

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.421 of 2006

1. Bisauha Singh, aged 49 years, S/o Bhima Singh
2. Vishal Singh, aged 45 years, S/o Bhima Singh
3. Ramawtar, aged 35 years, S/o Bhima Singh
4. Pramod Singh, aged 30 years, S/o Bhima Singh

All R/o Village Khektara, Tahsil Lormi, District Bilaspur

(Defendants No.1 to 4)

---- Appellants

Versus

1. Baldau Singh, aged 70 years, S/o Bhima Singh

(Plaintiff)

2. Aniruddha Singh, aged 55 years, S/o Bihari Singh
3. Yugal Kishore, aged 60 years, S/o Jahar Singh
4. Shashi Bhushan Singh, aged 53 years, S/o Jahar Singh

All R/o Village Khektara, Tahsil Lormi, Distt. Bilaspur (C.G.)

5. Amrika Bai, D/o Bihari Singh, W/o Ramadhar, R/o Village Bargaon, Tahsil Mungeli, Distt. Bilaspur
6. Chandrika Bai, aged 52 years, D/o Bihari Singh, W/o Ganesh Singh, R/o Bramhan Para, Raipur (C.G.)
7. Ambi Bai, D/o Bihari Singh, W/o Gore Singh, R/o Ghasia Para, Bilaspur (C.G.)
8. Maina Bai, aged 45 years, D/o Jahar Singh, W/o Ram Kumar, R/o Village Bhaisa, P.S. Bemetara, Distt. Durg
9. State of Chhattisgarh, through Collector, Bilaspur (C.G.)

(Defendants)

---- Respondents

For Appellants: Mr. Abhijeet Mishra, Advocate.
 For Respondent No.1: Mr. Anand Kumar Gupta, Advocate.
 For Respondent No.9 / State: -
 Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

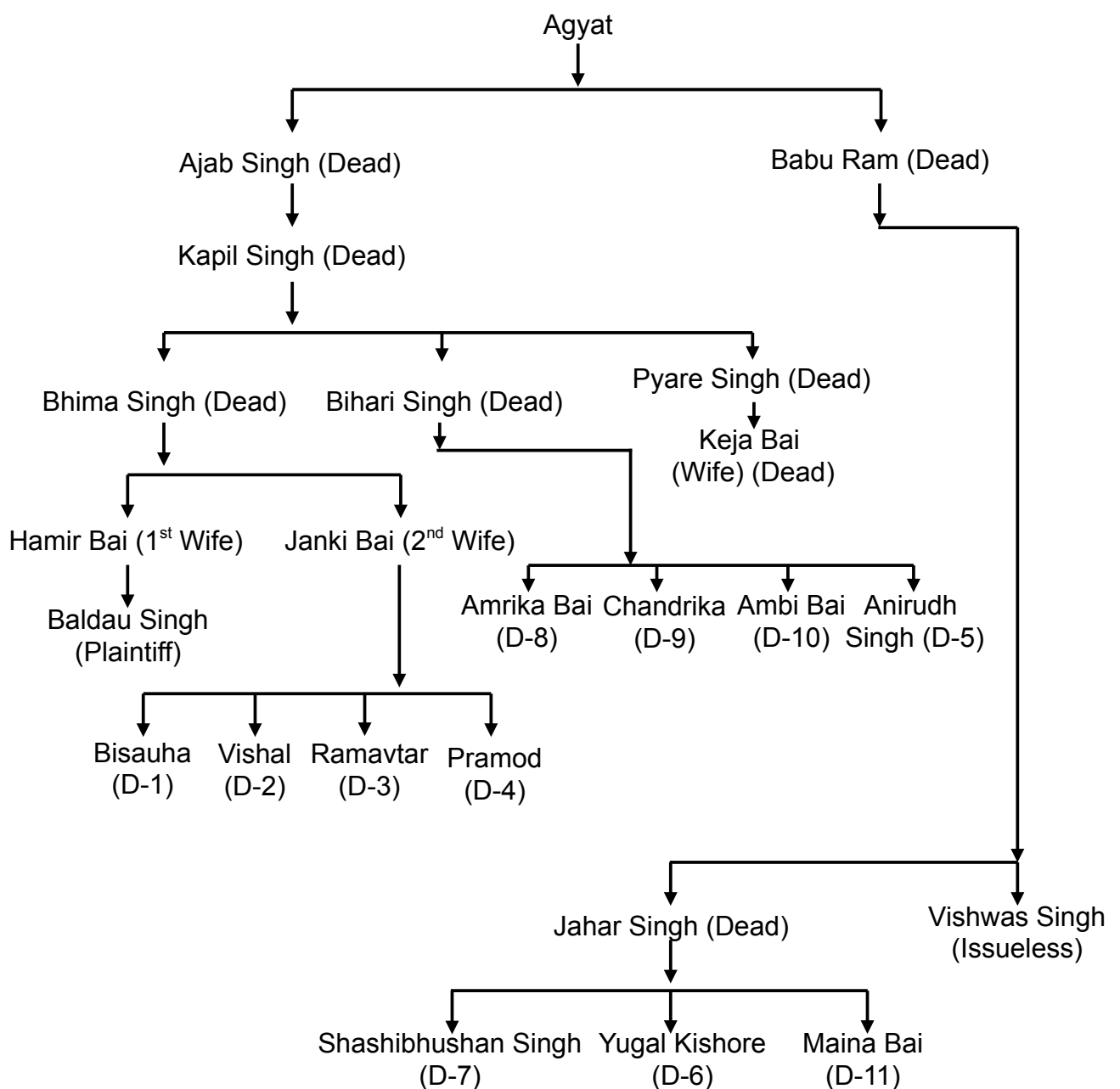
16/08/2019

1. This second appeal preferred by defendants No.1 to 4 was admitted for hearing by formulating the following substantial question of law: -

“Whether learned first appellate Court is justified in holding that though partition has already taken place between the parties, but the suit tank has not been partitioned by metes and bounds thus, plaintiff is entitled for a decree that he is co-sharer in the suit tank?”

[For the sake of convenience, parties hereinafter will be referred as per their status in the plaint before the trial Court.]

2. The following genealogical tree would demonstrate the relationship among the parties herein: -



1. The suit property was originally held by Bhima Singh. He had two wives. The plaintiff is the son born out of his wedlock with Smt. Hamir Bai (first wife) and he entered into second marriage with Janaki Bai after the death of Hamir Bai and defendants No.1 to 4 are his sons out of his wedlock with his second wife Janaki Bai. Defendants No.5, 8, 9 & 10 are son and daughters of Bihari Singh – brother of Bhima Singh. Defendants No.6, 7 & 11 are successors-in-interest of Bhima Singh. The dispute mainly relates to suit tank.
2. Sole plaintiff Baldau Singh brought an action for declaration of title pleading inter alia that after death of Bhima Singh in the year 1975, the plaintiff and his brothers defendants No.1 to 4 inherited the suit property left by Bhima Singh and partitioned the entire property except the suit tank, but thereafter, in the same year, vide Ex.D-1, defendants No.1 to 4 & 5 to 11 got their names mutated in the revenue records vide order dated 29-10-1975 though the plaintiff and others are in joint possession of suit tank without knowledge of the plaintiff which he questioned before the Assistant Settlement Officer, Lormi, but that was rejected on 21-1-2000 vide Ex.P-1 leading to filing of suit for declaration of title, as he is in joint possession of the suit tank with the defendants and therefore, decree to that effect be granted in his favour.
3. Defendants No.1 to 4 filed their joint written statement stating inter alia that during the lifetime of Bhima Singh – their father, the plaintiff separated after taking partition of his share and at that time, coparcenary of Bhima Singh – defendants No.1 & 2 was in existence and thereafter, defendants No.3 & 4 also joined the said coparcenary as they were born later and as such, the coparcenary

consisted of Bhima Singh and defendants No.1 to 4. Since the plaintiff had already separated from the coparcenary by taking partial partition of his share, therefore, he is no longer member of the coparcenary and as such, his name has rightly been not entered in the revenue records vide order dated 29-10-1975 on suit tank and after death of their father, defendants No.1 to 4 have inherited the property by inheritance including the suit tank, as such, the suit deserves to be dismissed.

4. The trial Court after appreciating oral and documentary evidence on record, dismissed the suit holding that the plaintiff has already separated from the coparcenary of Bhima Singh and defendants No.1 to 4, as such, he has no right and title over the suit tank. Feeling aggrieved against the judgment & decree passed by the trial Court dismissing the suit, the plaintiff preferred first appeal before the first appellate Court. The first appellate Court set aside the judgment & decree of the trial Court holding that since the suit tank was not subjected to partition which is indivisible in nature, therefore, the plaintiff has right and title over the suit tank. Questioning that judgment & decree this appeal has been preferred under Section 100 of the CPC and substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
5. Mr. Abhijeet Mishra, learned counsel appearing for the appellants / defendants No.1 to 4, would submit that admittedly, the plaintiff was earlier the member of Joint Hindu Family, but as per his intention shown, during the lifetime of Bhima Singh, partial partition has been taken by him and he got separated from the Joint Hindu Family,

therefore, he had already relinquished all his rights to claim over the property left including in the suit tank, after partial partition and once the status of coparcenary is severed, then again he cannot claim share in the said suit tank unless the fact of reunion is pleaded and established in accordance with law which he has omitted to plead and establish and therefore the trial Court was absolutely justified in dismissing the suit, but the first appellate Court interfered with the finding of the trial Court by merely holding that the suit tank is indivisible in nature therefore he has right to seek further partition over the suit tank left after partial partition in which the plaintiff has separated himself by taking share in the coparcenary property. As such, the judgment & decree of the first appellate Court deserve to be set aside and that of the trial Court deserves to be restored.

6. Mr. Anand Kumar Gupta, learned counsel for respondent No.1 / plaintiff, would submit that the first appellate Court is absolutely justified in holding that the suit tank being indivisible in nature has not been subjected to partition though partial partition had earlier affected prior to 1955 in his favour and the plaintiff has separated after taking his share and, therefore, the first appellate Court has rightly concluded that the plaintiff has right to seek partition in the suit tank which has been granted by setting aside the judgment & decree of the trial Court, which is strictly in accordance with law and no exception can be taken by defendants No.1 to 4 in this appeal, as such, the second appeal deserves to be dismissed with cost.
7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.

8. The suit tank admittedly, belonged to and held by one Bhima Singh which was one of the coparcenary properties consisting of Bhima Singh, his son Baldau Singh (plaintiff), defendants No.1 & 2 and defendants No.3 & 4, as they had born later but they also became members of coparcenary after taking birth in the coparcenary family. It is admitted position on record which is spelt out from the plaint averments itself that the plaintiff sought partition during the lifetime of his father Bhima Singh by expressing his intention to get severed from the coparcenary which was accepted by Bhima Singh and other members of coparcenary and by taking separate property on partition, the plaintiff separated from the Joint Hindu Family having coparcenary property. As such, partial partition took place in which the plaintiff got his share by partial partition and he has separated from the joint family property by taking his share. Therefore, there is an oral partial partition which took place so far as this coparcenary property is concerned in which the suit tank was also part of coparcenary property. It is the case of the defendants that in partition, the suit tank fell in the share of defendants No.1 to 4 and which remained in the share of defendants No.1 to 4. The fact of partition has not only been pleaded in paragraph 2 of the plaint, but also the plaintiff candidly in his cross-examination paragraphs 2, 3 and 4 of his statement before the trial Court has clearly admitted that he got separated from the joint family by effectuating an oral partial partition in the year 1955 during the lifetime of his father Bhima Singh and obtained his share in coparcenary property.

9. The question of consideration is, what is the meaning of “partition” ?

10. The Supreme Court in the matter of Kalyani (dead) by L.Rs. v. Narayanan and others¹ at paragraph 10 has defined the word “partition” by holding that an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenary with right of survivorship and observed as under: -

“10. ... Partition is a word of technical import in Hindu law. Partition in one sense is a severance of joint status and coparcener of a coparcenary is entitled to claim it as a matter of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenary with right of survivorship and such separated member holds from the time of disruption of joint family as tenant-in-common. Such partition has an impact on devolution of share of such members. It goes to his heirs displacing survivorship. ...”

11. Thereafter, in the matter of Shub Karan Bubna alias Shub Karan Prasad Bubna v. Sita Saran Bubna and others², R.V. Raveendran, J. speaking for the Supreme Court, defined the word “partition” in following terms:-

“5. “Partition” is a redistribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty.

6. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. “Separation of share” is a species of “partition”. When all co-owners get separated, it is a partition. Separation of share(s) refers to a division where only one or only a few among

1 AIR 1980 SC 1173

2 (2009) 9 SCC 689

several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother.”

12. The status of joint family property after partition was delineated by the Supreme Court in the matter of Bhagwati Prasad Sah and others v. Dulhin Rameshwari Kuer and another³, in which it was held that there is no presumption because one of the members of the family separated himself, there has been separation with regard to all. It was observed as under: -

“[7] ... The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but, as it is admitted here, that Imrit, one of the coparceners, did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the plaintiff's side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other coparceners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief. ...”

13. This principle has been reiterated by the Supreme Court in the matter of Addagada Raghavamma and Anr. v. Addagada Chenchamma and Anr.⁴.

14. Likewise, in the matter of Hans Raj Agarwal and another v. Chief Commissioner of Income Tax and others⁵, the Supreme Court while dealing with the consequences of partition, placing reliance

3 AIR 1952 SC 72

4 AIR 1964 SC 136

5 (2003) 2 SCC 295

upon its earlier decision in the matter of Nani Bai v. Gita Bai⁶, held as under: -

“Partition in the Mitakshara sense may be only a severance of the joint status of the members of the coparcenary, that is to say, what was once a joint title has become a divided title though there has been no division of any properties by metes and bounds. Partition may also mean what ordinarily is understood by partition amongst co-sharers who may not be members of a Hindu coparcenary.... For partition in the latter sense of allotting specific properties or parcels to individual coparceners, agreement amongst all the coparceners is absolutely necessary. *Such a partition may be effected orally*, but if the parties reduce the transaction to a formal document which is intended to be the evidence of the partition, it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition, and is, thus, within the mischief of Section 17(1)(b).”

15. The principle of law laid down and enunciated in Bhagwati Prasad Sah (supra) was further followed by the Supreme Court in Kesharbai alias Pushpabai Eknathrao Nalawade (Dead) by LRS. And another v. Tarabai Prabhakar Rao Lalawade and others⁷ and it has been held that once a partition whether general or partial in shape of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. The relevant report states as under:-

“21..... It is a settled principle of law that once a partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Undoubtedly the joint and undivided family being the normal condition of a Hindu family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition (of status or property) whether general or partial, is shown to have taken place in a family.....”

16. Mulla in Hindu Law (2013, 21st Edition) at page 527 has dealt with

⁶ AIR 1958 SC 706

⁷ (2014) 4 SCC 707

the status of non-separating members in partial partition as to the persons separating and held as under: -

“... It is also now beyond doubt that a member of such a joint family can separate himself from the other members of the joint family and is on separation entitled to have his share in the property of the joint family ascertained and partitioned off, for him, and that the remaining coparceners, without any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained after such a partition of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous coparcener had separated from them. ...”

17. Likewise, **Mulla in Hindu Law** (2013, 21st Edition) at page 538 has dealt with the “Effect of Partition” holding that the effect of partition is to dissolve the coparcenary, with the result, that the separating members henceforth hold their respective shares as their separate property, and the share of each member will pass on his death to his heirs. However, if a member while separating from his other coparceners continues joint with his own male issue, the share allotted to him on partition, will in his hands, retain the character of a coparcenary property as regards the male issue.

18. Reverting to the facts of the present case in light of principle of law enunciated by the Supreme Court in the above-stated judgments, it is quite vivid that in the present case, the plaintiff in the year 1955 expressed his individual intention in unequivocal terms to separate himself from the rest of the joint and undivided family as it is evident from the plaint statement as well as in his statement before the trial Court and accordingly, oral partition was effected and he was given his share in coparcenary property which resulted into disruption of coparcenary status in respect of the

plaintiff that is the separating member and as such, the status and undivided joint family has already been disrupted in respect of and qua the separating member i.e. the plaintiff herein. Once the severance is effected by explicit declaration as it is the case of the plaintiff that partial partition had already taken place and he has separated from the family. Thus, it is quite clear that once severance or partial partition of a person takes place and intention to separate is unequivocally clear, then such severance from the joint status cannot be revoked and thereafter the claim of joint ownership over the claim in rest of the property cannot be made by the separating member i.e. the plaintiff herein unless and until he claims reunion with the joint family by making necessary pleading and proving the same, he is not entitled for partition in the subject property.

19. **Mayne's Hindu Law** (11th Edition) at page 569 has held the legal position as to burden of proof of reunion as under: -

“As the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a reunion. To establish it, it is necessary to show, not only that the parties already divided, lived, or traded together, but that they did so with the intention of thereby altering their status and of forming a joint estate with all its, usual incidents. It requires very cogent evidence to satisfy the burden of establishing that by agreement between them, the divided members of a joint Hindu family has succeeded in so altering their status and to bring themselves within all the rights and obligations that follow from the fresh formation of a joint undivided Hindu family.”

20. In the matter of **Bhagwan Dayal (since deceased) and thereafter his heirs and legal representatives Bansgopal Dubey and another v. Mst. Reoti Devi (deceased) and after**

her death, Mst. Dayavati, her daughter⁸, the Supreme Court placing heavy reliance upon the leading authority on reunion in the matter of Balabux Ladhuram v. Rukhmabai⁹ held as under: -

“It is also well settled that to constitute a reunion there must be an intention of the parties to reunite in estate & interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion.”

21. Now, coming back to the pleadings of the plaintiff, in the instant case, admittedly, it is the case of the plaintiff that he got separated from the joint and undivided family and living separately thereafter after taking his share. Nowhere in the plant, it is stated that reunion was attempted with the rest of the family in relation to him by blending the property which he got in partition in 1955, as such, the plea of reunion which is a condition precedent for claiming joint ownership over the residue coparcenary property is a must.

22. The Supreme Court in the matter of Puttrangamma and others v. M.S. Ranganna and others¹⁰ has held that subsequent agreement to reunite with the joint family is mandatory to revoke the partial partition and claim joint ownership of property. It was observed as under: -

“(5) ... When once a communication of the intention is made which has resulted in the severance of the joint family status it was not thereafter open to Savoy

8 AIR 1962 SC 287

9 30 Ind App 130 (PC) : 1903 United Kingdom Privy Council (UKPC) 22

10 AIR 1968 SC 1018

Ranganna to nullify its effect so as to restore the family to its original joint status. If the intention of Savoy Ranganna had stood alone without giving rise to any legal effect, it could, of course, be withdrawn by Savoy Ranganna but having communicated the intention, the divided status of the Hindu joint family had already come into existence and the legal consequences had taken effect. It was not, therefore, possible for Savoy Ranganna to get back to the old position by mere revocation of the intention. It is, of course, possible for the members of the family by a subsequent agreement to reunite but the mere withdrawal of the unilateral declaration of the intention to separate which already had resulted in the division in status cannot amount to an agreement to reunite. It should also be stated that the question whether there was a subsequent agreement between the members to reunite is a question of fact to be proved as such. In the present case, there is no allegation in the Written Statement nor is there any evidence on the part of the respondents that there was any such agreement to reunite after January 8, 1951. ...”

23. Thus, from the plaint averments and the evidence brought on record, there is nothing to demonstrate that the plaintiff has attempted for reunion with the joint family except claiming that the suit tank has not been subjected in the partial partition held. Since the plaintiff having admitted the fact of oral partial partition with the rest of the coparceners prior to 1955 in the lifetime of Bhima Singh and as such, the partition had already taken place and the status of joint family has already been disrupted in respect of the separating member i.e. the plaintiff and he has brought an end to the coparcenary with the right of survivorship and that partition has an impact on devolution of shares of such members. Since the plaintiff has already separated from the coparcenary by taking his share and thereafter, he has no right and interest over the coparcenary property unless the fact of reunion is pleaded and established which he has miserably failed to plead and establish that after disruption of joint family status at any point of time, he blended the

property which he got on partition to the other members and other members consented to admit the plaintiff as a coparcener. In absence of such pleading, he would remain a separate member from the said coparcenary and he cannot claim any part of the property which he did not get on earlier partition and remain in the residuary coparcenary of the other non-separating coparceners. The reason assigned by the first appellate Court that since the suit tank is indivisible in nature, therefore it was not partitioned and as such, it is open and liable to be partitioned is also not correct.

24. **Mulla in Hindu Law** (2013, 21st Edition) page 492 states about the property indivisible by its nature. It states as under: -

“Property indivisible by its nature.—Where property is in its nature indivisible, as for instance, in the case of animals, furniture, etc., it may be sold and its value distributed; or it may be valued and retained by one coparcener exclusively and the amount credited to his share. In the case of a will, it may be enjoyed by the coparceners in turn or jointly. Where a strip of land is reserved as common passage by a decree in a suit for partition for the use of the coparceners, none of them is entitled to a partition of that strip. Where a stockbroker's card is issued by the Stock Brokers' Association in the name of a coparcener, he must account for its value at the time of the partition.”

25. Assuming the property in dispute i.e. the suit tank to be in nature indivisible, as stated above, it cannot be held that the suit tank could not have been divided in the manner indicated by learned author in the above-stated principle laid down and noticed herein by selling the suit tank and dividing the sale proceeds to the members of coparcenary.
26. In view of the aforesaid legal analysis, I am unable to hold that merely because the suit tank is indivisible by its nature, it was not subjected to partition. Such a finding runs contrary to the well

settled principles of law in this regard and it is liable to be set aside.

Therefore, the judgment & decree of the first appellate Court is set aside and that of the trial Court is restored. Consequently, the appeal is allowed. No order as to cost(s).

27. Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

Soma