

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.149 of 2017

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Lakshman Sah Son of Late Ramjee Sah, Resident of Village- Tulsia, P.O.-
Bajjnathpur, P.S.- Bihariganj, District- Madhepura Bihar.

... .. Defendant No.1-Appellant
Versus

1. Chandrakala Devi W/o Ashok Kumar Sah, D/o Late Ramdeo Sah, Resident of Village- Tulsia, P.O.- Bajjnathpur, P.S.- Bihariganj, District- Madhepura Bihar. And at Present Village- Dibara Bazar, P.O.- Dibara Bazar, P.S.- Barhara Kothi, District- Purnea.
.....Plaintiff-Respondent 1st Party
2. Gopal Kumar Sah, Son of Late Ramjee Sah,
3. Pradeep Kumar Sah, Son of Late Ramjee Sah, Both Residents of Village- Tulsia, P.O.- Bajjnathpur, P.S.- Bihariganj, District- Madhepura Bihar.
...Defendants 1st Party-Respondents 2nd Party
4. Indira Devi, W/o Birendra Sah, D/o Late Ramjee Sah, Resident of Village- Singheswar, P.S.- Singheswar, District- Madhepura.

...Defendants 2nd Party-Respondent 3rd Party

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Appearance :

For the Appellant/s :	Mr. Anil Kumar Mukund, Advocate Mr. Anirudh Pandey, Advocate
For the Respondent no.1 :	Mr. Amit Kumar Anand, Advocate
For the Respondent no.4 :	Mr. Uday Chand Prasad, Advocate Mr. Manoj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

Date : 08-02-2023

Heard learned counsel for the appellant, learned counsel for the respondent no.1 and learned counsel for the respondent no.4. No one appears on behalf of the respondent nos.2 and 3.

The instant appeal has been preferred against the judgment dated 23.3.2017 and decree dated 29.3.2017 passed in



Title Suit no.3 of 2006 by the learned Sub Judge VII, Madhepura whereby the learned trial court was pleased to hold that there was jointness of title and possession of the plaintiff with the defendants over the suit property and that the plaintiff was entitled to 1/5th share in the ancestral property of her mother and father after their death. Learned trial court further held that the suit as framed was maintainable. She has valid cause of action, the suit was not barred under section 34 of the Specific Relief Act and thus decided the issue nos. 1, 2, 3 and 4 in favour of the plaintiff. The suit was allowed on contest ex parte against the defendant nos.1 to 3. It is against this judgment that the defendant no.1 has preferred the instant appeal.

The case of the plaintiff in brief is that Late Ramjee Sah and his wife Late Smt. Ram Dulari Devi, both deceased, were her parents and were having sufficient landed properties in Mauza Tulsiya, Sheikhpura and Baidyanathpur, details of which are given in Schedule I of the plaint. They had right, title and possession over the suit property. The names have been mutated in the records of the Revenue Department, they were paying rent and were being granted rent receipts. The plaintiff's father died in October 2000 followed by the plaintiff's mother on 6.2.2005. They died leaving behind three sons who are the



defendant nos.1, 2 and 3 in the title suit and two daughters ie the defendant no.4 and the plaintiff. The defendant no.4 was married to one Birendra Sah. The plaintiff was married to Ashok Kumar Sah.

It is the case of the plaintiff that the plaintiff and the four defendants, on the death of their parents inherited the suit land as their sons and daughters, equally. Thus, the share of the plaintiff would be 1/5th in the suit property. It was further stated that a panchayati was held in the village in which the panches and the defendants accepted and acknowledged the status and character of the plaintiff having 1/5 share in the suit property and the defendants agreed to give to the plaintiff her share. However, subsequently the defendants turned down the plaintiff's claim and the plaintiff was left with no other alternative except to file the instant suit for such a declaration by Court. It was submitted that the cause of action for the suit arose on 25.12.2005 when the 1/5th share of the plaintiff in the suit property was raised in the panchayati in the village and the same was acknowledged by the panches and the defendants. It also arose when subsequently the defendants refused to give the plaintiff her share. Thus with no other alternative, the plaintiff filed the suit in the Court of learned Sub Judge, Madhepura



which was registered as Title Suit no.3 of 2006 praying therein for the following reliefs:

“(I) That the court be pleased to declare that the plaintiff has got 1/5 share in the suit properties which were acquired by father and mother (now deceased) of the plaintiff and status and character of the plaintiff to the said extent may kindly be declared by the court and a preliminary decree for partition may kindly be passed in favour of the plaintiff.

(II) That after such adjudication the court be pleased to award cost of the suit to the plaintiff.

(III) That the any other relief or reliefs which your honour deem fit and proper may kindly be awarded to the plaintiff.

(1)(AA) The court be please further appoint Survey Knowing Pleader Commissioner to carve out 1/5th share of the plaintiff in the suit land at the cost of plaintiff.”

A written statement and a supplementary written statement was filed on behalf of defendant nos. 1 to 3 in Title Suit no.3 of 2006. It was contended therein that the suit as framed was not maintainable. The plaintiff has no cause of action for the suit. It was barred under section 34 of the Specific Relief Act and the law of limitation. It was further contended that the suit was also barred by estoppel, waiver and acquiescence and the plaintiff has filed the suit with malafide intention. It was stated that it was true that panchayati was held



on 15.1.2003 and award was prepared which was reduced in writing, signed by defendant nos.1 to 3 and panches as also the mother of the defendants and thus the suit was barred under the provisions of Arbitration and Conciliation Act, 1995. The properties in the villages were not wholly of Ramji Sah but half of it belonged to his elder brother Radhe Sah. It was further contended that Mewaram Sah who was the common ancestor had two sons namely Mahavir Sah and Ram Sunder Sah. Mahavir Sah predeceased his father leaving behind two sons Ram Naresh Sah and Ganesh Sah. The plaintiff and the defendants were the descendants of Ram Sunder Sah. Ram Sunder Sah had two sons namely Radhe Sah and Ramji Sah. Radhe Sah died issueless on 21.9.1991 in jointness with his brother Ramji Sah and nephews who are the defendant nos.1 to 3. Thus, the interest of Radhe Sah devolved upon Ramji Sah and after him on his sons only ie defendant nos.1 to 3. Ramji Sah died on 11.10.2000 leaving behind his widow Ram Dulari Devi who died on 2.2.2005. The defendant nos.1 to 3 are the three sons of Ramji Sah and Ram Dulari Devi and the two daughters are the plaintiff and defendant no.4. It was further stated that it was incorrect to state that all the lands were mutated in the name of Ramji Sah and Ram Dulari Devi. In fact, the lands which



were purchased in the name of defendant nos. 1 to 3, description of which has been given in Schedule B were mutated in the name of defendant nos.1 to 3 and it was these defendants who were paying rent and rent receipts were issued in their names. It was submitted that the plaintiff and the defendants have sons and daughters who have not been impleaded as parties to the instant suit and thus the suit was fit to be dismissed also for non-joinder of necessary parties. It was the case of the defendants that the plaintiff and defendant no.4 neither inherit nor get any share in the land purchased in the name of defendant nos.1 to 3 which stand mutated in their names. They also do not get equal shares with defendants in the ancestral property. So far as the defendants are concerned, they being coparceners had acquired interest in the coparcenery property by birth and the share to which the plaintiff may be entitled would only be the share which she may get out of the property which falls in the share of their deceased father if a partition had taken place at the time of his death. However, the plaintiff was not entitled to get any share in the property as she herself on affidavit had stated before the panches in the panchayati held on 15.1.2003 that she would not take share in the property at all. The plaintiff has also sworn an affidavit to the effect that in view of the help rendered by the



defendants in the time of her need in getting her husband educated and employed, she had reiterated that she would not take any share in the ancestral property, would not lay any claim in the future and that she was swearing the affidavit out of her own sweet will without any coercion and persuasion. It was submitted that the date of cause of action given by the plaintiff was absolutely false and wrong.

It was further case of the defendants that a panchayati was held on 15.1.2003 and the award prepared in presence of all including the plaintiff and the defendant no.4, both of whom on their own agreed to take no share. The plaintiff is not entitled to any relief and it was prayed that the suit be dismissed with exemplary cost.

A further supplementary written statement was filed on behalf of defendant nos.1 to 3 in light of the amended plaint wherein it was stated that the two sisters ie the plaintiff and the defendant no.4 out of their own free will refused to take any share in the property as they were reared, educated and married in affluent families. The defendant no.1 who was appointed a Lecturer in a college at Patna under the Magadh University, from his earnings as a Lecturer and giving tuitions, on 4.6.1994 purchased 15 dhurki of land through registered sale deed in



Patna, out of reverence in the name of his late father who subsequently also executed a deed of relinquishment in his favour. The plaintiff was conscious of the fact that the property at Patna was the exclusive purchase of the defendant no.1. The panchnama dated 15.1.2003 was between the mother and the three brothers and also signed by the sisters. The plaintiff is a greedy person and under the influence of her husband, who wants illegal gain as a result of the instant case.

Having perused the contents of the plaint as also the written statements filed on behalf of the defendants, the learned trial court was pleased to frame the following issues:

- “(i) Is the suit as framed maintainable?
- (ii) Whether the plaintiff has got any cause of action to file this suit?
- (iii) Whether the suit is hit by section 34 of the Specific Relief Act?
- (iv) Whether the suit is barred by principles of waiver, acquiescence, estoppel and resjudicata?
- (v) Whether the suit property is a joint family property and whether there is unity of title and possession between the parties to the suit?
- (vi) Whether the plaintiff is entitled to get 1/5 share in the suit property?
- (vii) Whether the plaintiff is entitled to get the reliefs as sought for in the plaint?
- (viii) Whether the plaintiff is entitled to get any other relief or reliefs from the Court?”



It may be stated here that the plaintiff examined five witnesses in support of her case besides several documentary evidences which included the registered sale deeds executed in favour of her mother and the khatiyani/khatas of her father.

On the other hand, the defendants did not examine any witness on their behalf nor did they produce any documentary evidence in support of their case.

The plaintiff witness ie PW 1 Chandeshwari Yadav in his deposition stated that he knows both the parties and has seen the disputed land which is about total area of about 23 acres. The parents of the plaintiff had land at different places. The father of the plaintiff died in the year 2000 while her mother died in the year 2005. They left behind three sons who are defendant nos.1, 2 and 3 and two daughters ie the plaintiff and defendant no.4. While the defendant no.4 was married to Birendra Sah, the plaintiff was married to Ashok Kumar Sah. The parties are coming in joint possession of the property left behind by their father Late Ramji Sah and mother Late Ram Dulari Devi and all of them are entitled to equal share ie 1/5 each.

This witness PW 1 Chandeshwari Yadav was cross-examined on behalf of the defendants. In his cross-examination,



he stated that he was not on regular visiting terms nor was he related/connected to the parties. He did not have any sale/purchase transactions with Ramji Sah nor any conversation with Ram Dulari Devi. He states about the marriages of the two daughters ie the defendant no.4 and the plaintiff. He is not aware as to what total area of land did Ramji Sah possess. He states that Ramji Sah had land at different places and no partition had taken place in his presence.

PW 2 Brahmdeo Das in his deposition states that he knows both the parties and had seen the disputed properties which measures a total area of 22-23 acres. He knows both Ramji Sah and his wife Ram Dulari Devi. Both of them died leaving behind three sons and two daughters. All five of them have title over the property left behind by their parents. The plaintiff has 1/5 share in the disputed property. There has never been any partition amongst the contesting parties and the plaintiff has filed this suit for her 1/5 share in the same. He is on visiting terms with the parties.

In his cross-examination, this witness PW 2 Brahmdeo Das has stated that in the partition, the grandfather of the plaintiff namely Ramsunder Sah had received about 22-23 acres of land. The said Ramsunder Sah had two sons namely Ramji



Das (father of the plaintiff) and Radhe Sah. The said Radhe Sah died issueless in the year 1991. Ramji Sah had sold some land of his share. No partition has taken place in his presence. This witness states that he knows about the disputed property since 30-35 years and as no partition has taken place between the parties, the plaintiff being five brothers and sisters is entitled to 1/5 share. Ramji Sah had married all the five children himself.

The next witness on behalf of the plaintiff ie PW 3 Sudhir Yadav in his deposition has stated that he knows the parties, has seen the disputed property which is about 22-23 bighas in area. Ramji Sah had two daughters and three sons. He died leaving behind the five children and his wife Ram Dulari Devi and all of them have been coming in joint possession of the property left behind by Ramji Sah. Ram Dulari Devi also died subsequently. There has been no partition of the immovable property between the parties nor has the plaintiff sold any land. There is unity of title and unity of possession of the plaintiff and she has filed the instant case for her 1/5 share.

In his cross-examination, the witness PW 3 Sudhir Yadav has stated that Ramji Sah was two brothers ie Ramji Sah and Radhe Sah. Both the brothers came in joint possession of the property. Radhe Sah died issueless in the year 1991 and



Ramji Sah died in the year 2000. The land are in five mauzas. Laxman Sah is a Professor in Patna for the last 15 years. The second son of Ramji Sah namely Gopal Sah is also employed. The third son Pradeep Sah is a Veterinary doctor. Ramji Sah had two daughters. Chandrakala was married in the year 1985 while Indira was married before her. He is on talking terms with the three sons of Ramji Sah. All the three brothers are together and there has not been any talk of partition between him and the brothers. It is not correct to state that the brothers had partitioned.

The plaintiff witness PW 4 Ashok Kumar Sah in his deposition states that he happens to be the husband of the plaintiff Chandrakala Devi. His father-in-law Late Ramji Sah and mother-in-law Late Ram Dulari Devi had a number of properties and were in joint possession along with the other members of the family. Ram Dulari Devi died in the year 2005 leaving behind her three sons and two daughters and ever since her death, her five children have joint title and possession over the property. The plaintiff has 1/5 share in all the properties. There is unity of title and unity of possession. In spite of request by the plaintiff to the defendants to give her 1/5 share in the suit property, the defendant have been avoiding her on one pretext or



the other. This witness further states that Ramji Sah having sold the ancestral property in mauza Baidyanathpur and mauza Sheikhpura had purchased land in Patna and Bihariganj in different names wherein the share of the plaintiff is 1/3.

PW 4 Ashok Kumar Sah in his cross-examination has stated that he was married to Chandrakala Devi (plaintiff) on 23.6.1985 and at the time of his marriage the brother of his father-in-law namely Radhe Sah was alive. Radhe Sah died in the year 1991. Ramji Sah died in October 2000. After partition with his brother, Ramsunder Sah had about 50 acres of land. In the year 1991 at the time of death of Radhe Sah, both had about 30-35 acres of land. The land was khatiyani. He further states that at the time of his marriage only Indira had been married while the three boys were unmarried. Even after his marriage, he was not a party in the sale deed which was executed. He states that he is not aware of the memorandum of partition or the so called deed of relinquishment executed by his mother-in-law in favour of her sons. It is not correct to state that the sons and daughters of Ramji Sah partitioned in the year 2003 and that in lieu of the land the brothers gave large amount to the plaintiff.

The last witness ie PW 5 Chandrakala Devi states that she is the plaintiff in the suit and her brothers and sisters are



the defendants, all being sons and daughters of Ramji Sah and his wife Ram Dulari Devi who had immovable property at a number of places. The plaintiff and the defendants were having joint title and joint possession over the property in question, the jamabandi was established in the name of Ramji Sah and Ram Dulari Devi, they were paying malguzari and receipts were being issued in their names. Ram Dulari Devi died in the year 2005 and the plaintiff and the defendants have joint possession and 1/5 share each in the immovable property. Although the defendants agreed to give 1/5 share to the plaintiff, however subsequently they refused and hence the suit.

The plaintiff witness PW 5 Chandrakala Devi was cross-examined at length. She states that the land is khatiyani. They have about 22-23 acres of land. She is unable to state the details of the land in the joint possession of the parties. She is not in possession of the papers. The elder son of Ramji Sah namely Laxman Sah was a Professor and is about 25-30 years elder to the plaintiff. Gopal Sah works in a private company while Pradeep Sah is a Veterinary doctor. All brothers are joint. Ram Dulari Devi died in the year 2005 in the month of February. Her father Ramji Sah died in the year 2000. After the death of her father, she had asked for her share from her mother



but her mother had not given her any share. Her husband was a Professor in an unrecognised private college and is at present having a pharmaceutical shop. He was not helped by her brothers in opening the shop. As the plaintiff and the defendants are five brothers and sisters, for this reason she has asked for 1/5 share. It is incorrect to state that any panchayati had taken place in the village where partition had been effected. It is wrong to state that the lands are completely partitioned.

Heard learned counsel for the defendant no.1-appellant and learned counsel for the plaintiff-respondent no.1.

It is the contention of the learned counsel appearing for the defendant no.1-appellant that the plaintiff has claimed immovable property belonging to her father which has been seriously disputed by the defendants. In the garb of a partition suit, the plaintiff has filed a title suit. The title suit is without jurisdiction and not maintainable and it could not have been filed to lay claim over one's share in the family property. The plaintiff-respondent ought to have filed a partition suit in the court below. It was further contended that the burden to prove that the property is a joint property is on the person who asserts it but in the court below the claim of the plaintiff-respondent has been accepted on face value and the impugned judgment has



been passed without according proper opportunity to the defendant no.1-appellant to examine witnesses in support of his case nor were they given any opportunity to cross-examine the witnesses on behalf of the plaintiff. The husband of the plaintiff-respondent has tried to shoot off his wife's shoulder by laying claim not only over the ancestral property belonging to other co-sharers but also over the self-acquired property of the defendant no.1-appellant which he earned by way of his personal income. The learned court below failed to appreciate that the plaintiff-respondent no.1 had herself sworn an affidavit on 29.7.2003 before the panches stating that she will never claim any share in the ancestral property.

It was contented on behalf of the plaintiff-respondent no.1 that the suit preferred by the plaintiff praying therein for preliminary decree for partition of her 1/5 share in the suit property which were acquired by her father and mother and for appointment of a Survey Knowing Pleader Commissioner to carve out 1/5 share of the plaintiff in the suit land was rightly decreed by the learned trial court. There being no merit in the instant appeal, the appeal be dismissed.

Learned counsel appearing for the defendant no.4-respondent no.4 submitted that the said respondent fully



supports the case of the defendant no.1-appellant. Partition had already taken place on 15.1.2003 in presence of their mother, brothers and sisters. Some of the properties which were acquired by the appellant's personal income were returned back by the father and the said acquisitions cannot be said to be out of the joint family property. It was out of his personal earnings that the brother built a house on the land purchased in Patna and the sisters cannot lay a claim on the brother's self acquired property. The learned court below has failed to appreciate the materials on record including the affidavit sworn by the plaintiff-respondent no.1 on 29.7.2003 before the Notary Public at Purnea to the effect that she will never claim any ancestral property having got more than her own share in the shape of money after selling the lands.

Having heard learned counsel for the parties and taking into consideration the oral and documentary evidence brought on record, it transpires that while five witnesses were examined on behalf of the sole plaintiff in the learned trial court and she brought on record a number of documentary evidence by way of exhibits, so far as the defendants are concerned, neither any witness was examined on their behalf nor any documentary evidence brought on record.



On perusal of the statements of the five plaintiff witnesses, it transpires that PW 1 (Chandeshwari Yadav), PW 2 (Brahmdeo Das) and PW 3 (Sudhir Yadav) are all independent witnesses. None of the three witnesses are related to either side but know both the sides. In their depositions, they had categorically stated that the plaintiff and the four defendants are all sons and daughters of Ramji Sah and Ram Dulari Devi. They have further stated that Ramsunder Sah partitioned from his brother Mahavir Sah. Ramsunder Sah had two sons namely Ramji Sah and Radhe Sah. Radhe Sah died issueless. Ramji Sah died in the year 2000 while his wife Ram Dulari Devi died in the year 2005. The witnesses categorically state that Ramji Sah and Ramdulari Devi died leaving behind their three sons and two daughters who are the plaintiff and defendants in the instant suit having joint title and joint possession over the suit property. No partition having taken place between the parties, each of the five were entitled to get 1/5 share each.

The other two witnesses on behalf of the plaintiff happen to be PW 4 Ashok Kumar Sah who is the husband of the sole plaintiff and the plaintiff herself ie PW 5 Chandrakala Devi. They have also supported the plaintiff's case about the five children of Ramji Sah and Ram Dulari Devi who happen to be



plaintiff and defendants in the suit, on the death of their parents succeeding jointly to the suit property and of no partition having taken place in the family.

At this stage itself, it would be relevant to point out that some attempt has been made by the learned counsel for the appellant to make submissions to the effect that adequate opportunity was not afforded to the appellant who was defendant no.1 in the learned trial court to put forward his case. The records speak otherwise. On service of notice, the defendants appeared in the learned trial court and a written statement was filed on 19.1.2007 on behalf of the defendant nos.1 to 3 in Title Suit no.3 of 2006 in the Court of learned Sub Judge, Madhepura. Subsequent to amendment in the plaint, a supplementary written statement was filed on behalf of defendant nos.1 to 3 in the title suit on 16.11.2010. While the first written statement was signed and verified by the defendant no.1-appellant Laxman Sah on 19.1.2007, the supplementary written statement was also affidavited by the said Laxman Sah on 16.11.2010.

It further transpires that each of the five witnesses on behalf of the plaintiff filed their depositions on affidavit but were cross-examined at length in the learned trial court on



behalf of the defendants. PW 1 (Chandeshwari Yadav) was cross-examined on 15.2.2012, PW 2 (Brahmdeo Das) on 17.2.2012, PW 3 (Sudhir Yadav) on 23.3.2012, PW 4 (Ashok Kumar Sah) on 26.3.2012 and 27.3.2012 and the plaintiff (PW 5) Chandrakala Devi was cross-examined on 16.4.2012 and 17.4.2012. Thus, from the facts stated herein above, it would transpire that the defendants in the learned trial court at all stages were actively participating and seriously contesting the suit.

So far as the share of the daughters, like the plaintiff-respondent no.1 in the instant case, in view of the amended section 6 of the Hindu Succession Act, 1956 is concerned, the matter in issue stands settled by the judgment of the Hon'ble Supreme Court in the case of **Vineeta Sharma vs. Rakesh Sharma and others (AIR 2020 SC 3717)** wherein the Hon'ble Supreme Court held as follows:

“61. With respect to a Hindu who dies after the commencement of the [Amendment Act, 2005](#), as provided in [section 6\(3\)](#) his interest shall pass by testamentary or intestate succession and not by survivorship, and there is a deemed partition of the coparcenary property in order to ascertain the shares which would have been allotted to his heirs had there been a partition. The daughter is to be allotted the



same share as a son; even surviving child of predeceased daughter or son are given a share in case child has also died then surviving child of such predeceased child of a predeceased son or predeceased daughter would be allotted the same share, had they been alive at the time of deemed partition. Thus, there is a seachange in substituted [section 6](#). In case of death of coparcener after 9.9.2005, succession is not by survivorship but in accordance with [section 6\(3\)\(1\)](#). The Explanation to [section 6\(3\)](#) is the same as Explanation I to [section 6](#) as originally enacted. [Section 6\(4\)](#) makes a daughter liable in the same manner as that of a son. The daughter, granddaughter, or greatgranddaughter, as the case may be, is equally bound to follow the pious obligation under the Hindu Law to discharge any such debt. The proviso saves the right of the creditor with respect to the debt contracted before the commencement of [Amendment Act, 2005](#). The provisions contained in [section 6\(4\)](#) also make it clear that provisions of [section 6](#) are not retrospective as the rights and liabilities are both from the commencement of the [Amendment Act](#).

62. The proviso to [section 6\(1\)](#) and [section 6\(5\)](#) saves any partition effected before 20.12.2004. However, Explanation to [section 6\(5\)](#) recognises partition effected by execution of a deed of partition duly registered under the [Registration Act, 1908](#) or by a decree of a court. Other forms of partition have not been



recognised under the definition of 'partition' in the Explanation.

63. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in [section 6](#) is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of [section 6\(1\)\(a\)](#) and [6\(1\)\(b\)](#). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in [section 6\(1\)](#), it is not necessary that there should be a living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment, i.e., 9.9.2005 with saving of past transactions as provided in the proviso to [section 6\(1\)](#) read with [section 6\(5\)](#).



64. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. [Section 6\(1\)](#) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted [section 6\(3\)](#).

99. Once the constitution of coparcenary changes by birth or death, shares have to be worked out at the time of actual partition. The shares will have to be determined in changed scenario. The severance of status cannot come in the way to give effect to statutory provision and change by subsequent event. The statutory fiction of partition is far short of actual partition, it does not bring about the disruption of the joint family or that of coparcenary is a settled proposition of law. For the reasons mentioned above, we are also of the opinion that mere severance of status by way of filing a suit does not bring about the partition and till the date of the final decree, change in law, and



changes due to the subsequent event can be taken into consideration.

128. The expression used in Explanation to [Section 6\(5\)](#) 'partition effected by a decree of a court' would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a court effects partition. A preliminary decree declares share but does not effect the actual partition, that is effected by passing of a final decree; thus, statutory provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by Court. Even if partition is supported by a registered document it is necessary to prove it had been given effect to and acted upon and is not otherwise sham or invalid or carried out by a final decree of a court. In case partition, in fact, had been worked out finally in toto as if it would have been carried out in the same manner as if affected by a decree of a court, it can be recognized, not otherwise. A partition made by execution of deed duly registered under the [Registration Act](#), 1908, also refers to completed event of partition not merely intendment to separate, is to be borne in mind while dealing with the special provisions of [Section 6\(5\)](#) conferring rights on a daughter. There is a clear legislative departure with respect to proof of partition which prevailed earlier; thus, the Court may recognise the other mode of partition in exceptional cases based



upon continuous evidence for a long time in the shape of public document not mere stray entries then only it would not be in consonance with the spirit of the provisions of [Section 6\(5\)](#) and its Explanation.

129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted [Section 6](#) of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in [Section 6\(1\)](#) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to [Section 6](#) of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted [Section 6](#) are



required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to [Section 6\(5\)](#) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the [Registration Act, 1908](#) or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

Thus, in view of the facts and circumstances stated herein above, the Court finds no reason to disbelieve the deposition of the five witnesses examined on behalf of the plaintiff which included the three independent witnesses who have been consistent inspite of being cross-examined on behalf of the defendants at length. Taking into account the statement of the plaintiff witnesses specially PW 1, PW 2 and PW 3 who besides stating about the death of Ramji Sah in the year 2000



and Ram Dulari Devi in the year 2005, the witnesses categorically state that both of them died leaving the five brothers and sisters who are parties to the suit in state of jointness having joint title and joint possession over the suit property and over which each of them including the plaintiff has 1/5 share each. Besides the oral evidence, the learned trial court has also rightly taken into account the registered sale deeds executed in favour of the mother of the plaintiff Ram Dulari Devi which has been marked as Ext. 1/A, 1/B, 1/C and 1/D as also the copies of the khatian/khatas which were marked as Ext. 2, 2/A, 2/B, 2/C, 2/D and 2/E to prove that the land in question was joint amongst the parties to the suit.

In view of the facts of the case as discussed above, the worthiness of the plaintiff's witnesses who were cross-examined on behalf of the defendants together with the fact that neither any oral nor documentary evidence was produced on behalf of the defendants, the Court is of the opinion that no partition had taken place amongst the plaintiff and the defendants. Thus in view of the judgment of the Hon'ble Supreme Court in the case of Vineeta Sharma (supra), the learned trial court rightly decreed the suit in favour of the plaintiff.



There is no merit in the instant appeal and the same is dismissed.

All pending applications stand disposed of.

(Partha Sarthy, J)

Saurabh/-

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