

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-10638-C-2023 in/and RSA-6234-2018 (O&M)
Date of Decision: October 06, 2023**

BIMLA DEVI AND ORS	Versus	Applicants-appellants
SUSHEEL KUMAR AND ORS		 Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanjay Mittal, Advocate for the applicants-appellants.

HARKESH MANUJA, J. (ORAL)

CM-10638-C-2023

Allowed as prayed for, subject to all just exceptions.

MAIN CASE

By way of present appeal, challenge has been laid to the judgments and decrees dated 10.05.2016 and 01.08.2018 passed by the Courts below whereby a suit for declaration filed at the instance of appellants-plaintiffs has been dismissed.

2. Briefly stating, the appellants-plaintiffs filed a suit for declaration assailing the relinquishment deed No.564 dated 19.06.2003, executed by respondent-defendant No.2 in favour of respondent/defendant No.1 regarding the suit property, situated in village Akhari Madanpur, Tehsil Jhajjar, District Rohtak (now Tehsil Matanhail, District Jhajjar) alleging it to be illegal, null, void and not binding on the rights of the appellants-plaintiffs and also claiming themselves to be owners in possession to the extent of 1/30th share each. The parties in the present litigation have been related to each

other closely, the appellants-plaintiffs being the daughter of respondent/defendant No.2 who in turn is the sister of respondent/defendant No.1 in whose favour the relinquishment deed dated 19.06.2003 has been executed followed by mutation entered on 31.10.2003.

It was pleaded further that the appellants-plaintiffs as well as respondents-defendants formed a joint Hindu family, pleading customary law of District Rohtak now Jhajjar being prevalent among the Hindu Jats, besides asserting that the property in question been inherited by respondent/defendant no.2 from her father was ancestral coparcener property in her hand and thus, it could not have been alienated, defeating the rights of the appellants-plaintiffs as that of coparceners, been attained under Section 6 of Hindu Succession Act, 1956 (2005 Amendment Act).

3. On the other hand, the suit was contested at the hands of respondents/defendants No.1 and 2 having filed their separate written statements while controverting the claim set up in the plaint as regards suit property being ancestral coparcenary property. On the contrary, it was submitted that respondent-defendant No.2 being the exclusive owner-in-possession of the suit property, the same being self-acquired one, voluntarily transferred the same in favour of respondent-defendant No.1 by virtue of relinquishment deed dated 19.06.2003. Reliance in this regard was also placed upon Section 14 of Hindu Succession Act, 1956. It was further pleaded that the suit filed by the appellants-plaintiffs

on 18.04.2011 was even barred by limitation.

5. The trial Court vide judgment and decree dated 10.05.2016 dismissed the suit filed by the appellants-plaintiffs. Aggrieved thereof, the appellants-plaintiffs filed First Appeal, however, the same was also dismissed.

6. I have heard learned counsel for the appellants and gone through the paper-book. I am unable to find substance in the submissions made on behalf of appellants-plaintiffs.

7. In the present case the alienation was made by respondent-defendant No.2 in favour of respondent No.1/defendant No.1 on 19.06.2003 i.e, before 09.09.2005 when the Hindu Succession Act, 1956 (2005 Amendment Act) came into force. The alienation was made vide registered relinquishment deed and thus the same was protected in terms of proviso to Section 6(1) and Section 6(5) of the 2005 Amendment Act. My aforesaid view is even derived from the law laid down by the Hon'ble Supreme Court in case of **Vineeta Sharma Vs Rakesh Sharma 2020 AIR (Supreme Court) 3717** wherein it has been held that proviso to Sections 6(1) and 6(5) of Hindu Succession Act, 1956 saves any alienation/partition done prior to 09.09.2005. Relevant paras thereof are reproduced below:-

“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).

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72. It was argued that in the eventuality of the death of a father or other coparcener, the parties would have not only partitioned their assets but also acted in pursuance of such partition. However, partitions have been taken care of by the proviso to section 6(1) and 6(5). Parliament has not intended to upset all such transactions as specified in the proviso to section 6(1).

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73. It was vehemently argued that if the daughter is given the right to be a coparcener by birth and deemed to become a coparcener at any point in the past, in the normal working of the law, uncertainty would be caused. In our opinion, no uncertainty is brought about by the provisions of section 6 as the law of Mitakshara coparcenary makes the share of surviving coparceners uncertain till actual partition takes place. Uncertainty in the right of share in a Mitakshara coparcenary is inhered in its underlying principles, and there is no question of upturning it when the daughter is treated like a son and is given the right by birth; to be exercised from a particular date, i.e., 9.9.2005. It is not to resurrect the past but recognising an antecedent event for conferral of rights, prospectively. There is no doubt about it that advancement brings about the enlargement of the size of the coparcenary and disabling it from treating the daughter unequally. Even otherwise, its size could be enlarged by the birth of a son also. By applying section 8, the joint possession was not repudiated by the fact that a female, whether a wife or daughter, inherited the share of coparcener under the proviso to original section 6. She was an equal member of the joint Hindu family and deemed statutory partition did not bring disruption of the coparcenary”

8. Accordingly finding no illegality or perversity with the concurrent findings recorded by Courts below besides there being no misreading of the pleadings or even the evidence available on record, the present appeal being devoid of merits, is thus dismissed.

9. Pending application(s), if any, shall also stand disposed of.

06.10.2023
tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No