

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.219 of 2006

Shrawan Kumar Gupta, S/o Raghvendra Lal Gupta, aged 39 years,
R/o Village Bodla, Tah. Kawaardha, Distt. Kabirtham (C.G.)

(Plaintiff)

{Respondent (in first appeal)}

---- Appellant

Versus

1. Yashoda Bai, widow of Ramanuj Gupta, aged 46 years.
(Legal heir of Ramanuj)

2. Ram Narayan, S/o Raghvendra Lal Gupta, aged 45 years.

Both are R/o Village Bodla, Tah. Kawardha, Distt. Kabirdham (C.G.)

3. Vyas Narayan Gupta, S/o Shri Raghvendra Lal Gupta, aged about 40
years, R/o Bodla, Tahsil Kawardha, District Kabirdham (C.G.)

(Defendants)

{Appellants (in first appeal)}

---- Respondents

For Appellant/Plaintiff: Mr. Malay Shrivastava, Advocate.

For Respondents/Defendants: -

None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

30/08/2019

1. The second appeal preferred by the plaintiff was admitted for hearing
by formulating the following substantial question of law:-

“Whether the finding of the first appellate court declaring
share of appellant for 1/5th only in Schedule 'A' is
perverse?”

2. The suit property was originally held by Raghavendralal Gupta. He
died in the year 1981 leaving behind the plaintiff and three sons –
defendants No.1 to 3 and one daughter Vimala Bai who is not party in
the suit or in the appeal. The plaintiff being the youngest son filed suit
for partition and possession that he is entitled for $\frac{1}{3}$ share in the suit
property, as defendant No.1 had already separated from his father by

taking his share during the lifetime of his father Raghavendralal Gupta from getting the share of his mother Dhup Kunwar which the defendants denied by filing written statement. Ultimately, the trial Court accepted his submission and granted $\frac{1}{3}$ share in the suit property against which the defendants preferred first appeal, however, the first appellate Court held that the plaintiff, three brothers and one daughter each of them will be entitled for $\frac{1}{5}$ share against which this second appeal has been preferred and question of law has been formulated which has been set-out in the opening paragraph of this judgment.

3. Mr. Malay Shrivastava, learned counsel appearing for the appellant / plaintiff, would submit that since the holder of the land i.e. father of the plaintiff Raghavendralal Gupta died in the year 1981, the succession opened on that day and the amendment in the Hindu Succession Act, 1956 which came into force with effect from 9-9-2005 would not be applicable and therefore daughter Vimala Bai will get the share of her father only and as such, the plaintiff is entitled for more share than what he has been allotted by the first appellate Court.
4. None present for the respondents, though served.
5. I have heard learned counsel for the appellant/plaintiff, considered his submissions made hereinabove and also went through the records with utmost circumspection.
6. In the instant case, in order to decide the dispute, it would be appropriate to consider the decision rendered by the Supreme Court in the matter of Smt. Raj Rani v. The Chief Settlement Commissioner, Delhi and others¹ in which the Supreme Court has held as under:-

¹ AIR 1984 SC 1234

“17.....The interest of Nanak Chand shall be deemed to by the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death irrespective of whether he was entitled to claim partition or not. In view of Explanation I of Sec. 6, Nanak Chand would have got 1/5th interest on partition between him and his wife and three sons. If once the interest of Nanak Chand is determined to be 1/5th before his death, his interest would devolve upon his widow, three sons and three daughters equally and thus the share of each one of them would be $1/5 \times 1/7$, that is, 1/35th each. The claim of these heirs cannot be denied merely because some of them have not advanced the claim. When the question of determination of share among the heirs crops up before the Court, the Court has to see that every heir gets his due. Shri Itorora appearing for the respondents could not successfully meet the point raised on behalf of the appellant.

18. For the foregoing discussion the appeal must succeed and it is accordingly allowed and the judgment of the High Court as well as of the authorities below are set aside and shares of the three sons, three daughters and the widow are determined as follows: Each of the three sons 1/35; each of the three daughters-1/35, the widow-1/35+1/5. As the widow has inherited the interest of her husband after his death her share would be augmented by 1/5. Therefore, her share would come to $1/35+1/5=8/35$.”

7. Reverting to the facts of the present case, since the property in question is Mitakshara coparcenary property, the plaintiff's interest in suit property would be determined in accordance with the provisions of Explanation I of Section 6 of the Hindu Succession Act. In the instant case, the co-parcenary consisted of Ragvendra Lal Gupta and his four sons namely, Ramanuj (defendant No.1), Ram Narayan (defendant No.2), Vyas Narayan (Defendant No.3) and Sharwan Gupta (plaintiff) and each of them will get 1/5th share in the suit property in notional partition and thereafter 1/5 share of Ragvendra Lal Gupta, father of the plaintiff and the defendants will further be divided between four sons and daughter Bimla Bai (defendant No.4), as such, the plaintiff would be entitled for $1/5+1/25$ share in the suit property.
8. Accordingly, the judgment and decree of the first appellate Court is modified and the plaintiff will be entitled for $1/5+1/25$ share in the suit

property. The second appeal is allowed in part and the judgment & decree of the first appellate Court is accordingly modified.

9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-