

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 257 of 2007****Judgment reserved on 06/03/2020****Judgment delivered on 16/03/2020**

1. Kheduram Sahu (died) through LRs. :-

A. Dhanukram, Aged about 42 years, S/o Late Shri Kheduram Sahu.

B. Bisahinbai, Aged about 45 years, D/o Late Shri Kheduram Sahu.

C. Rohnibai, Aged about 48 years, Wd/o Late Shri Kheduram Sahu.

D. Gaisuram Sahu, Aged about 30 years, S/o Late Shri Kheduram Sahu.

E. Dhanendra Kumar, Aged about 23 years, S/o Late Shri Kheduram Sahu.

All R/o Village Koylari, P.H. No. 46, Revenue Circle, Birendra Nagar, District Kabirdham, Chhattisgarh.

F. Ragni Bai, Aged about 25 years, D/o Late Shri Kandara, W/o Shri Siyaram, R/o Bhadu Tala, R.I. Circle and Tahsil Sahashpur Lohara, Distt. Kabirdham, Chhattisgarh.

---Appellants/LRs. Of Plaintiff

Versus

1. Agasiya Bai Sahu D/o Shri Phoolsingh (died) through LRs. :-

A. Dhundh Ram alias Budhram, Aged about 70 years, S/o Late Shri Raruha Sahu.

B. Navtariha, Aged about 40 years.

C. Gautam, Aged about 30 years.

B and C both Sons of Shri Dhundh Ram Sahu.

All Agriculturists and R/o Village Kolyari P.C. No. 46, R.I. Circle, Birendra Nagar Tahsil Sahaspur, Lohara, Civil and Revenue District Kabirdham, Chhattisgarh.

D. Chintabai, Aged about 35 years, D/o Shri Dhundh Ram W/o Shri Musi Ram Sahu, Agriculturist, Village Dhangaon, R.I. Circle and Tahsil Sahaspur, Lohara, Revenue and Civil District Kabirdham, Chhattisgarh.

2. Nemin Bai Sahu, Aged about 35 years, W/o Shri Kaluram Sahu R/o Village Post Koylari, P.H. No. 46, Revenue Inspector Circle Birendra Nagar, Tahsil Sahaspur Lohara, Distt. Kabirdham, Chhattisgarh.

3. Keja Bai, Aged about 45 years, W/o Shri Meghnath Sahu, Occupation Agriculturist, R/o Village Bami, Tahsil Sahaspurlohara, District Kabirdham, Chhattisgarh.

4. Jagdish Sahu, Aged about 35 years, S/o Shri Kejauram Sahu, Occupation Advocate and Agriculturist.

5. Jageshwar Ram Sahu, Aged about 30 years, S/o Shri Kejauram Sahu, Occupation Agriculturist.

Both R/o Village Post Koylari, P.H. No. 46, Revenue Inspector Circle Birendra Nagar, Tahsil Sahaspurlohara, District Kabirdham, Chhattisgarh.

6. State of Chhattisgarh, Through The Collector, District Kabirdham, Chhattisgarh.

--- Respondents/Defendants

For Appellants :- Mr. Shashi Bhushan Tiwari, Advocate
For Respondents:- Mr. H.S. Patel, Advocate
For State :- Mr. Ravi Bhagat, Dy. Government
Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Judgment

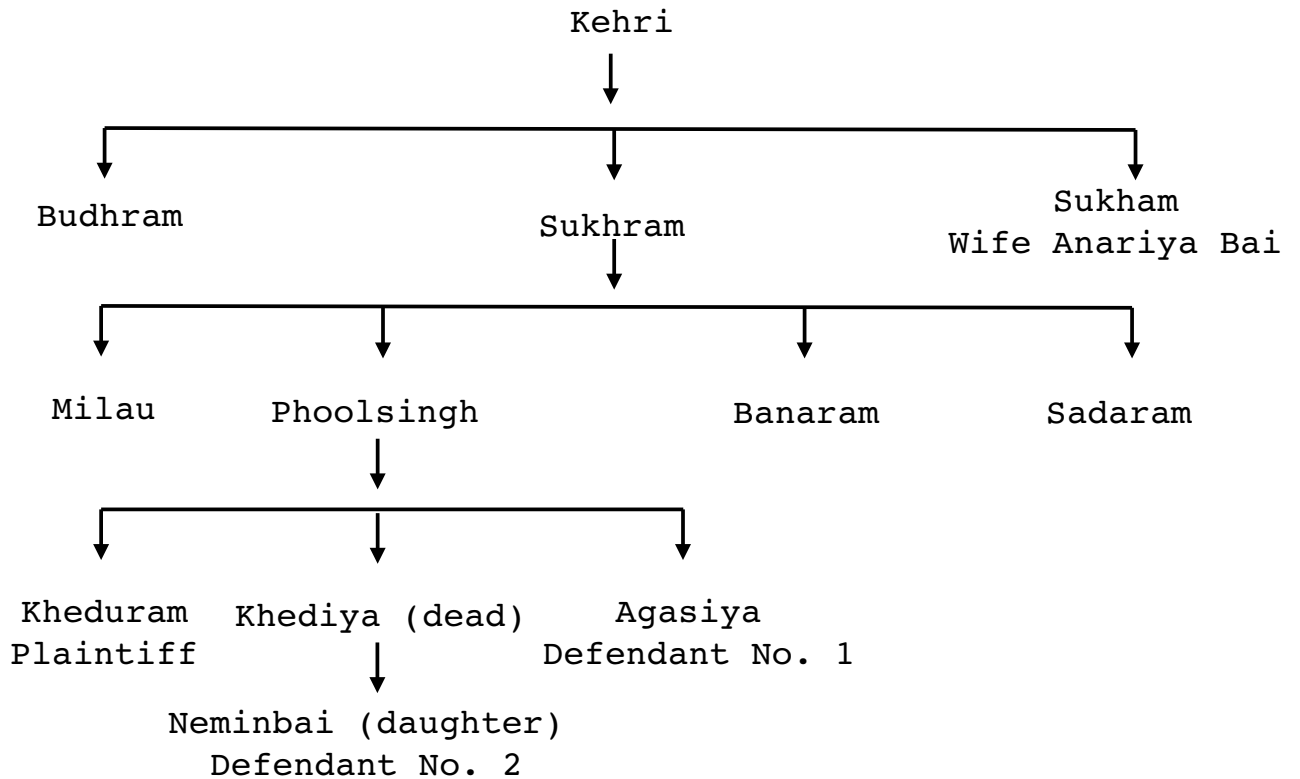
1. This second appeal preferred by the appellants/LRs. of original plaintiff – Kheduram Sahu was admitted for hearing on the following substantial questions of law :-

“1. Whether the finding recorded by the first appellate Court that the suit land Schedule 'A' was the self-acquired property of Phool Singh ?

2. Whether the Courts below have committed error of law by refusing decree of partition between the parties when the plaintiff as well as defendants No. 1 & 2 have claimed decree for partition ?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

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



3. Sukhram had four sons namely Milau, Phoolsingh, Banaram and Sadaram. Phoolsingh had one son namely Kheduram who is the plaintiff and two daughters namely Agasiya who is defendant No. 1 and Khediya who died leaving behind her daughter Neminbai who is defendant No. 2.

4. Plaintiff – Kheduram filed a suit for declaration of title and in alternative partition and possession stating *inter alia* that the suit land shown in Schedule 'A' annexed with the plaint was originally held by his grandfather Sukhram and Sukhram's brother Sukham and his wife Anariyabai. Sukham and Anariyabai died issueless and after the death of Sukhram, Sukham and his wife Anariyabai, the said suit land was inherited by

the four sons of Sukhram and partition took place amongst them in which the suit land shown in Schedule 'A' fell in the share of plaintiff's father Phoolsingh, as such, the suit land was the ancestral property of Phoolsingh. After the death of Phoolsingh, the names of all three of his children i.e. Kheduram, Khediya and Agasiya were jointly recorded in the revenue records as the three of them were co-owners of the suit land. The said suit land shown in Schedule 'A' was later on orally partitioned amongst the plaintiff and defendants No. 1 and 2, yet the revenue records continued to be in the joint names of all three of them which persuaded defendants No. 1 and 2 to file an application under Section 178 of the Land Revenue Code, 1959 wherein Tahsildar, Kawardha, by its order dated 30/08/2001, directed that plaintiff along with defendants No. 1 and 2, each of them is entitled to get 1/3rd share in the suit land against which plaintiff preferred an appeal under Section 44 of the Land Revenue Code, 1959 wherein the Sub-divisional Officer, Kawardha, by its order dated 01/05/2002, dismissed the appeal by affirming the order of the Tahsildar. Thereafter, defendants No. 1 and 2

sold some part of the suit land to defendants No. 3, 4 and 5 by various sale deeds whereas both defendants No. 1 and 2 had no right title to alienate part of the suit land in favour of defendants No. 3, 4 and 5. It was further pleaded that the exclusive title of plaintiff is not found then partition be directed amongst the parties as per explanation 1 of Section 6 of the Hindu Succession Act, 1956.

5. Defendants opposed the plaint allegations by setting up a plea that since Sukham and his wife Anariya were issueless, they adopted Phoolsingh, as such, suit land was the self-acquired property of Phoolsingh. Defendants No. 1 and 2 also filed a counter-claim for partition and possession stating that each of them are entitled for $1/3^{\text{rd}}$ share in the suit land.
6. Learned trial Court, upon consideration of oral and documentary evidence on record, vide its judgment and decree dated 24/07/2006, dismissed the suit as well as the counter-claim though held that the suit property shown in Schedule 'A' was the ancestral property of Phoolsingh.
7. On appeal being preferred by the plaintiff and cross-objection preferred by the defendants,

learned first appellate Court, vide its judgment and decree dated 28/04/2007, though interfered with the finding of the trial Court with respect to issues No. 5 and 10 and held that suit land was the self-acquired property of Phoolsingh but ultimately, dismissed the appeal and the cross-objection against which this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff (now, his LRs.) in which two substantial questions of law have been formulated and set out in the opening paragraph of this judgment.

8. Mr. Shashi Bhushan Tiwari, learned counsel for the appellants/LRs. of plaintiff would submit that the first appellate Court was absolutely unjustified in holding that the suit land was the self-acquired property of Phoolsingh by reversing the well-reasoned finding of the trial Court in this regard that the suit land was the ancestral property of Phoolsingh as there is no evidence on record to hold that the suit land shown in Schedule 'A' was the self-acquired property of Phoolsingh. He would further submit that both the Courts below have committed legal error by refusing to grant partition as plaintiff as well

as defendants No. 1 and 2, all three of them have claimed decree for partition as the plaintiff has filed the suit for partition whereas defendants No. 1 and 2 have sought partition by way of filing counter-claim, as such, the second appeal deserves to be allowed.

9. Mr. H.S. Patel, learned counsel for the respondents/defendants would submit that learned first appellate Court has rightly held that the suit land was the self-acquired property of Phoolsingh which is neither perverse nor contrary to record, as such, the second appeal deserves to be dismissed.

10. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

Answer to substantial question of law No. 1 :-

11. Plaintiff has clearly averred in the plaint that the suit land was originally held by his grandfather Sukhram and Sukhram's brother Sukham and his wife Anariya Bai who died issueless. It was further pleaded that after the death of Sukhram, Sukham and Anariya Bai, the suit land was inherited by Sukhram's four sons namely

Milau, plaintiff's father Phoolsingh, Banaram and Sadaram and in partition held amongst all the four brothers, the suit land fell in the share of plaintiff's father Phoolsingh, as such, the suit land was the ancestral property in the hands of Phoolsingh. Defendant No. 1 is the daughter of Phoolsingh and defendant No. 2 is the granddaughter of Phoolsingh. They set up a defence that the suit land is the self-acquired property of Phoolsingh and he was the adopted son of Phoolsingh, as it was held by Sukham's wife Anariya Bai and Anariya Bai had given the suit land to Phoolsingh, therefore, it is the self-acquired property of Phoolsingh. The trial Court held that the suit land was the ancestral property in the hands of Phoolsingh which the first appellate Court reversed holding that the suit land was the self-acquired property of Phoolsingh as he was the adopted son of Anariya Bai.

12. The following two paragraphs of written statement filed by defendant No. 2 would show the nature of the suit land as per her version :-

“4. अ - यह कि, सुखराम के सुखम छोटा भाई था, बड़ा भाई बुधराम - अपना हिस्सा लेकर अलग हो चुका था सुखम और

उसकी पत्नी अनरिया बाई निःसंतान थे इसलिये फूलसिंह को गोद के लिया था और अपने पास रखे थे । सुखम अनरिया बाई के घरजमाई पति था । अनरिया बाई के पास सोना- चाँदी और पर्याप्त चल अचल संपत्ति थी । वाद पत्र अनुसूची अ में दर्शाया गया ग्राम - कोयलारी, बामी, नवागांव की कुल 30.87 एकड़ अनरिया की थी जिसे अनरिया बाई ने फूलसिंह को दिया था । इस तरह वादग्रस्त जमीन फूलसिंह के पिता सुखराम की नहीं थी बल्कि अनरिया की थी इसलिये वादग्रस्त भूमि फूलसिंह की स्वअर्जित भूमि मानी जावेगी ।

4. स. यह कि, ग्राम बामी स्थित 9.14 एकड़ जमीन तथा ग्राम नवागांव स्थित 3.06 एकड़ जमीन जिसका विवरण वाद पत्र के साथ संलग्न अनुसूची अ में दिया गया है फूलसिंह की स्वअर्जित जमीन है चूंकि इस जमीन को फूलसिंह ने अनरिया से प्राप्त किया था।

14. यह कि, वाद पत्र कंडिका 14 के लेख असत्य होने से अस्वीकार है । इस कंडिका में वादी ने वैकल्पिक निवेदन किया है कि यदि वादी एवं प्रतिवादी क्र. 1 एवं 2 के मध्य बटवारा नहीं होना पाया जाता है, उस दशा में वादी एवं प्रतिवादी क्र. 1 एवं 2 के मध्य काल्पनिक बटवारा किया जावेगा और काल्पनिक बटवारा में कोयलारी की 18.67 एकड़ जमीन में 9.83 एकड़ वादी को तथा 9.84 एकड़ फूलसिंह को तथा ग्राम बामी की 9.14 एकड़ में 4.67 एकड़ वादी और तथा 4.67 एकड़ फूलसिंह को, ग्राम - नवागांव की 3.06 एकड़ जमीन में 1.43 एकड़ वादी को तथा 1.43 एकड़ फूलसिंह प्राप्त करता और फूलसिंह को प्राप्त भूमि क्रमशः 9.84, 4.67, 1.63 एकड़ में तीन बराबर हिस्सा होगा जिसमें एक हिस्सा वादी और एक हिस्सा प्रतिवादी क्र. 1 व 2 को मिलेगा । इस तरह काल्पनिक बटवारा के आधार पर गणना करते हुए वादी ने इस कंडिका के ग्राम कोयलारी स्थित जमीन में वादी को 12.44 एकड़ तथा प्रतिवादी क्र. 1 को 3.11 एकड़ प्रतिवादी क्र. 2 को 3.11 एकड़ तथा ग्राम बामी स्थित जमीन में 6.09 एकड़ जमीन वादी को तथा प्रतिवादी क्र. 1 को 1.52 तथा 1.52 एकड़ प्रतिवादी क्र. 2 को तथा ग्राम नवागांव की स्थित 2.04 एकड़ वादी को 0.51 एकड़ प्रतिवादी क्र. 1 तथा 0.51 एकड़ प्रतिवादी क्र. 2 को मिलने के अभिवचन किया है जो विधि

विपरीत है वस्तुस्थिति ऊपर दर्शाया जा चुका है तीनो गाँव की वादग्रस्त जमीन फूलसिंह की पैतृक जमीन नहीं थी बल्कि स्वअर्जित जमीन थी जिसे उसने अनरिया से प्राप्त किया था इसलिये काल्पनिक बटवारा नहीं किया जावेगा बल्कि तीनो गाँव की जमीन में वादी तथा प्रतिवादी क्र. 1 व 2 का सामान हक हिस्सा है तदानुसार ही तहसीलदार द्वारा बटवारा किया गया है ।

उपरोक्त तथ्यों के अलावा वादी वैकल्पिक रूप से अगर नया बटवारा करना चाहता है तो उसे फूलसिंह के द्वारा खेदु और उसके न. बा. बच्चे के नाम पर खरीदे गए ग्राम कोयलारी, खैरा, अमलीडीह, एवं पवनतरा, नवागांव की करीब 29.38 एकड़ तथा पैतृक 7.67 एकड़ जमीन को इस वाद में शामिल किया जाना चाहिए चूंकि बटवारा के बाद में सभी सम्पत्तियों और सभी पक्षकारों का समावेश किया जाना आवश्यक होता है इसलिये वादी को नया बटवारा का वैकल्पिक निवेदन भी स्वीकार नहीं किया जा सकता । इस कंडिका में यह असत्य होने से अस्वीकार है कि पूरे वादग्रस्त जमीन में 20.67 एकड़ वादी तथा प्रतिवादी क्र. 1 केवल 5.14 एकड़ तथा प्रतिवादी क्र. 2 केवल 5.14 एकड़ ही प्राप्त करेंगे वस्तुस्थिति ऊपर दर्शाया जा चुका है । निवेदन है कि हिन्दू उत्तराधिकार संशोधन अधिनियम 2005 के द्वारा धरा 6 में संशोधन कर पैतृक संपत्ति में पुत्री को भी पुत्र के समान अधिकार प्रदान कर दिया गया है । ”

13. The above-stated averment of the written statement would show that it is the case of defendant No. 2 that the suit land was held by Anariya Bai who had given the suit land to Phoolsingh, being her adopted son. No evidence has been brought on record to establish the fact of valid adoption of Phoolsingh except the self serving statement of defendant No. 2. The compliance of the conditions in Chapter I of the Hindu Adoption and Maintenance Act, 1956 is

mandatory for adoption to be treated as valid (See: C.A. No. 8814/2010 *M. Vanjala v. M. Sarladevi* decided by the Supreme Court on 06/03/2020). Furthermore, it is the case of defendant No. 2 that Anariya Bai had given the suit land to Phoolsingh. No such registered instrument has been brought on record to show that the suit land was gifted or willed by Anariya Bai in favour of Phoolsingh. Even there is no clinching evidence on record to show that the suit land was held by Anariya Bai herself, as such, for want of evidence, it cannot be held that the suit land was the property of Anariya Bai which was given by her to the plaintiff, therefore, it was the self-acquired property of Phoolsingh.

14. It is the case of the plaintiff that Phoolsingh received the suit land in partition which effected amongst the four brothers and after the death of his father, plaintiff inherited the suit land, in which his sister i.e. defendant No. 1 and his sister's daughter i.e. defendant No. 2 have also claimed equal share.

15. In the matter of Smt. Dipo v. Wassan Singh¹, the Supreme Court noticed the incidents of ancestral property as quoted in the Mulla's Hindu Law (15th Edition), pages 289 and 291 respectively, in the following words :-

"..... if A inherits property, whether movable or immovable, from his father or father's father, or father's father's father, it is ancestral property as regards his male issue. If A has no son, son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, sons' sons and sons' sons' sons' but as regards other relations he holds it and is entitled to hold it, as his absolute property."

Again at page 291, it is stated :

"The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issue. As regards other relations, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession.""

16. The principle of law enunciated in Dipo (supra) has been followed by the Supreme Court in the matter of Doddamuniyappa v. Muniswamy² holding that the property inherited from father by his

¹ AIR 1983 SC 846

² (2019) 7 SCC 193

sons, becomes joint family property in the hands of the sons. It was held as under :-

"23. It is well settled and held by this Court in *Dipo v. Wassan Singh* that the property inherited from the father by his sons becomes joint family property in the hands of the sons. The relevant portion is as under: (SCC pp. 378-79, para 2)

"2...Property inherited from paternal ancestors is, of course, "ancestral property" as regards the male issue of the propositus, but it is his absolute property and not ancestral property as regards other relations. In *Mulla's Principles of Hindu Law* (15th Edn.), it is stated at p. 289:

'223. Ancestral property. - (1)
Property inherited from paternal ancestor. - ... if A inherits property, whether movable or immovable, from his father or father's father, or father's father's father, it is ancestral property as regards his male issue. If A has no son, son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases...

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A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, sons' sons and sons' sons' sons, but as regards other relations he holds it, and is entitled to hold it, as his absolute property."

Again at p. 291, it is stated:

'(4) *Share allotted on partition. - The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property*

only as regards his male issue. As regards other relations, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession.'"

(emphasis in original)

17. Reverting to the facts of the case in light of the above-stated legal position and legal analysis, since plaintiff's father received the suit land in partition of the ancestral property, it would remain ancestral in the hands of plaintiff Kheduram, as such, the first appellate Court is absolutely unjustified in holding that the suit land was the self-acquired property of Phoolsingh. It is held to be the ancestral property in the hands of Phoolsingh and it would remain ancestral/co-parcenery property in the hands of the plaintiff.

Answer to Substantial question of law No. 2 :-

18. The Supreme Court, in the matter of **Uttam v. Saubhag Singh and Ors.**³ summarized the principles relating to succession to joint family property prior to 2005 amendment and held as under :-

"18...The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:-

(i) When a male Hindu dies after the commencement of the Hindu Succession Act,

1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants."

19. Following the principle of law enunciated in the matter of Uttam (supra), it is quite vivid that firstly, the suit land will be divided notionally as per explanation 1 of Section 6 of the Hindu Succession Act, 1956 between Phoolsingh and plaintiff Kheduram and they would get $\frac{1}{2}$ share each and thereafter, Phoolsingh's $\frac{1}{2}$ share would further be divided between plaintiff and defendant No. 1 (daughter of Phoolsingh) and defendant No. 2 (daughter of Khediya i.e. granddaughter of Phoolsingh). Each one of them would take $\frac{1}{2} \times \frac{1}{3} = \frac{1}{6}$ share. Thus, plaintiff (now his LRs.) would be entitled for $\frac{1}{2} + \frac{1}{6}$ and defendants No. 1 and 2 (now their LRs.), each of them would be entitled for $\frac{1}{6}$ share in the suit land and possession after partition in accordance with law.

20. As a fallout and consequence of the aforesaid legal discussion, the judgment and decree of both the Courts below are modified and the second appeal is allowed to the extent indicated herein-above. No cost(s).

21. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge