

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.331 of 2007

Chaturram S/o Bhaiya Ram Sahu Aged about 47 yrs.
Resident of Village Mokhali, Tahsil Dongargaon,
Distt. Rajnandgaon (CG)

(Defendant)

---- Appellant

Versus

1. Smt. Chandrika W/o Shri Dayaram Sahu, Aged about 52
Yrs. R/o Village Baigatola, Tahsil & Distt.
Rajnandgaon (CG)

2. Nagina Bai D/o Bhaiyaram Sahu Aged about 42 years,
R/o Village Mokhali Tahsil & Distt. Rajnandgaon
(CG)

---- Plaintiffs

3. State of Chhattisgarh Through, Collector
Rajnandgaon (CG)

---- Respondents

For Appellant/Defendant	:Mr.Prakash Tiwari, Advocate
For Res.No.1&2/Plaintiffs	:Mr.Rakesh Thakur, Advocate
For Respondent No.3	:Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

03/10/2019

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

"Whether, the finding of both the Courts
below that daughter will get right as per
section 6 of the Hindu Succession Act prior
to the amended Act, 2005 can be
justified?"

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

2. The suit property was originally held by Bhaiyaram
Sahu. The plaintiffs are daughters and defendant

No.1 herein is son of Bhaiyaram Sahu. The suit property is ancestral property of Bhaiyaram Sahu. The plaintiffs filed a suit for declaration of title and partition in the suit property. The trial Court by its judgment and decree dated 1.5.2004 held that each of the plaintiffs will be entitled for 1/3 share in the suit property of their father along with defendant No.1, which was upheld by the first appellate Court, against which, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant, in which substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

3. Mr.Prakash Tiwari, learned counsel for the appellant/defendant, would submit that both the Courts below have committed illegality by holding that each of the plaintiffs will be entitled for 1/3 share in the suit property of their father along with defendant No.1 as the suit property will be notionally partitioned between Bhaiyaram Sahu and his son defendant No.1-appellant herein and both will get 1/2 share in the suit property and Bhaiyaram Sahu's 1/2 share will further be decided between the plaintiffs and defendant No.1 and each of the plaintiffs will get $1/2 \times 1/3$ share in the suit property and defendant No.1 will get

1/2+1/6 in the suit property, as such, the decree deserves to be modified accordingly.

4. Mr. Rakesh Thakur, learned counsel for respondents No.1 and 2/plaintiffs, would support the impugned judgment and decree.

5. I have heard learned counsel for the parties, considered their rival 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:-

".....6. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property, shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative, specified in that class who claims, through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

¹ AIR 1984 SC 1234

Explanation I.-For the purposes of this section, the interest of a Hindu Mitakshara coparcenery shall be deemed to be 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."

17.....The interest of Nanak Chand shall be deemed to be 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 $\frac{1}{5} \times \frac{1}{7}$, that is, $\frac{1}{35}$ th 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 $\frac{1}{35}$; each of the three daughters $\frac{1}{35}$, the widow $\frac{1}{35} + \frac{1}{5}$. As the widow has inherited the interest of her husband after his death her share would be augmented by $\frac{1}{5}$. Therefore, her share would come to $\frac{1}{35} + \frac{1}{5} = \frac{8}{35}$."

7. Reverting to the facts of the present case, admittedly, the suit property was ancestral property in the hands of Bhaiyaram Sahu and it will be notionally partitioned between Bhaiyaram Sahu

and defendant No.1 and both will get $1/2$ share in the suit property and thereafter $1/2$ share of Bhaiyaram Sahu will be further divided between defendant No.1 and two plaintiffs and each of them will get $1/3$ share in the share of Bhaiyaram Sahu, as such, each of the plaintiffs will be entitled for $1/2 \times 1/3 = 1/6$ share in the suit property and defendant No.1 will be entitled for $1/2 + 1/6$ share in the suit property.

8. Accordingly, the judgment and decree of both the Courts below are modified and defendant No.1 will be entitled for $1/2 + 1/6$ share in the suit property and each of the plaintiffs will be entitled for $1/6$ share in the suit property. The second appeal is allowed in part and the judgment & decree of both the Courts below are accordingly modified.

9. Decree be drawn-up accordingly. NO cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

B/-