



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

SECOND APPEAL NO.479 OF 2019

Vasant S/o Kashinath Salve
 Aged about 62 years, Occ: Private Medical
 R/o Colliery Road, Ballarpur,
 Tahsil Ballarpur, Dist. Chandrapur.

...APPELLANT
 (Orig. Deft. No.2)
 (On R.A.)

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

1. Moreswar S/o Bhujangrao Niwalkar
Aged about 66 years, Occ: Private work,
2. Arun S/o Bhujangrao Niwalkar
Aged about 66 years, Occ: Private work,
3. Anil S/o Bhujangrao Niwalkar
Aged about 66 years, Occ: Private work,
4. Bhujangrao S/o Sitaram Niwalkar
[Died during the pendency of the suit.
Hence, deleted by the trial Court]

...(Orig. Plaintiffs)
 (On R.A.)

... (Orig. Def.No.2)

All R/o Bamani, Tahsil Ballarpur,
 District Chandrapur.

...RESPONDENTS

 Mr. Rohit Joshi a/w Mr. Madhur Deo, Advocates for Appellant.
 Ms Kirti Satpute, Advocate for respondent nos.1 to 3.

CORAM :- M.W. CHANDWANI, J.

ARGUMENTS WERE HEARD ON :- 19.07.2024.

JUDGMENT IS PRONOUNCED ON :- 17.10.2024

JUDGMENT:

1. This second appeal challenges the judgment and decree dated 12.06.2019 in Regular Civil Appeal No.50/2013 passed by

the District Judge, Chandrapur, thereby reversing the decree of dismissal of suit in Regular Civil Suit No.167/2008 (Old RCS No.74/2006).

2. Respondent nos.1 to 3 the sons of deceased Bhujangrao Sitaram Niwalkar, original defendant no.2, filed a suit against the appellant herein claiming that the suit property is ancestral property and the same is in possession of respondent nos.1 to 3. Bhujangrao Niwalkar alienated the suit property in favour of the appellant without consent of respondent nos.1 to 3, the coparceners. The said alienation was not for the benefit of Hindu joint family and therefore, respondent nos.1 to 3 sought declaration that the said sale-deed dated 21.08.1974 executed by their father Bhujangrao Niwalkar in favour of the appellant is not binding on them. They also sought an injunction restraining the appellant from disturbing their possession over the suit property.

3. The trial Court held that the sale-deed dated 21.08.1974 executed in favour of the appellant is not binding on respondent nos.1 to 3 and also held that respondent nos.1 to 3 are entitled to injunction restraining the appellant from disturbing their peaceful possession over the suit property. However, the trial Court dismissed the suit on the ground that it is beyond the prescribed

period of limitation. Dissatisfied with the decree of dismissal, respondent nos.1 to 3 preferred an appeal before the learned District Judge, Chandrapur. The appellate Court held that the suit filed by respondent nos.1 to 3 is within limitation and thereby decreed the suit of respondent nos.1 to 3, declaring that the said sale-deed dated 21.08.1974 is not binding on respondent nos.1 to 3 and also restrained the appellant from disturbing the possession of respondent nos.1 to 3 over the suit property. The appellant challenged the said judgment and decree by this second appeal.

4. By order dated 14.01.2020, this Court has framed following substantial questions of law:

“(1) Whether in appeal it is necessary for a party to file a cross-objection in respect of an adverse finding which is rendered by the Trial Court?”

“(2) Whether Order 41, Rule 22 of the Civil Procedure Code, permits the respondents to raise all pleas as are available to him, in respect of a finding rendered by the Trial Court?”

“(3) What is the nature of difference between the property held as a coparcener and as a person inheriting under Section 8 of the Hindu Succession Act, 1956?”

5. Mr. Rohit Joshi, learned counsel for the appellant, would submit that though the appellant did not file a cross-objection or a cross-appeal, as per Order XLI Rule 22, the appellant who was respondent before the first appellate Court,

had right to object to any issue which ought to have been in his favour without filing any cross-appeal or cross-objection. According to him, the trial Court without framing an issue on the point of nature of suit property, i.e. whether the suit property is ancestral or self-acquired property has held that the suit property is ancestral property of respondent nos.1 to 3. When the objection was raised by the appellant before the appellate Court it was overruled on the ground that no cross-appeal or cross-objection has been filed by the appellant. He submitted that as per Order XLI Rule 22 of the CPC, the respondent need not file cross-appeal or cross-objection to attack any finding recorded by the trial Court.

6. Mr. Rohit Joshi, learned counsel for the appellant, further submitted that since the suit property was inherited by deceased Bhujangrao Niwalkar from his father after the Hindu Succession Act, 1956 (for short, “**Act of 1956**”) came into force respondent nos.1 to 3 will not get interest by birth. The suit property devolved upon deceased Bhujangrao Niwalkar as per Section 8 of the Act of 1956 being son of deceased Sitaram Niwalkar, the grandfather of respondent nos.1 to 3. Therefore, the property inherited by deceased Bhujangrao assumed the character of self-acquired property. This aspect has neither been considered

by the trial Court nor the appellate Court. According to him, once succession opens after commencement of the Act of 1956, the property of Hindu male on his death shall devolve upon his legal heir, as per Section 8 of Act of 1956 and not by survivorship. The trial Court as well as the appellate Court erred in holding that the property is ancestral property and respondent nos.1 to 3 have interest in the suit property, consequently held that the sale-deed executed by their father – Bhujangrao Niwalkar is not binding on them.

7. *Per contra*, Ms Satpute, learned counsel for respondent nos.1 to 3, submitted that concurrent findings are recorded by the appellate Court as well as the trial Court that the suit property which was inherited by deceased Bhujangrao is an ancestral property and respondent nos.1 to 3 are having interest in the said property. Therefore, the trial Court as well as the appellate Court rightly held that the sale-deed executed by deceased Bhujangrao, the father of respondent nos.1 to 3, is not binding on respondent nos.1 to 3. She further submitted that there was no cross-appeal or cross-objection filed for challenging the finding of the trial Court that the suit property is ancestral property, therefore, he cannot challenge the same before the appellate Court in absence

of the cross-objection. She supported the judgments of the Courts below and sought rejection of the appeal.

8. It is a matter of record that both parties before the trial Court claimed by way of rival pleadings about nature of the suit property. No issue was framed by the trial Court as to nature of the suit property. The trial Court proceeded to record the findings that the suit property is ancestral property. Though, this ground was raised by the counsel for the appellant before the appellate Court while arguing the appeal, being respondent in the said appeal, the same has not been appreciated on the ground that no cross-objection was filed by the appellant.

9. For appreciating the arguments of the learned counsel for the appellant, it will be apt to refer Order XLI Rule 22, which is reproduced here:

“ORDER XLI

22. Upon hearing respondent may object to decree as if he had preferred separate appeal.—

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree 2 [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the

appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation. —A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.”

10. The rule states that if the finding recorded by the trial Court on any particular issue is incorrect or the said finding ought to have been in favour of the appellant, in such a case the appellant may file a cross-objection in respect of the same. Therefore, the words “and may also take any cross-objection” mentioned in the rule assume significance which shows that, apart from demonstrating that the finding against him ought to have been in his favour, the appellant may also take any cross-objection. In other words, the rule envisages that the appellant may demonstrate that the finding against him is not correct irrespective of filing of the cross-objection. The right to file a cross-objection is in addition to the right to demonstrate or state that any finding recorded by the Courts below ought to have been in his favour.

11. A reference can be made to case of ***Banarsi Vs. Ram Phal***¹, wherein the Supreme Court has taken into consideration, the amendment of 1976 to the Code of Civil Procedure and has observed as under:

“10. The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-

¹ (2003) 9 SCC 606

amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objections to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelt out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default, the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.”

12. Thus, if the decree was in favour of a person, then in appeal filed by opponent party challenging the decree, the person, while attacking adverse findings recorded by the trial Court against him need not file a cross-objection, unless he seeks to modify the decree which has been passed by the Courts below. Consequently, in appeal filed by a person aggrieved by decree of a Court, a respondent can raise all pleas available to them in respect of adverse findings recorded by the trial Court. Therefore, I find

substance in the argument of the learned counsel for the appellant that the appellate Court was not justified in ignoring the argument attacking the finding recorded by the trial Court about the nature of the suit property only on the reason that the cross-objection was not filed by the appellant herein. The substantial question recorded at serial nos.1 and 2 are answered accordingly.

13. This takes me to the next substantial question of law. Perusal of impugned judgments of the trial Court as well as the appellate Court shows that the suit property was initially held by Sitaram Balaji Niwalkar, the father of Bhujangrao. After the death of Sitaram, the property was inherited by Bhujangrao, original defendant no.2, the father of respondent nos.1 to 3. Thus, the moot question that arises is, whether the property inherited by deceased Bhujangrao will assume the character of self-acquired property or shall be treated as coparcenary property, wherein respondent nos.1 to 3 got right by birth?

14. Under uncodified Hindu Mitakshra School of law, the interest of a Hindu male in a coparcenary property used to devolve upon surviving coparceners. Later, in year 1955-56, the Hindu law came to be codified by a different enactments. Law

regarding inheritance and succession of a Hindu is codified by Hindu Succession Act, 1956. The Act, as its long title states, is an Act to amend and codify the law relating to intestate succession among Hindus. It is necessary to set out the relevant provisions of the Act of the 1956. Section 4 overrides the Hindu Law in force immediately before the commencement of this Act with respect to any matter for which a provision is made by the Act. Section 4 read as follows:

“4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.”

Section 6 prior to 2005 Amendment reads as follows:

“6. Devolution of interest in coparcenary property.—

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.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener 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.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.”

Section 6 post 2005 amendment reads as follows:

“6. Devolution of interest in coparcenary property.—

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other

law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener 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.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted. Explanation.—For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004 Explanation.—For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.”

15. The next important Section is Section 8, which reads as follows:-

*“8. General rules of succession in the case of males.—
The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter —*

(a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

(b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.”

THE SCHEDULE

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son, son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son.”

16. Sections 19 and 30 of the Act of 1956 also carry importance, which read as follows:-

“19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property,—

(a) save as otherwise expressly provided in this Act, per capita and not per stripes; and

(b) as tenants-in-common and not as joint tenants.

30. Testamentary succession.— Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.”

17. The Act brought about a sea of change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a *non obstante* provision in terms whereof any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Act, ceased to have effect with respect to any matter for which a provision is made therein, save as otherwise expressly provided. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Clause (1) of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed as Class I heirs but a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not *per stripes*, as also tenants-in-common and not as joint tenants.

18. Thus, the position of law as regards coparcenary property after the Act of 1956 came into force has undergone a change. After 17th June 1956, if a male inherits property from his

ancestor by virtue of Section 8 of the Act of 1956, the said property assumes the character of self-acquired property and does not remain joint family property. Sons or daughters of the said male will not get interest in the said property by birth.

19. Way back in the year 1984, the Supreme Court in the decision of *Commissioner of Wealth Tax, Kanpur etc. Vs. Chander Sen etc.*¹ has held as under:

“19. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

20. In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu

¹ AIR SC 1753 : 1986 TAX LR 1328

family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under section 8 of the Act included widow, mother, daughter of predeceased son etc.

21. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu law 15th Edn. dealing with section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on Hindu Law, 12th Edition pages 918-919.

22. The express words of section 8 of The Hindu Succession Act, 1956 cannot be ingored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored."

20. That view is consistently followed in the cases of ***Yudhishter Vs. Ashok Kumar***¹; ***Banwar Singh Vs. Puran***². In later, in the year 2016, the Supreme Court in the decision of ***Uttam Vs. Saubhag Sing and others***³, after considering all these decisions as well as the decision of ***Rohit Chauvhan Vs. Surinder Singh***⁴ postulated various contingencies which have been summarized in para 18 of the said judgment, which is reproduced here:

"18. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. Dharma

1 (1987) 1 SCC 204

2 (2008) 3 SCC 87

3 (2016) 4 SCC 68

4 (2013) 9 SCC 419

Shamrao Agalawe v. Pandurang Miragu Agalawe (1988) 2 SCC 126, *Sheela Devi v. Lal Chand*, (2006) 8 SCC 581, and *Rohit Chauhan v. Surinder Singh* (2013) 9 SCC 419, were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. 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.”

21. Evidently, in the present case, the grandfather of respondent nos.1 to 3 died in 1969, i.e. after the commencement of the Act of 1956. Therefore, the suit property inherited by deceased Bhujangrao in succession, as per Section 8 of the Act of 1956, assumes the character of self-acquired property and does not remain coparcenary property. Respondent nos.1 to 3 will not get any interest in the suit property by their birth. Deceased Bhujangrao could very well have disposed of the property, which he did, even without necessity or without procuring benefits from the said transaction for Hindu joint family. These aspects have not been considered by the Courts below and erroneously held that right of respondent nos.1 to 3 in the suit property is created by birth assuming the suit property to be coparcenary property. Therefore, the said finding of the trial Court as well as appellate Court is required to be set aside.

22. The substantial question of law at serial no.3 is answered by holding that the suit property inherited by deceased Bhujangrao is not coparcenary property but assumes the character of self-acquired property with unfettered right to dispose of the same as self-acquired property. To that extent the appeal succeeds.

23. Since it is an admitted position that respondent nos.1 to 3 are in possession of the suit property, therefore, they are entitled for injunction to protect their possession. The judgment and decree of appellate Court is set aside and modified as under :

- i. The suit is partly decreed.
- ii. The appellant himself or any person acting on his behalf are hereby restrained permanently from interfering with the possession over the suit property without following due process of law.

JUDGE

Wagh