supreme Court in the matter of **Vineeta Sharma Vs. Rakesh Sharma** reported in **AIR 2020 SC 3717** would submit that learned Courts below are justified in decreeing the suit of the plaintiff as date of death of father is immaterial. He submits that as the sisters have co-parcenary right over the suit property, the substantial question of law as framed may be answered in favour of respondent No.1/plaintiff.

10. Learned counsel appearing for respondents No. 2 and 3 have stated that they are formal party in the instant suit.

11. Heard learned counsel for the parties and perused the material available on record including record of the courts below.

12. In the present case, it is not in dispute that the suit property was recorded in the name of Nanku Sahu, the father of the original plaintiff and defendant No.1. The plaintiff instituted the suit claiming a share in the property left by her father whereas defendant No. 1 resisted the claim on the grounds *inter alia* that the plaintiff had relinquished her rights after receiving gold and silver ornaments and that he had perfected his title by adverse possession. The trial Court upon consideration of the evidence rejected the plea of relinquishment and adverse possession and decreed the suit for

partition and separate possession of one-half of the suit property. The question whether the plaintiff had relinquished her rights is essentially one of fact to be determined on the basis of the evidence adduced by the parties and the legal requirements applicable to the alleged relinquishment. A relinquishment of rights in immovable property cannot be inferred merely from a general assertion that a daughter received ornaments or other movable property from her family. The nature of the alleged arrangement, the intention of the parties, the evidence establishing relinquishment and, where applicable, compliance with the legal requirements governing the transfer or extinguishment of rights in immovable property has to be examined. In the absence of a legally sustainable basis to displace the concurrent findings of both the Courts below, the appellants cannot succeed merely by reiterating the defence already rejected by the trial Court and the first appellate Court. Similarly, the plea of adverse possession cannot be accepted solely on the ground that defendant No. 1 had been cultivating the suit land for more than twelve years. Where the parties are members of a family and the property is held jointly, the possession of one co-owner is ordinarily treated as possession on behalf of all unless there is a clear and unequivocal ouster of the other co-parcener. It is worthwhile to mention here that the elements of adverse possession must be established by the party asserting it.

13. If looked upon the aforesaid factual conspectus, the main controversy apparently involved in the present appeal is in respect of applicability of Section 6 of the Hindu Succession Act, 1956 as substituted by the Hindu Succession (Amendment) Act, 2005 to the rights claimed by the original plaintiff in the suit property particularly in view of the fact that her father Nanku Sahu died on 15.09.1980. The appellants/defendants contend that succession had already opened upon the death of Nanku Sahu and therefore

the amended provisions of Section 6 could not have been applied by the Courts below. However, standpoint of the respondent/plaintiff is that in view of the law laid down by the Supreme Court in the matter of *Vineeta Sharma (supra)*, the date of death of the father is not determinative of a daughter's right in the coparcenary property.

14. Before examining the rival submissions of the parties, this Court thinks it apposite to distinguish between the devolution of interest of a deceased Hindu under the unamended Section 6 of the Act of 1956 and the rights conferred upon a daughter by birth under the substituted Section 6 which came into force on 09.09.2005. The distinction is material because the amended provision confers upon a daughter the status of a coparcener in the same manner as a son in a Hindu joint family governed by the Mitakshara doctrine of law. The provision also recognizes equal rights and liabilities in coparcenary property subject to the statutory protection afforded to dispositions, alienation and partitions covered by the proviso to sub-section (1) and sub-section (5) of Section 6. The nature of the property and the basis on which the plaintiff claims her share must be determined from the pleadings and evidence on record.

15. The legal position governing the interpretation of amended Section 6 has been authoritatively settled by the Supreme Court in *Vineeta Sharma (supra)* where it has set at rest the issue concerning the rights of daughters in Mitakshara coparcenary property holding that the substituted Section 6 confers coparcenary status upon a daughter by birth in the same manner as a son irrespective of whether she was born before or after the amendment. The Supreme Court has further clarified that the right conferred by the amended provision is enforceable with effect from 09.09.2005 and that it is

not necessary for the father who was a coparcener to have been alive on that date. The Supreme Court also explained that a partition claimed to have taken place before 20.12.2004 must be examined in accordance with the requirements of Section 6(5). Mere assertion of an earlier oral partition cannot ordinarily be accepted as conclusive proof of such partition until and unless the exceptional circumstances warranting such oral partition are established by cogent and clinching evidence which is not the position in the case in hand. Accordingly, the submission made on behalf of the appellants/defendants that the death of the father before the commencement of the 2005 Amendment necessarily excludes the daughter's claim under the amended Section 6 cannot be accepted as a correct statement of law. The applicability of the amended Section 6 must be considered in the context of the nature of the property and the rights asserted by the plaintiff.

16. The findings of both the Courts below on these disputed factual issues are concurrent findings of fact. In a second appeal under Section 100 of the CPC such findings cannot be interfered with merely because another view of the evidence may be possible. Interference is warranted only where a substantial question of law arises in accordance with the settled principles governing the jurisdiction of this Court.

17. The second appeal is accordingly **dismissed**. The substantial questions of law are answered in negative. The judgment and decree passed by the Courts below shall stand affirmed. No order as to costs. Decree be drawn.

Sd/-

(Sachin Singh Rajput)
Judge

Amita/Jyotishi