

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.741 of 2000**

Chheduram S/o Gopal, resident of Konari, Tah. Baloda Bazar,
District Raipur (M.P.) (Now C.G.)

---- Appellant**Versus**

1(i) Smt.Brij Bai (died and deleted)

(ii) Smt. Sukhamati W/o Shri Mukut Ram Aged about 60 years

(iii) Smt. Hema Bai W/o Shri Mukut Ram, Aged about 55 years,

Above three wife R/o village-Konari, Tahsil BalodaBajar, Dist.
Raipur (CG)

(iv) Smt. Chhabi Bai D/o Shri Mukut Ram, W/o Shri Danendra
Patel, aged about 27 years, village – Raikheda, Tahsil and Dist.
Raipur (CG)

(v) Smt. Chetan Bai D/o Shri Mukut Ram W/o Shri Santosh Kumar
Patel, Aged about 25 years, R/o Village Dhaunde-Bhanta, Dist.
Raipur (CG)

(vi) Premlal S/o Shri Mukut Ram, aged about 20 years, R/o Village-
Konari, Tahsil Baloda Bajar, Dist. Raipur (CG)

2. Ramadhar S/o Arjun,

3. Nohar S/o Arjun,

All Residents of – Konari, Tah. Baloda Bazar, District – Raipur
(M.P.) (Now C.G.)

4. State of Madhya Pradesh Through the Collector, Raipur (M.P.)
(Now C.G.)

---- Respondents

For Appellant	:	Mr.R.S.Patel, Advocate
For Respondent No.1 to 3	:	Mr.C.D. Sharma, Advocate
For Respondent No.4	:	Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board**

05/09/2018

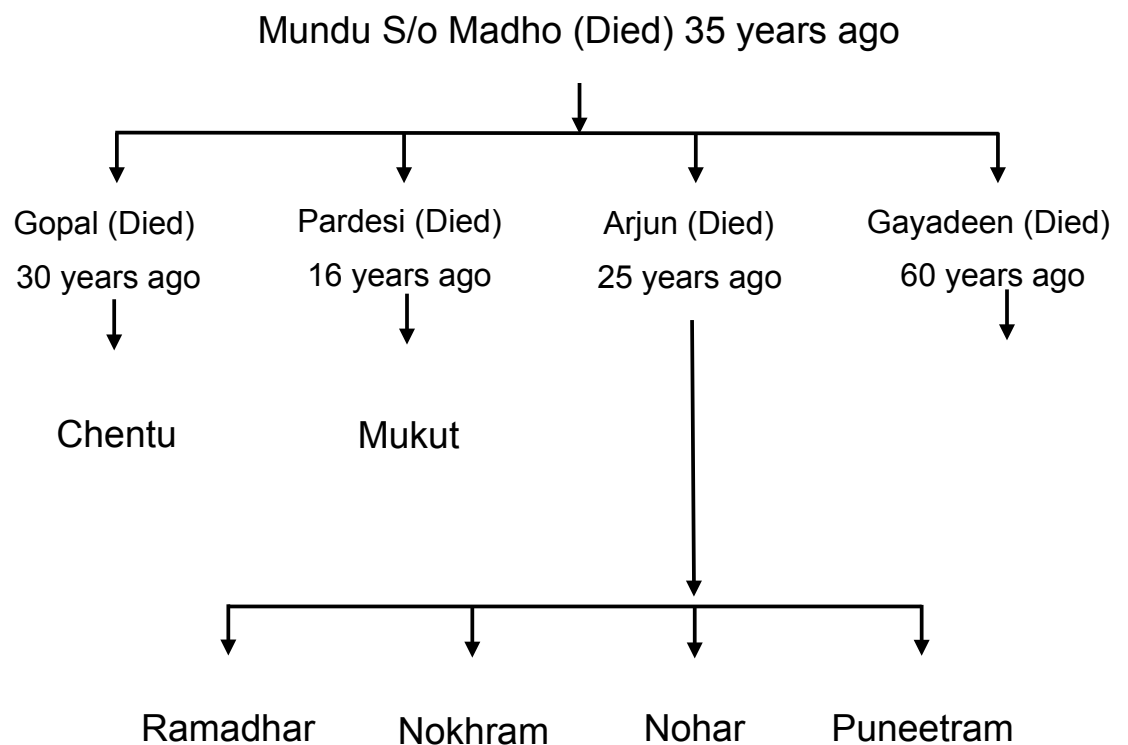
1. The substantial question of law involved, formulated and to be answered by this Court in this plaintiff's second appeal is as under:-

“Whether the findings of the First Appellate Court are perverse on the basis of settled principles of Hindu Law ?”

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) The following genealogical tree will demonstrate the relationship among the parties:-



The suit property originally belonged to Mundu S/o Matho. He had four sons namely, Gopal, Pardeshi, Arjun and Gayadin, out of four sons, Gayadin was unmarried. The plaintiff is son of Gopal. It is the case of the plaintiff that Mundu had 31.67 acres of ancestral land and the plaintiff's father was only given 6 acres of the land, therefore, he is entitled for 1/3rd share in the suit property.

(2.2) Defendants No.1 to 5 filed their joint written statement stating inter-alia that Shri Mundu, grandfather of the plaintiff, has already given 6 acres of the land to the plaintiff's father Gopal in his lifetime, as such, there is family arrangement effected between the parties, therefore, he is not entitled for further share in the suit property.

3. The trial Court after appreciating oral and documentary evidence available on record came to the conclusion that the plaintiff's father got 6 acres of the land under family arrangement during lifetime of his father Mundu and also held that after giving partition to the plaintiff's father Gopal, Mundu had given 8 acres of the land to Pardeshi, father of defendant No.1, 8 acres of the land to father of defendants No.2 to 5 under family arrangement and thereby granted decree of 1/3rd share in the suit property in favour of the plaintiff.

4. On appeal being preferred by defendants No.1, 2 and 4, the First Appellate Court by the impugned judgment and decree dated 28.4.2000 reversed the judgment and decree of the trial Court

holding that the plaintiff's father separated from his father Mundu after taking partition in his father's lifetime, therefore, the plaintiff's father was not entitled for further share in the suit property and set aside the judgment and decree of the trial Court and dismissed the suit.

5. Assailing legality, validity and correctness of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

6. Mr.R.S.Patel, learned counsel for the appellant/plaintiff, would submit that the First Appellate Court is absolutely unjustified in reversing the well reasoned judgment and decree of the trial Court, as such, the appellant is entitled for 1/3rd share in the suit property. Therefore, the judgment and decree of the First Appellate Court be set aside and that of the trial Court be restored.

7. Mr.C.D.Sharma, learned counsel for the respondents No.1 to 3/defendants, would support the impugned judgment and decree.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

9. The trial Court has clearly recorded a finding that Mundu-original holder of land, had given 6 acres of the land to plaintiff's father under family arrangement and further recorded a finding that Mundu had also given 8 acres of the land to his second son Pardeshi and 8 acres to other son Arjun though partition is not established and held the plaintiff to be entitled for 1/3rd share in the suit property. The said finding has been reversed by the First Appellate Court holding that since Mundu, plaintiff's grandfather, has already partitioned the suit property in his lifetime and separated the plaintiff's father by giving 6 acres of the land by family arrangement, which is binding on the appellant/plaintiff as his father did not made any claim of partition during his lifetime. The finding of the trial Court that under family arrangement 6 acres of the land was given to the plaintiff's father by Mundu in his lifetime, which was accepted by the plaintiff's father, has become final as it was not challenged by the plaintiff by filing cross-appeal/cross-objection in appeal filed by the defendants.

10. It is well settled law that when under the partition by a father, unequal shares are given to the sons, the transaction will be binding on the sons as a family arrangement, if acquiesced in by them. If the partition is unequal and unfair, it is open to the sons if they are majors to repudiate the partition. The partition will be good, until it is set aside and if the sons find that partition was not just and fair or unequal, it would thus be open to challenge (See **Meeyappa**

v. IT Commr,¹).

11. Likewise, in the matter of Apoorva Shantilal Shah, v. Commissioner of Income Tax, Gujarat I, Ahmedabad², the Supreme Court has held that partial partition of joint family property between father and minor sons is permissible and considered the effect of unequal distribution amongst co-sharers. It was observed as under:-

“23. We must, therefore, hold that partial partition of properties brought about by the father between himself and his minor sons cannot be said to be invalid under the Hindu Law and must be held to be valid and binding. We wish to make it clear that this right of the father to effect a partial partition of joint family properties between himself and his minor sons, whether in exercise of his superior right as father or in exercise of the right as patria potestas has necessarily to be exercised bona fide by the father and is subject to the right of the sons to challenge the partition if the partition is not fair and just.

27.....In our opinion, a partial partition of any joint family property by the father between himself and his sons does not become invalid on the ground that there has been no equal distribution amongst the co-sharers. It is expected that the father who seeks to bring about a partial partition of joint family properties will act bonafide in the interest of the joint family and its members, bearing in mind in particular the interests of the minor sons. If however, any such partial partition causes any prejudice to any of the minor sons and if any minor son feels aggrieved by any such partial partition, he can always challenge the validity of such partial partition in an appropriate proceeding and the validity of such partition will necessarily have to be adjudicated upon in the proceeding on a proper consideration of all the

¹ AIR 1951 Mad 506

² AIR 1983 SC 409

facts and circumstances of the case. Till such partial partition has been held to be invalid by any competent court, the partial partition must be held to be valid.”

12. In Mulla Hindu Law, 23rd Edition, learned author has stated about the partition by father during his lifetime as under:-

“This right of a father at times described as his 'superior power' or 'peculiar power' or *patria potestas* was reiterated by the Supreme Court in Apoorva Shantilal v IT Commissioner, Gujarat, after referring to a number of decisions on the subject and it was observed that it was recognised in ancient Hindu law and due effect was given to the same. It was also held that a father was entitled to effect a partial partition of joint family properties by virtues of his right as *patria potestas* [See newly added Article 328 (2a)]. There was a subsequent amendment in section 171 of the Income Tax Act, that no such partial partition would be recognised for the purposes of that enactment.”

12. Reverting to the facts of the present case, it is quite apparent that the trial Court has clearly recorded a finding that under family arrangement Mundu had given share to plaintiff's father as well as two other sons which has been accepted by the plaintiff's father and other defendants, which was not questioned by the plaintiff's father during his lifetime and after death of his father long back, suit was filed claiming partition. It is finding of the trial Court that by way of family arrangement, the plaintiff's grandfather Mundu has already separated the plaintiff's father during his lifetime by giving 6 acres of land, which the plaintiff's father accepted by not challenging the

same and same is binding to the plaintiff also. The plaintiff cannot be allowed to question the said share given to his father by way of family arrangement by filing suit after death of his father.

13. The First Appellate Court is absolutely justified in reversing the judgment and decree of the trial Court granting in favour of the plaintiff. In view of above, the substantial question of law is answered against the plaintiff and the judgment and decree of the First Appellate Court are hereby re-affirmed.

14. Accordingly, the second appeal is dismissed finding no merits. A decree be drawn up accordingly. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-