



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.385/2015

1. Harilal s/o Dago Raut (Dead),
Thr. LRs.
- 1-a Manoj Kumar s/o Harilal Raut,
aged about 41 years, Occ. Labourer
- 1-b Omeshkumar Hiralal Raut,
aged 41 years, Occ. Labourer.
- 1-c Gourishkumar Harilal Raut,
aged about 38 years, Occ. Pvt.Service

All r/o Post Kudwa, Ward No.3,
Tq. Dist. Gondia.
2. Hirkanbai wd/o Nandlal Raut,
aged 68 years, Occ. Household
3. Himmatlal s/o Nandlal Raut,
aged 40 years, Occ. Agriculture
4. Roshanlal s/o Nandlal Raut,
aged about 34 years, Occ. Agriculture.
5. Ramlal s/o Jagu Raut,
aged about 58 years, Occ. Agriculture
6. Shamlal s/o Jagu Raut,
aged about 55 years, Occ. Agriculture
7. Ushabai w/o Suryabhan Tembhurkar,
aged about 46 years, Occ. Agriculture

Nos.2 to 7 r/o Hiwra, Post Ratnara,
Tah. and District Gondia.

.....APPELLANTS

...V E R S U S...

1. Yashodabai - Chiman Danvade,
aged about years, Occ. Household,
r/o c/o Vinod Naidu Swami,
Vivekanand Nagar, Near Government
Hospital, at Post Kanhan, Dist. Nagpur.

2. Gujaba @ Gudya s/o Jagu Raut,
aged about 64 years, Occ. Agriculture,
r/o Dorli, Tah. Parseoni, District Nagpur.

3. ~~Ritesh Hukumsingh Kate~~

...RESPONDENTS

Mr. A. V. Karnavat with Mr. Y. K. Bhagat, Advocates instructed by
Mr. S. D. Sirpurkar, Advocate for appellants.
Mr. S. G. Karmarkar, Advocate for respondent No.1

CORAM:- ANIL L. PANSARE, J.

DATED :- 18.04.2024

ORAL JUDGMENT

The appeal has been admitted on the following
substantial question of law.

*“Whether in the wake of decision of the Hon'ble
Supreme Court in the case of Prakash v. Phulvati;
2016 (1) Mh.L.J., Page 1, the father having expired in
the year 1970, the suit filed in the year 2007 by the
daughter was maintainable?”*

2. The respondent No.1-original plaintiff had filed suit
against the appellants-defendants for partition, separate possession
of her 1/6th share in the suit property. Respondent no.1, daughter
of Dago, who expired in the year 1970, is claiming rights in the
suit property as coparcener.

3. In the case of Prakash v. Phulvati; 2016 (1) Mh.L.J.,
Page 1, the Supreme Court held that the amended Section 6 was
not retrospective in operation and it would apply when both the

coparceners and the daughter were alive on the date of commencement of the Amendment Act i.e. 09.09.2005.

If the law laid down in *Prakash's* case supra is applied, the respondents would not be entitled for any share.

4. The counsel for the appellants has invited my attention to the judgment of Larger Bench of the Supreme Court in *Vineeta Sharma .Vs. Rakesh Sharma and Ors., (2020) 9 SCC 1.* The question concerning the interpretation of Section 6 of the Hindu Succession Act, 1956, as substituted by the Hindu Succession Act, 2005, was referred to the Larger Bench, in view of the conflicting verdicts rendered in two Division Bench judgments of the Supreme Court in *Prakash's* case supra and *Damanna alias Suman Surpur and anr .vs. Amar and Ors, (2018) 3 SCC 343.* The Supreme Court, in paragraph 80 of *Vineeta's* case supra, held thus.

“80. A finding has been recorded in Prakash V. Phulavati that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9.9.2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends.

Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of "living coparcener", as laid down in Prakash V. Phulavati. In our opinion, the daughters should be living on 9-9-2005. In substituted Section 6, the expression 'daughter of a living coparcener' has not been used. Right is given under Section 6(1) (a) to the daughter by birth. Declaration of right based on the past event was made on 9-9-2005 and as provided in Section 6(1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave no room to entertain the proposition that coparcener should be living on 9-9-2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part."

The Supreme Court has then overruled the judgment in *Prakash's* case supra.

5. Thus, the issue involved is now settled by the Supreme Court in the case of *Vineeta Sharma*, supra. The coparcener even if has expired prior to coming into force the amended provision of Section 6, the daughters will be entitled for their shares in the property left behind by their ancestors. Thus, the daughters are

held coparceners even if their father expired prior to 09.09.2005.

6. In view thereof, the suit filed by respondent no.1 in the year 2007, despite her father having been expired in the year 1970, is maintainable. The substantial question of law is answered in the affirmative.

7. Both the Courts below have held that the respondent-plaintiff will be entitled for the share in the property. The judgments are in consonance with the law laid down by the Supreme Court in *Vineeta Sharma's* case. In other words the appellants failed to make out a case. The appeal is accordingly dismissed.

(Anil L. Pansare, J.)

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