

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Review No.195 of 2015**

**In**

**First Appeal No. 357 of 1981**

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1. Most. Meena Devi, Wife of Late Om Prakash Sah, Resident of Village- Bhadas, P.O.- Bhadas, P.S.- Muffasil, District- Khagaria.

2. Nutan Devi, Daughter of Late Om Prakash Sah and Wife of Chandan Kumar Sah, resident of Village- Madudabad, P.O.- Mohauddinagar, District- Samastipur

3. Parasmani, son of Late Om Prakash Sah

4. Navneet Kumar, son of Late Om Praksah Sah

Both are Resident of Village- Bhadas, P.O.- Bhadas, P.S.- Muffasil, District- Khagaria.

.....Review-Petitioners/Appellants

Versus

1. Jawahar Lal Sah , son of Late Moti Lal Sah

2. Heera Lal Sah, son of Late Moti Lal Sah

3. Jai Jai Ram Shahu, son of Late Moti Lal Sah

4. Hari Ram Shahu, son of Late Moti Lal Sah

5. Poonam Kumari, daughter of Late Moti Lal Sah

All are Resident of Village- Bhadas, P.O.- Bhadas, P.S.- Muffasil, District- Khagaria.

6. Sri Kant Sah, son of Late Ayodha Sah

7. Shiv Dhani Sah, son of Late Ayodha Sah

8. Ram Sakhi Devi, wife of Ayodha Sah

All are Resident of Village- Tengraha, P.O.- Utesra, P.S.- Kopria, District- Saharsa.

9. Shakuntala Devi, daughter of Late Ayodha Sah and wife of Late Ram Swaroop Sah, Resident of Village- Dehteda, P.O. + P.S.- Saharsa, District- Saharsa.

10. Laxmi Devi, wife of Bateshwar Sah, resident of Village- Gogari , P.O.- Gogari, P.S.- Gogari, District- Khagaria.

..... Respondent 1<sup>st</sup> Set/Plaintiff/Opposite Parties

11. Savitri Devi, daughter of Late Amrit Lal Sah & wife of Bishwanath Prasad Sah, Resident of Village- Chitragupta Nagar, P.O. + P.S.+ District- Khagaria

12. Sumitra Devi, daughter of Late Amrit Lal Sah & wife of Ashok Kumar, resident of Village- East Saharsa Kahari, Soaling Road, Gautam Nagar, District- Saharsa

13. Meena Kumari, daughter of Late Amrit Lal Sah & wife of Mukti Lal, Resident of village- Basua, P.O.- Piparpanti, P.S.- Pasaraha, District- Khagaria

..... Respondent 2<sup>nd</sup> Set/Plaintiff/ Opposite Parties.

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**Appearance :**

For the Petitioners : Mr. J.S. Arora, Sr. Advocate

For the Respondent No.10 : Mr. Vijay Anand Singh, Advocate

For the Respondent No.1 to 5 : Mr. Manoj Kumar Singh, Advocate

For the Respondent No.6, 7 and 9: Mr. Vivekanand Vivek, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO**

**ORAL ORDER**

9 28-11-2016

Heard learned senior counsel Mr. J.S. Arora, for the



petitioners and the learned counsel Mr. Vijay Anand Singh, for the opposite party no.10, Mr. Manoj Kumar Singh, for the opposite party nos.1 to 5, Mr. Vivekanand Vivek, for the opposite party nos.6,7 and 9.

2. This review application has been filed by the appellants-petitioners for review of the judgment dated 22.07.2015 passed by this court in First Appeal No. 357 of 1981 whereby this Court held that the plaintiff is entitled to 1/4<sup>th</sup> share because after the death of Chhakauri Sah, his property will be divided between two sons and two daughters equally having 1/4<sup>th</sup> each.

3. The learned senior counsel Mr. J.S. Arora submitted that in fact there is an error apparent on the face of the record while deciding the share of the plaintiff and the defendants as mentioned in paragraph-27 of the judgment. Since Chhakauri Sah died in the year 1956, i.e., much prior to the commencement of the Hindu Succession (Amendment) Act, 2005, therefore, the plaintiff being the daughter is entitled to inherit a share in the share of her father only. In support of his contention, the learned counsel relied upon the decision of the Supreme Court AIR 2006 SC 3332 and AIR 2012 SC 169.

4. On the other hand, the learned counsel appearing on behalf of the plaintiff-respondents submitted that after amendment of the Hindu Succession Act, 2005, the daughters



have also become coparcener and till then there was no partition. Therefore, the plaintiff is also entitled to equal share as they are full brother and sister.

5. It is admitted facts that Chhakauri Sah had died in the year 1956. The Hindu Succession Act was amended in the year 2005 and the daughters were also given the status of coparcener, i.e., daughters are also entitled to equal share as that of the male coparcener. After amendment of Section, this Hindu Succession (Amendment) Act, 2005, provides that in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall:

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

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

(c) .....

(2) .....

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitkshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the



coparcenary property shall be deemed to have been divided as if a partition had taken place and .....

6. In view of the above provision, this amendment portion of the Hindu Succession Act will be applicable if the coparcener whose property is sought to be divided died after the commencement of the Hindu Succession Act. This is the view taken by the Supreme Court also in AIR 2006 SC 3332 and the Supreme Court in AIR 2012 SC 169. Admittedly in this case, the coparcener Chhakauri Sah, i.e., the plaintiffs' and defendants' father died in the year 1956 after commencement of Hindu Succession Act, 1956.

7. In view of the Hindu Succession Act, the daughters were entitled to inherit the property of the father. Therefore, on the death of the father, after commencement of Hindu Succession Act, the share of the father will be divided between his all heirs. Chhakauri Sah had two sons. Accordingly, the share of Chhakauri Sah will be  $\frac{1}{3}^{\text{rd}}$  share only. The two sons will be inherited  $\frac{1}{3}^{\text{rd}}$  each. On the death of Chhakauri Sah, his share, i.e.,  $\frac{1}{3}^{\text{rd}}$  share will go to two sons and two daughters equally. As such, the daughter will be entitled to inherit  $\frac{1}{4}^{\text{th}}$  of  $\frac{1}{3}^{\text{rd}}$ , i.e.,  $\frac{1}{12}^{\text{th}}$  share in the property.

8. From perusal of the judgment at paragraph-27, it appears that this question of law was not at all considered by this



Court while passing the judgment. In my opinion, therefore, it is an error apparent on the face of the record. It can very well be said that there is misconception of law in the judgment, as such, that part of the judgment i.e. paragraph-27 is liable to be reviewed. Accordingly, the same is reviewed and it is held that the plaintiff is entitled to  $1/12^{\text{th}}$  share only. The other daughter of Chhakauri Sah will be entitled to  $1/12^{\text{th}}$  share whereas the two sons will be entitled to  $1/3^{\text{rd}} + 1/12^{\text{th}}$  each.

9. Accordingly, the judgment is reviewed and thus, modified to the extent indicated above.

10. In the result, the first appeal is allowed in part. Thus, this review application stands allowed. Let a decree be drawn accordingly.

**(Mungeshwar Sahoo, J.)**

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