



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

SECOND APPEAL NO.389 OF 2009

- APPELLANTS** : 1 **Anna S/o. Yadeorao Sonwane,**
 Aged 41 years, occ. Decoration work
- 2 **Gopala S/o. Yadeorao Sonwane,**
 Aged 48 years, occ. Decoration work
- 3 **Smt. Gangabai Wd/o. Yadeorao Sonwane,**
 Aged 67 years, occ. Nil (Deleted as per Court order dated 07.06.2022)
- 4 **Ku. Pramila D/o. Yadeorao Sonwane,**
 Aged 29 years, Occ. Labour
5. **Smt. Radhika W/o. Chinduji Urkude,**
 Aged 32 years, Occ. Labour

All the appellants 1 to 4 are resident of Budhwari Peth, Umred, District Nagpur.

..VERSUS..

- RESPONDENTS** : 1 **Mahadeorao S/o. Pandurang Nagrikar,**
 Aged 67 years, Occ. Agriculture, resident of Itwari Peth, Umred, District Nagpur.

Amended as per Hon'ble Court Order dated 20.10.2022

- 1a **Subhadra wd/o Mahadeorao Nagrikar,**
 Aged about 69 years, Occupation:- Not known
- 1b **Manoj s/o Mahadeorao Nagrikar,**
 aged About 44 years, Occupation:- Agriculture

- 1c **Kishor Mahadeorao Nagrikar**,
aged about 37 Years, Occupation:-
Agriculture
The respondent No.1a to 1c are
resident of Near Itwari Post Office,
Itwari Peth, Umred, District: Nagpur
- 1d **Kunda W/o Arun Bande**
aged about 42 years, Occupation:
Housewife Resident of Mahajanwadi,
Wanadongari behind Sutgirni, Tah
Hingana Dist- Nagpur.
- 1e **Savita W/o Eknath Dalal**,
aged about 40, Occ: Housewife
Resident of Sonamata Mandir, Lahan
Deoghar, Sirsi Tah: Umred Dist:
Nagpur.
- 1f **Nitu W/o Vilas Nimje**,
Age about 38 years, Resident of Purani
Machhisath sadakpatti, near Durga
Mata Temple Tah: Mouda Dist:
Nagpur.

Mr P. A. Abhayankar, Advocate for Appellants.

Mr P. P. Pendke, Advocate for Respondents.

CORAM : **M. W. CHANDWANI, J.**
RESERVED ON : **24th JULY, 2024.**
PRONOUNCED ON : **22nd OCTOBER, 2024.**

JUDGMENT

1. Heard.

TAMBE

2. The ultimate question arising in this appeal is, whether the property acquired by a Hindu male from his father or forefather in succession by virtue of Section 8 of the Hindu Succession Act, 1956 (hereinafter referred to as, “the Act of 1956”), is coparcenary property, wherein his sons and daughters will get right by birth ?

3. The appellant Nos.1 and 2 are the sons and the appellant Nos.4 and 5 are the daughters of deceased Yadeorao Sonwane. There was a partition between Yadeorao and his brother regarding their father’s property, which occurred after their father’s death. The agricultural land bearing Gat No.28/4 admeasuring area 3.49 H.R. situated at Village Kawadasi (Barad) fell in the share of Yadeorao. On 07.02.1988, deceased Yadeorao purchased the agricultural land bearing Gat No.43/1 admeasuring area 1.40 H.R. and Gat No.45/3 admeasuring area 0.51 H.R. from Laxmiparasad Hindriya and his son Pritim Laxmiprasad Hindriya. The said agricultural land situated at Narsala is renumbered as Gat No.64 admeasuring area 2.10

H.R., which is the suit property. Deceased Mahadeorao Nagrikar i.e. the original defendant - the father of the present respondents purchased the suit property by registered sale-deed dated 30.01.1996 for a consideration of Rs.2,26,000/-.

4. The case of the appellants before the Trial Court was that the suit property is purchased out of the income of the ancestral property of deceased Yadeorao and the appellants. Yadeorao was addicted to liquor, gambled excessively and was also a womanizer. Therefore, he started residing separately at Gangapur. Despite there being no legal necessity of joint family, Yadeorao sold the suit property to Mahadeorao Pandurang Nagrikar. When the appellants came to know about this fact, they issued a notice to the original defendant. Hence, a suit for possession over the suit property alongwith a prayer asking for 1/6th share of the suit property apart from mesne profit was filed against deceased Mahadeorao. The defence of deceased Mahadeorao was that the suit property is self acquired property of deceased Yadeorao.

5. The Trial Court after hearing the suit on merits decreed the suit of the appellants by holding that the nature of the suit property is joint family property and it has been sold by deceased Yadeorao without any legal necessity. The Trial Court also held that each appellants have $1/6^{\text{th}}$ share in the suit property and they are entitled for possession over the suit property. The decree passed by the Trial Court was carried in appeal by deceased Mahadeorao before the District Judge, Nagpur. The District Judge, Nagpur, reversed the findings of the Trial Court and held that the suit property is self acquired property of deceased Yadeorao, therefore, he had absolute right to sell the suit property. Accordingly, the decree of the Trial Court was set aside and the suit was dismissed. Being aggrieved with the decision of the Appellate Court, the appellants, who are the original plaintiffs, have filed this second appeal.

6. The appeal was admitted on the following substantial questions of law :

“(1) Whether 1st Appellate Court was justified to set aside the decree passed by the trial Court directing partition amongst family members ?

“(2) Whether transferer Yadavrao had legal necessity to dispose of property in favour of respondent ?”

7. Mr P. A. Abhayankar, learned counsel appearing on behalf of the appellants submitted that the property of Survey No.28/4 admeasuring area 3.49 H.R. situated at Kawadasi (Barad), which was received by deceased Yadeorao in partition between him and his brother in the year 1984, was ancestral property. Out of the income of the agriculture land of Gat No.28/4 admeasuring area 3.49 H.R. situated at Village Kawadasi (Barad), deceased Yadeorao purchased the suit property in his name. Therefore, suit property purchased from joint family fund is joint family property of the appellants. Yadeorao, behind the back of the appellants, sold the suit property to Mahadeorao without any legal necessity of the joint family. Therefore, the sale-deed dated 30.01.1996 executed by

Yadeorao is not binding upon the appellants and they are entitled for possession over the suit property. According to him, the Trial Court has rightly held that the suit property was ancestral property of the plaintiffs and determined 1/6th share of each of the plaintiffs in the suit property. According to him, the Appellate Court failed to appreciate the fact that the suit property received either through inheritance or from his father or forefather would be considered as ancestral property in the hands of the sons and daughters as per the principles of coparcenary. According to the principle of coparcenary, the coparceners are entitled to ancestral property by birth as per the Hindu law. The decision of the Apex Court in the case of **Rohit Chauhan vs. Surinder Singh and Ors., AIR SC 3525**, has been relied upon, wherein the Apex Court has held in para 11 as under :

“11. We have bestowed our consideration to the rival submission and we find substance in the submission of Mr. Rao. In our opinion, coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor.

Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener. The view which we have taken finds support from a judgment of this Court in the case of M. Yogendra v. Leelamma N., (2009) 15 SCC 184, in which it has been held as follows :

29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid.”

8. Taking his argument further, Mr Abhayankar, learned counsel for the appellants submitted that the

agricultural land of Gat No.28/4 as well as the income from the said agricultural land would belong to the joint family and appellants have proved the nucleus fund for purchase of the suit property. According to the learned counsel for the appellants, the suit property was purchased in the name of deceased Yadeorao, therefore, the suit property, which has been purchased out of the income of the joint family property will also become joint family property.

9. Next, learned counsel for the appellants would submit that, in wake of judgment of the Hon'ble Apex Court in the case of **Rohit Chauhan** (supra), the suit property is nothing but ancestral property of the appellants. Particularly, appellant Nos.1 and 2 have a right by birth being sons of deceased Yadeorao. According to him, there is nothing on record to suggest that deceased Yadeorao has sold the suit property due to any legal necessity of the joint family, therefore, the finding of the Appellate Court does not sustain in the eyes of law.

10. The sum and substance of the argument of learned counsel for the appellants is that the Trial Court has rightly appreciated that the property received by a Hindu male in partition shall be ancestral property for his sons. Therefore, the appellants have interest in the suit property. Hence, he submitted that the findings of the Appellate Court are erroneous and are required to be set aside.

11. Per contra, Mr P. P. Pendke, learned counsel appearing for the respondents would submit that the Appellate Court, relying on the decision of the Hon'ble Apex Court in the case of *Bhanwar Singh vs. Pura and others, (2008) 3 SCC 87*, has rightly held that the suit property is not ancestral property of the appellants and it was self acquired property of deceased Yadeorao. Next submission of the learned counsel for the respondents is that burden of proof lies with the person claiming the suit property to be coparcenary property to show that there was sufficient nucleus fund with the joint family to purchase the property. However, the appellants have failed to

discharge this burden. Therefore, even if the suit property of Gat No.28/4 is deemed as joint family or coparcenary property, the appellants have failed to prove that the joint Hindu family had possession of the nucleus i.e. the income from ancestral property. Subsequently, the purchase of the suit property by Yadeorao in his name constitutes as self-acquired property of Yadeorao and not joint Hindu family property. Therefore, the learned counsel appearing for the respondents sought rejection of the appeal.

12. Having heard the learned counsels for the respective parties and having gone through the record and judgments of the Trial Court as well as the First Appellate Court, it transpires that the Trial Court held that the agricultural land of Gat No.28/4 that was received by Yadeorao was ancestral property, and therefore, appellant Nos.1 and 2 being coparceners, have an interest in the land and are in possession of the joint Hindu family property. The fact that the appellants have a joint family milk business proved the possession of nucleus funds for

purchase of the suit property. Therefore, the suit property is joint family property of the appellants and deceased Yadeorao. As against this, the Appellate Court reversed the decree of the Trial Court on the ground that the suit property received by deceased Yadavrao in his share assumes the character of self-acquired property as he inherited the same under Section 8 of the Act of 1956.

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

14. 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.”

15. 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.”

16. The Act brought about a sea of change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act of 1956 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 of 1956, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 of the Act of 1956 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 of 1956 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.

17. 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.

18. Way back in the year 1984, the Hon'ble Apex Court in the case of Commissioner of Wealth Tax, Kanpur etc. vs. Chander Sen etc. AIR SC 1753 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 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."

19. The view taken in Chander Sen (supra) is consistently followed in the decisions of Yudhishter vs. Ashok Kumar, (1987) 1 SCC 204 and Bhanwar Singh vs. Puran and others, (2008) 3 SCC 87. Later in the year 2016, the Apex Court in the decision of Uttam Vs. Saubhag Sing and others, (2016) 4 SCC 68 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 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."

20. The decision of **Rohit Chauhan** (supra) relied upon by the counsel for the appellants and other decisions of the Apex Court on the line of decision in **Rohit Chauhan** (supra) have been considered in the case of **Uttam** (supra). The Apex Court has observed that in these decisions, Sections 4, 8 and 19 of the Act of 1956 were not considered. Therefore, the decision in the case of **Rohit Chauhan** (supra) will not be helpful to the appellants.

21. Evidently, the grandfather of appellant Nos.1, 2, 4 and 5 died in the year 1983 after the commencement of the Act of 1956 and thereafter, deceased Yadeorao alongwith his brother received the property of Gat No.28/4 in succession by virtue of Section 8 of the Act of 1956. Therefore, the suit property received by deceased Yadeorao in succession alongwith his brother assumes the character of self-acquired property and does not remain coparcenary property. Consequently, the appellant Nos.1 and 2, the sons of deceased Yadeorao, will not get any interest in the suit property by birth.

Having held so, even if the case of the appellants, that the suit property is purchased out of the income of the agricultural land of Gat No.28/4 is accepted, the suit property cannot become joint family property or ancestral property, but it was self-acquired property of Yadeorao.

22. To conclude, the Appellate Court was justified in setting the decree passed by the Trial Court directing partition of the suit property amongst the family members aside. The substantial question of law No.1 is answered accordingly.

23. In wake of the answer to substantial question of law No.1, question No.2 does not survive. Accordingly, the appeal fails and the same is **dismissed**.

(M. W. CHANDWANI, J.)