

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No.329 of 1999**

Mst. Anumati Bai, aged about 50 years, widow of Raghunandan Das, resident of Murmunda, Post Bojetala, Tahsil and District Rajnandgaon (M.P.)

---- **Appellants/Defendant No.12**

Versus

1. Ram Kumar, aged 30 years, son of Hirdas Vaishnav;

Plaintiff

2. Jagatram, aged 45 years;

3. Belap Ram, aged 40 years;

4. Amrautin Bai dead through LR's

- (a) Hiru Nishad S/o Late Boharan Nishad, aged about 50 years,

- (b) Hiranman Nishad S/o Late Boharan Nishad, aged about 40 years,

- (c) Churaman Nishad S/o Late Boharan Nishad, aged about 35 years,

All R/o Village Kirri, Post Office Bhanpuri, Tahsil Dongargarh, District Rajnandgaon (CG)

5. Bhagatwatram, aged 33 years, Son of Bodhram Sahu;

6. Mangtin Bai, aged 34 years, wife of Fagua Kewat;

7. Pardeshin bai dead through LR's

- (a) Ashok Nishad S/o Nandu Nishad, aged about 30 years

- (b) Toran Nishad S/o Nandu Nishad, aged about 28 years

Both of them are R/o Village Kirgi, Post Office Bhanpuri, Tahsil Dongargarh, District Rajnandgaon (CG)

8. Smt. Aina Bai dead through Lrs

- (a) Shiv Kumar Das Vaishnav S/o Late Ramprapanna das Vaishnav, aged about 50 years,

- (b) Jagmohan Das Vaishnav S/o Late Ramprapanna das Vaishnav, aged about 40 years,

- (c) Smt. Sati Bai W/o Late Dudhram Das Vaishnav (son), aged about 55 years,

- (d) Manoj Vaishnav S/o Late Budhram Das Vaishnav, aged about 35 years,

Serial No.a to d are R/o Village Rivagahan, Post Office Pendri, Tehsil and District Rajnandgaon (CG)

(e) Nandkumar Das Vaishnav, S/o Late Ramprapanna das Vaishnav, aged about 44 years, R/o Village Kohka, Post Office Dongargarh, Tahsil Dongargarh, District Rajnandgaon (CG)

9. Smt. Panna Bai dead through LR's

(a) Banwali Das Vaishnav S/o Bhagwat Vaishnav, aged about 52 years (son)

(b) Smt. Usha Bai Vaishnav Widow of Late Gajendra Das Vaishnav, aged about 35 years, both are R/o Village Kohka, Post Office Dongargarh, Tahsil Dongargarh, District Rajnandgaon (CG)

10. Smt. Nisha Ben Wife of Shri Atul Kumar Mohiya, resident of Rajnandgaon (Shri Gujrat Glass and Frame Centre, Cinema Line, Rajnandgaon, Tahsil and District Rajnandgaon).

11. Smt. Durga Bai, wife of Chintaram Sahu, aged about 35 years, R/o Village Kirgi, Tahsil Dongargarh, District Rajnandgaon (CG)

12. State of Madhya Pradesh through Collector Rajnandgaon

-- Respondents/Defendants 4 to 11 & 13 to 15

Defendants 1, 2 & 3 Rewati Bai, Dewarin bai & Shyam Bai having died during the pendency of suit their names have been omitted from the cause title.

For Appellant : Shri P. P. Sahu, Advocate
 For Respondent No.1 : Shri J. A. Lohani, Advocate
 For Respondent No.8(a): Smt. Renu Kochar, Advcoate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/04/2018

Heard.

1. This appeal is directed against the impugned judgment and decree dated 31-03-1999 passed in Civil Suit No.1-A/1991 by the First Additional District Judge, Rajnandgaon, whereby suit filed by the respondent-plaintiff has been decreed by the learned trial Court and decree of partition has been granted in favour of the respondent-plaintiff.

2. Respondent-plaintiff had filed a suit seeking declaration that the sale deed

executed by the defendant No.1 in favour of the defendants No.2 & 13 are void and not binding and also for declaration of title and permanent injunction on the pleadings inter alia that the property in dispute described in Scheduled "A" & "B" belonged to Late Hari Das Vaishnav and after his death in the year 1969, it devolved upon the heirs which included the plaintiff, who was minor, aged 10 years, in equal share with his mother. However, the defendant No.1-mother used to maintain the property and also having information regarding revenue records, taking undue advantage of which, she got the records corrected and got entered the name of respondents No.2 & 12 in respect of land ad measuring 27.15 acres situated at Village Bharritola. It was further pleaded that the defendant No.1 kept on selling property and when the plaintiff came to know that she intended to again sell the joint family property to defendants No.2 & 13, he objected to the same yet defendant No.1 sold out the property. Finally, the plaintiff had to file a suit for appropriate declaration of his title that the sale deeds are void and also for permanent injunction.

3. Case of the defendants was that the property of Late Hari Das Vaishnav, after his death in the year 1969, was partitioned amongst his widow, the plaintiff and three daughters by registered partition deed dated 30-01-1970. The plaintiff was fully aware of this partition. The plaintiff had already been given his share of 27.5 acres of land of which he had been in cultivating possession in his own right and the share given under the partition deed to all including the plaintiff was just and fair, binding on the plaintiff and the suit was liable to be dismissed.

On the basis of the pleadings of the parties, learned trial Court framed issues and on the basis of oral evidence as well as documentary evidence, decreed the suit of the plaintiff holding that the partition under agreement dated 30-01-1970 was not binding on the plaintiff, suit was not barred by limitation as even though the registered partition deed was not challenged, under Section 6

of the Hindu Succession Act, 1956, the plaintiff is entitled to 1/3rd share in the property situated in Village Kirgi and further notional partition of 1/3rd share of his father. It was held that the sale deed executed by Revti Bai on 16-05-1981 in favour of the defendants No.2 & 3 were not binding on the plaintiff.

4. Assailing correctness and validity of the impugned judgment and decree, learned counsel for the appellant contended that the suit filed by the plaintiff was not maintainable in the absence of relief of cancellation of registered partition deed dated 30-01-1970. He would submit that the plaintiff in his evidence has clearly deposed that even prior to filing of the suit, the plaintiff had not only come to know about the partition deed but he also obtained a copy of the same. Thus, before filing of the suit, the plaintiff had full knowledge about the partition deed executed long back when the plaintiff was minor, even though, he did not choose to challenge the same and get it cancelled. In the absence of any relief of cancellation of the partition deed, the decree of partition could not be granted in favour of the appellant. In support of his submission, learned counsel for the appellant placed reliance in the case of ***Ranganayakamma and another vs. K. S. Prakash (D) By Lrs. & Ors., 2008(15) SCC 673*** and ***K. G. Shivalingappa (Dead) By Lrs. & others vs. G. S. Eswarappa and others, 2004(12) SCC 189***. Next submission of learned counsel for the appellant is that the learned trial Court grossly erred in recording a finding that the suit was not barred by limitation because the plaintiff had not even sought cancellation of the registered partition deed though law obliged him to do so, so that he could get relief of partition. The deed of partition was a registered one. The plaintiff attained majority on 24-03-1977, therefore, in any case, the plaintiff was required to file a suit within a period of three years from the date of attaining majority. In support of his submission, learned counsel for the appellant placed reliance on the provisions contained in Section 6 & 8 of the

Limitation Act and decision of the Supreme Court in the case of ***Meenambal and others vs. Chockalinga Chettiar and others, 1978 AIR (Madras) 230***. It is next contended that even according to the plaintiff's own pleading and admission, he was born out of second marriage solemnized by Hari Das Vaishnav with Hira Bai, who admittedly was the second wife. This second marriage was solemnized during the subsistence of first marriage with Revti Bai. The plaintiff born out of this illegal marriage, was illegitimate child, and therefore, he could never be a coparcener of coparcenary property nor he is entitled to succession under the Hindu Succession Act, 1956, because son as class I heir has to be legitimate son only and not illegitimate son. It is submitted that though, there was no issue framed in this regard before the learned trial Court, but it being a pure question of law, decision on which, does not require enquiry into disputed facts but could be decided on admitted facts of the case, it may be examined in the appeal. It is lastly submitted that in any case, there is no element of unfairness involved in the partition which was effected way back in the year 1970. At the time of death of Hari Das Vaishnav, his wife Revti Bai and three daughters namely Ena Bai, Panna Bai and Anumati Bai and the illegitimate child (the plaintiff) were surviving. Firstly, it is submitted that the illegitimate child was not entitled to any succession and share in the property. Secondly, in the alternative, it is submitted that even assuming that for the purpose of succession, illegitimate child was also entitled to succeed to the property of his father, all the heirs being class I heirs, can only get equal share, therefore, at the most, the plaintiff was entitled to 1/5 share of total property situated in Village Krigi and Village Bharritola. The total extent of agricultural land held by Hari Das Vaishnav in the aforesaid two villages was 83 acres and 1/5 share of the same would be 21 acres, whereas the plaintiff was allotted 28.51 acres. It is also submitted by learned counsel for the appellant that as the

plaintiff has admitted in his evidence that he was holding the lands in his hand in his own title and not as a joint family property and had sold substantial part of it as its owner, this shows that the plaintiff was not only having knowledge about the partition but also acted upon the partition, therefore, after selling substantial part of his share, the plaintiff is estopped from challenging the partition deed and in any case, no partition can be claimed at a later stage. For this purpose, learned counsel for the appellant placed reliance on the case of ***Nagappan vs. Ammasai Gounder and others*, 2004 (13) SCC 480, Meenambal** (supra). Thus, viewed from any angle, it cannot be said that the plaintiff's interest in the property was not duly protected by the elder members in the family at the time of partition in the year 1970. Therefore, the plaintiff is not entitled to any decree.

5. Per contra, learned counsel for the respondent would argue that the plaintiff had made out a clear case that at the time of death of Hari Das Vaishnav, his widow and plaintiff alone were surviving heirs and entitled to $\frac{1}{2}$ of the share in the property whereas plaintiff was granted a meager share of 24.5 acres of land. Next submission of learned counsel for the respondent-plaintiff is that the plaintiff was a minor, aged about 10 years at the time when the partition deed was said to be executed and therefore, he had no knowledge about the same, until filing of the suit. It is next submitted that as the plaintiff was minor, he is not required to seek cancellation of partition deed and as such, he was not required to seek cancellation but only to seek declaration of his title. It is next submitted that as there was no requirement of law for the plaintiff to seek cancellation of the partition deed or even to seek declaration that it was not binding on him, the learned trial Court has rightly decided the issue of limitation in favour of the plaintiff. Learned counsel for the respondent would further urged that as far as the issue of succession is concerned, even if the plaintiff was a illegitimate child, he is entitled to succeed to the property of his father under the

Hindu Succession Act, 1956, in view of the decision of the Supreme Court in the case of ***Gurnam Kaur (Smt.) and another vs. Puran Singh and others, 1996 (2) SCC 567***. Learned counsel for the respondent would further submit that the respondent produced only a photocopy of the so-called registered partition deed and the same was admitted in his evidence before the learned trial Court only upon production of the records from the office of the Registrar, it being a carbon copy, the documents of partition was not admissible in evidence. Therefore, in the absence of proof that the document was duly registered, there was no need for the plaintiff to seek cancellation of the same. It is lastly submitted that whatever transactions he may have made in selling a part of the land, which he was holding in his hand, it was without the knowledge of the alleged fact of partition. Therefore, it cannot be said that having knowledge of the partition, he had acted upon the same by selling his part of the land, therefore, the impugned judgment and decree passed by the learned trial Court does not warrant interference.

6. I have heard learned counsel for the parties and perused the records.

7. Following issues arise for consideration:-

- (a) Whether the suit is not maintainable without seeking relief of cancellation of registered partition deed dated 30-01-1970?
- (b) Whether the suit is barred by limitation?
- (c) Whether there existed coparcenery of Hari Das with plaintiff -Ram Kumar ? Whether the property of Hari Das devolved upon plaintiff Ram Kumar (son), his wife- Revti Bai and three daughters Anna Bai, Panna Bai and Anumati Bai as Class I heirs as intestate succession under Hindu Succession Act, 1956, if so, whether they are entitled to equal share?
- (d) Whether the plaintiff having acted upon earlier partition deed dated 30-01-1970 is estopped from challenging the same?

(e) Whether the partition effected vide partition deed dated 30-01-1970 was otherwise unfair, unequal and prejudicial to the interest of the plaintiff, who was minor on the date of effecting partition.

8. One of the foremost challenge to the impugned judgment and decree is that the partition having been effected way back on 30-01-1970 by registered deed, without avoiding the same, the plaintiff is not entitled to any relief.

9. The plaintiff in the plaint has only sought for a declaration that the sale deed, by which, sale is effected by the defendant No.1 in favour of defendants No.2 & 13 is not binding on him and void. The consequential relief of permanent injunction has also been sought. In the entire plaint, there is no mention of partition deed dated 30-01-1970. What has been pleaded in para 8 of the plaint is that when he obtained copies of the revenue records from Patwari, he came to know that the defendant No.1 has got the holdings partitioned.

In the written statement, defendant Nos.1 and 12 as also in the written statement of defendant No.2, 7 & 13, it has been very categorically pleaded that a partition was effected by registered deed dated 30-01-1970. Despite disclosure of the aforesaid fact of there being a registered deed of partition dated 30-01-1970, the plaintiff did not choose to seek cancellation of the same. The defendants have produced the said registered *Batwaranama* dated 30-01-1970 (Ex.D-2) duly proved by DW-2. The partition has been effected amongst Revti Bai, the plaintiff Rajkumar Das, a minor through his uncle Dau Shawrat Das, Smt. Anna Bai, Smt. Panna Bai and Smt. Anumati Bai. It is, therefore, clear that in the deed of partition, the plaintiff was also a party represented through his guardian because at the time of execution of registration of the partition deed, he was a minor. Nevertheless, it cannot be said that the minor Ram Kumar was not a party to the partition deed.

10. Ram Kumar, the plaintiff has examined himself as his first witness. In para

10 of his evidence, he admits that upon making an enquiry from Patwari in the year 1989, he was informed that holdings have already been partitioned and the land which has been sold, has been separately registered in the revenue records in the name of Revti Bai (defendant No.1). According to him, before this disclosure, he was not knowing about the partition of holdings. In para 11, he further deposed that he enquired from the office of the Registrar, he came to know that his mother Revti had already partitioned the properties amongst all including herself, plaintiff and step sisters. In para 18 of his cross-examination, he admits that before filing of the suit, he came to know from the revenue records obtained from the Patwari that partition had already taken place and he clearly admits in para 19 of his evidence that at the time of filing of the suit, partition effected in 1970 by registered partition deed, had already come to his notice and he has also obtained copy of the same but he did not consider it necessary to produce the same.

Thus, it is clear that prior to filing of the suit, the plaintiff had not only come to know about partition deed dated 30-01-1970 but he had also obtained the copy of the same. Even then, he did not sought cancellation of the same despite being a party to the said registered deed of partition. The defendants had clearly stated in the written statement, rather took up as the main shield of defence that the partition was effected long back in the year 1970. Even then, the plaintiff did not seek any relief much less pleadings to state that the deed was null and void or inoperative in law because of any legal defect or that it was voidable at his option by the reason of fraud or misrepresentation etc. It is true that the plaintiff was minor at the time when the partition deed was executed and registered, nevertheless, he was also a party to the partition deed through the guardian Shiv Ratan, who was his uncle as admitted by the plaintiff himself in his defence. It was, therefore, incumbent upon the plaintiff to avoid the said

partition deed by seeking cancellation of the same on grounds permissible under the law and without challenge laid to same, no relief could be granted in ignorance of the registered deed of partition.

11. In the case of **Nagappan** (supra), though dealing with specific provisions contained in Section 8 of the Hindu Minority and Guardianship Act, 1956, Their Lordships in the Supreme Court held that in the absence of prayer for setting aside the sale deed, the suit filed for recovery of possession was not maintainable. The said verdict was rendered on the facts that the sale of the property in dispute during minority of the plaintiff, was sought to be ignored while filing a suit for declaration after attaining the majority. In that case, without seeking a relief of setting aside the sale deed, declaration of title and recovery of possession was prayed for. It was held by the Hon'ble Supreme Court that in the absence of prayer for setting aside sale deed, suit filed by the plaintiff for recovery of possession was not maintainable, relying upon the earlier decisions, Their Lordships in the Supreme Court held, as below:-

“ The High Court held that in the absence of a prayer for setting aside of the sale deeds, the suit filed by the appellant for recovery of possession was not maintainable. Placing reliance on the two Division Bench judgments in **Sridharan v. Arumugam**, (1993) 2 MLJ 428 and in **K. Jagannathan v. A. M. Vasudevan Chettiar**, (2001) 2 CTC 641 and a Full Bench decision in **C.R. Ramaswami Ayyangar v. C. S. Rangachariar**, ILR 1940 Mad 259 of his own High Court, the learned Single Judge held that where the minor is an eo nomine party to a sale deed or other documents related to alienation, he must sue for the cancellation of the documents and it is not enough if he applies for possession without getting the sale deed cancelled. Such a suit would not be maintainable. Since the appellant had failed to seek the relief of setting aside of the sale deed and their cancellation, the suit filed by the appellant was not maintainable.”

Though, present is not a case under Hindu Minority & Guardianship Act, the principle enunciated therein applies with full force in the present case also.

10. In the case of **Chanvirapa vs. Dhanava**, ILR 1894 19 Bombay 593, it was held that partition made by the mother as guardian of his minor son is valid, that if it is just and legal and it will bind the minor, that when the minor

arrives at full age, he can have it set aside if it can be shown to be illegal or fraudulent. Even if it is the plea that the partition was effected during minority, upon attaining majority, the plaintiff is required under the law, before seeking any relief of possession or partition based on title in respect of the property already said to be partitioned in the past under the registered deed of partition to claim relief of cancellation of the registered deed. Though, it is open for the minor, after he attains majority, to challenge the partition effected during his minority on the ground that it is unfair, unjust and detrimental to his interest, nevertheless challenge has to be laid. It is also open for him to have the partition declared inoperative in law on the grounds that no such partition could take place under the law or that his property, in the hands, was not divisible or for any other legal impediment, partition could not take place under the law. Whatever may be the grounds available under the law, challenge has to be laid to the partition and no suit for declaration of title and recovery of possession would be maintainable without avoiding the partition deed in the manner permissible under the law.

11. In the case of ***Ratnam Chettiar and others vs. S. M. Kuppuswami Chettiar and others***, (1976) 1 SCC 214, the partition effected between the members of Hindu Undivided Family was challenged on the ground that it is unfair, unjust and detrimental to the interest of minor coparceners. Their Lordships in the Supreme Court held that the partition was effected between the members of Hindu Undivided Family, which consists of minor coparceners will be binding on the minor. Therefore, this Court is of the considered opinion that unless the partition effected in the past and the registered deed of partition is challenged and cancellation of the same is sought, declaratory relief of title in respect of the same property which was subjected to partition and recovery of possession cannot be granted and suit is liable to be dismissed only on this

ground.

12. The partition deed was executed and registered on 30-01-1970. True it is that at that point of time, the plaintiff Ram Kumar was minor, but once, he attains the majority, he was required to challenge the partition and the partition deed as also to seek cancellation of the partition deed within the period of limitation provided under Article 59, which reads as under:-

PART IV- Suits Relating to Decrees and Instruments		
<u>Description of suit</u>	<u>Period of limitation</u>	<u>Time from which period begins to run</u>
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

According to this provision, time from which, the period of limitation begins to run would be when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. The plaintiff was a party to the deed of partition though through a guardian. But, once the plaintiff attained majority, knowledge is attributed to him under the liability. In support of this conclusion, I draw support to my view from the decision of Madras High Court in the case of **Meenambal** (supra), wherein it was held:-

“24. If the earlier partition is to be set aside by the plaintiff, the question is as to what is the period of limitation for such a suit. According to the learned counsel limitation will begin from the date of knowledge of the illegality or unfairness and not from the date of the plaintiff attaining majority. It is said that the plaintiff became aware of the fact that the partition is unfair and unequal only on 16-2-1060. I am not inclined to agree with the learned counsel that the three years will not commence from the date of the plaintiff attaining majority. The minor, as soon as he attains majority should be taken to have knowledge of the transactions entered into by the guardian during his minority. Therefore, the plaintiff

should be taken to have had knowledge of the transaction on his attaining majority. Therefore, the period of limitation before which he should file a suit for setting aside the document of partition will be three years of his attaining majority.”

13. The plaintiff undisputedly attained majority on 24-03-1977. Therefore, within a period of three years, the suit ought to be filed. The legal disability on account of minority had come to an end on plaintiff's attaining majority. Therefore, even if the provision of Section 6 of the Limitation Act are taken recourse to in aid of the plaintiff, the suit ought to be filed within a period of three years. In fact, the plaintiff fully knowing that if he challenges the deed of partition, the suit would be barred by limitation, proceeded to file a suit with a simple prayer for declaration of title, without seeking to avoid partition effected in the year 1970 on the ground that the partition was void and no partition could have effected or on the ground that it was voidable at his option or on the ground of fraud and misrepresentation etc., as propounded by the Supreme Court that it was unfair, unjust or detrimental to his interest. The finding of learned trial Court, therefore, in this regard, is unsustainable in law and reversed and the suit is held to be barred by limitation.

14. During the course of arguments, learned counsel for the respondent-plaintiff argued, as pleaded by the plaintiff, that the property was in the hands of coparcener Haridas and Ram Kumar. During life time of Hari Das, upon birth of the plaintiff, the plaintiff acquired by birth, interest in the co-parcenary property along with father Hari Das and therefore, half of the property in dispute belonged to him, out of remaining half of the property, it was liable to be partitioned amongst his mother, he himself and three daughters. This entire submission is without any factual premise much less any specific pleading that the property in dispute were ancestral property and therefore, the property belonged to the coparcenary.

15. On the other hand, there is specific pleading and evidence on record which makes admitted position that Hari Das had first married Revti Bai and during subsistence of first marriage of Hari Das with Revti Bai, he contacted second marriage with Heera Bai. Moreover, even if its accepted that Hari Das and the plaintiff Ram Kumar were coparceners and there is hardly any evidence on record to prove that the property in dispute being ancestral, belonged to coparcenery. In fact, the trial Court has not framed any issue in this regard. However, the learned trial Court proceeded on the assumption that the property in dispute was ancestral property and therefore, belonged to the coparcenery and on that basis, proceeded to hold that the partition was required to be made in accordance with Section 6 of the Hindu Marriage Act, 1956. It is relevant to note that the defendants No.1 & 12 in their written statement, had clearly denied that the property was coparcenery, and they have stated that it was self-acquired property. Therefore, in view of the decision of the Supreme Court in the case of **Gurnam Kaur** (supra), even the illegitimate son would take as Class-I heir in the matter of intestate succession under Hindu Succession Act, 1956. Therefore, the legal position which emerges is that upon death of Hari Das, succession would take effect under the Hindu Succession Act, as intestate succession and thus, all Class I heirs would take the property in equal shares. Upon death of Hari Das in the year 1969, his first wife Ravti Bai, the present plaintiff and three daughters namely Enna Bai, Panna Bai and Anumati Bai were Class I heirs, thus all of them would be entitled to 1/5th share each in the property in dispute.

16. From the evidence of the plaintiff himself, it is clear that he was not only holding his share in own separate name but he had also been selling various properties not as joint family property, but as his separate property. In para 20 of his cross-examination, Ram Kumar, PW-1 had stated that he had already

sold 10 acres of land recorded in his own account. He had further deposed that he had sold those land as owner and holder. He further deposed that recently he had sold five parcel of land to five different persons. He further admits that in the last five years, he sold the lands @ Rs.15,000/- to Rs.20,000/- Per Acre. In para 26 of his cross-examination, he has further stated that the land which he has cultivating as on the date and and which have been sold, were recorded in his name in the revenue records and his name is recorded as holder of possession in the record of rights. It would thus appear that the lands which were received by the plaintiff by way of partition was separately recorded in his name in records of rights, copy of which, are in possession and time and again, the plaintiff has sold land to different persons out of his own share. He has admitted in his evidence that in his name, 28.51 acres of land has been recorded and it was so recorded prior to sale made by him. It would thus appear that the plaintiff has acted upon the partition made in the past even after he attained majority.

17. In view of the above evidence of the plaintiff having acted upon the partition in selling out substantial part of his own share which was separately recorded in his name in the revenue books/records, separately cultivated and enjoyed exclusively, he is not entitled, under the law, to challenge the partition.

18. In the case of **Narendra Kante versus Anuradha Kante and others 2010 (2) SCC 77**, facts were that the family settlement was reduced in writing under settlement deed, which was signed by all the members except one of the co-sharers. It was held that though, deed of final settlement was reduced in writing under settlement deed, it was signed by all the members, except one of the co-sharers. It was held that though, deed of final settlement of joint family is not signed by all the co-sharers, however, when the deed of family settlement was acted upon by the co-sharers, then grievance raised that it was not signed

by him, was liable to be rejected, it was held that he has no right to contend that the settlement was not valid. It was held thus:-

“As was held in the case of M.N. Aryamurthy (supra), under the Hindu Law if a Family Arrangement is not accepted unanimously, it fails to become a binding precedent on the co-sharers. Both Mr. Vivek Tankha and Mr. Anoop G. Chaudhary, learned Senior Advocates, brought this point to our notice to indicate that all the co-sharers had not consented to the Deed of Family Settlement which could not, therefore, be relied upon. The argument would have had force had it not been for the fact that acting upon the said Settlement, the appellants had also executed sale deeds in respect of the suit property. Having done so, it would not be open to the appellants to now contend that the Deed of Family Settlement was invalid.”

18. In the case of **Ranganayakamma** (supra) also, it was highlighted both on the requirement of getting partition set aside as also on the issue of limitation, as below:-

“Applicability of [Article 59](#) would indisputably depend upon the question as to whether the deed of partition was required to be set aside or not. In view of our findings aforementioned, it was required to be set aside. It is not a case where the deed of partition by reason of purported wrong factual contention raised in the plaint leading to grant of a consent decree was void ab initio. It was not. The effect of it would be that the same was required be set aside. [See Prem Singh (supra), [M/s. Bay Berry Apartments Pvt. Ltd. & Anr. v. Shobha & Ors.](#) 2006 (10) SCALE 596 and [Utha Moidu Haji v. Kuningarath Kunhabdulla and Ors.](#) 2006 (14) SCALE 156] It must, therefore, be held that the suit was barred by limitation.”

19. In the case of **Meenambal** (supra), the legal requirement of getting partition deed set aside before relief could be granted to the minor, was considered, as below:-

“In this case, in the partition under Exhibit A-8, the plaintiff was represented by his mother, the fourth defendant. The partition has also been acted upon. Even assuming that the partition is found to be unfair, unequal and unjust the plaintiff having been represented by his natural guardian is bound by the said partition until it is set aside at his instance on attaining majority.”

20. In view of what has been propounded by Their Lordship's in the Supreme Court in the case of **Ratnam Chettiar** (supra), the right of the quondam minor to have the partition set aside on the ground that the partition is unequal and unfair, cannot be disputed.

21. In ***Balkishan Das vs. Ram Narain Sahu***, ILR 1903 Calcutta 738, the Privy Council observed,

“The question upon which their Lordships have felt most difficulty is whether the document can be considered as binding upon the coparceners, who were minors at the date of it. But they think that in these proceedings they must treat it as binding upon them. There is no doubt that a valid agreement for partition may be made during the minority of one or more of the coparceners. That seems to follow from the admitted right of one co-parcener to claim a partition; and (as has been said) if an agreement for partition could not be made binding on minors a partition could hardly ever take place. No doubt if the partition was unfair or prejudicial to the minor's interests, he might, on attaining his majority, by proper proceedings, set it aside so far as regards himself.”

22. In the case of ***Meenambal*** (supra), the Full Bench Judgment of Madras High Court in the case of ***Thavva Rangasayi and others vs. Thavva Nagarathnamma***, was also noted as below:-

“In Thavva Rangasayi v. Nagarathnamma, ILR 57 Mad 95 : (AIR 1933 Mad 890) a Full Bench of this Court pointed out that a valid partition could be made outside the Court by the members of a joint family though some were minors at that time, that it is open to the adult coparceners to express their intention to separate from others, that even though some coparceners are minors such intention to separate may be communicated to the mothers or other natural guardians of the minors, that a partition effected by the adult coparceners with the mothers or other natural guardians of the minor coparceners representing the minors would be a valid partition and would be binding on the minors though it would be open to the minors when they come of age to take steps to have such a partition modified if their proper shares of the joint family property have not been secured to them. From the above decisions it is clear that the plaintiff in this case cannot ignore the earlier transaction of partition to which he was eo nomine a party and proceed to ask for a fresh partition without setting aside the earlier partition either on the ground of fraud or illegality or on the ground that it is unfair and unequal and prejudicial.”

23. In the present case, the plaintiff has not come out with any amount of pleading much less clinching evidence to prove that the partition was otherwise unjust, unfair and detrimental to his interest. It is not even the case of the plaintiff that while effecting partition in the year 1970, when the plaintiff was a minor, his interest were not fully protected and he was not allotted share which was due to him. There are no allegations of fraud or misconduct. The case of

the plaintiff is, in fact, on the premise that no partition could be effected in the manner it was done because he and his father Hari Das, were entitled to equal share in the co-parcenary property and therefore, he ought to be allotted half of the entire property and thereafter, out of the remaining half of the property, he was entitled to further share equally along with his mother Revati Bai and three sisters. On this aspect, this Court has already considered and given its finding that in the absence of there being a proof that the property in dispute being ancestral and belonged to coparcenary, it devolved upon all the Class I heirs of Late Hari Das, under the Hindu Succession Act, it being a case of intested succession. Even according to the plaintiff, the total extent of land was approximately 83 acres. As Hari Das has left, his wife Revati Bai, son Ram Kumar as also three daughters Ena Bai, Panna Bai and Anumati Bai, all of them, are entitled under the law to 1/5th share in the property which comprised of little more than 83 acres. Thus, the plaintiff was entitled to even less than 25 acres. However, the plaintiff in his evidence, has also admitted that upon partition, he was allotted more than 28 acres of land, which is more than his entitlement under the law. Therefore, the partition, in any case, does not appear to be unjust, unfair and detrimental to the interest of the plaintiff-Ram Kumar, who was minor on the date of partition.

24. In view of the aforesaid conclusion, the impugned judgment and decree is reversed and the plaintiff's suit is liable to be dismissed and accordingly dismissed with costs. The appeal is accordingly allowed. Let appellate decree be drawn accordingly.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E