



## COMMENT: UTTAM V. SAUBHAG SINGH & ORS. (2016)

*By Bhargavi Shukla and Swagat Sanyal  
From Gujarat National Law University*

### Abstract

The case deals with the concepts of the Mitakshara Coparcenary system and the Joint Hindu Family with regard to the law focusing testamentary and intestate succession. It focuses on the Sections 6 and 8 of the Hindu Succession Act, 1956 prior to the 2005 amendment. The question is with regard to the devolution of the deceased's property as well as the status of the plaintiff/appellant in order to ascertain his claim. The court dealt with a number of issues such as a widow's right as a tenant-in-common or a joint tenant subsequent to the death of her husband, entitlement of a son's son in the property of a Joint Hindu Family among others. The Court laid down some basic differences between Survivorship and Succession while passing the judgment. The case comment, therefore, aims at analysing this judgment of the Court vis-à-vis previous judgments related to the two concepts.

### I. INTRODUCTION

The Supreme Court of India, in the case of *Uttam v Saubhag Singh*,<sup>1</sup> has summarised the law laid down in Sections 6<sup>2</sup> and 8<sup>3</sup> of the Hindu Succession Act, 1956 in relation to joint family property governed by Mitakshara School. The court has analyzed both the Sections in depth in order to reach a

conclusive difference between the two and, therefore, between the concepts of survivorship and succession. Section 6 of the 1956 Act dealt with devolution of interest of a person in a coparcenary property in case he dies intestate. It provided that in case a person having interest in a coparcenary property dies intestate leaving only male heirs, such property will devolve upon his male heirs by survivorship. However, the proviso to Section 6 provided that if the deceased had left behind a Class 1 female heir, the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

In order to apply this section, it becomes important to determine the share of a person in the coparcenary property. This is done by giving effect to a fictional partition immediately before the death of such person. This share is then distributed between all the coparceners and the widow of the deceased person in order to give effect to the notional partition of the coparcenary property.

On the other hand, Section 8 of the Act comes into effect either by reason of the death of a male Hindu leaving behind self-acquired property or by the application of the proviso to Section 6. In the situation of Section 8 being applied, the property devolves only by way of intestate succession and not by survivorship. Moreover, Section 30<sup>4</sup> of the deals with testamentary succession and makes it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in coparcenary property can be disposed of by any form of testamentary disposition.

<sup>1</sup> 2016 (4) SCC 68.

<sup>2</sup> Hindu Succession Act 1956, s 6.

<sup>3</sup> Hindu Succession Act 1956, s 8.

<sup>4</sup> Hindu Succession Act 1956, s 30.



## II. FACTS

Jagannath Singh, the grandfather of the plaintiff, passed away in 1973 leaving behind his wife, Mainabai and 4 children including the plaintiff's father. The plaintiff Uttam filed a suit for partition against his father who was defendant no.3 and his father's brothers namely defendant no. 1, 2 and 4. The suit was for acquisition of his share in the suit property which according to him was ancestral property. He claimed that he was entitled to his share on the account of him being a coparcenary.

## III. PROCEDURAL HISTORY

### A. First Appeal

The suit was decreed, against which appeal was preferred. The appeal was allowed by the court of first appeal by dismissing Uttam's suit on reasoning that the death of Jagannath Singh took place in 1973, after which his widow Mainabai was alive. Thus, according to the proviso to Section 6, the distribution of Jagannath Singh's property would be done as per Section 8.

The court of first appeal took into consideration the fact that once the application of Section 8 is done, the division of joint family property has to be carried out according to the rules of intestacy and not survivorship. In light of this fact, the court decided that there remained no JHF property to be divided when the suit for partition was brought by the plaintiff. It was further noted that the father of the plaintiff alone was the Class I heir of Jagannath's property and was entitled to succession in his property and the

plaintiff had no right as long as his father was alive.

### B. Second Appeal

The Madhya Pradesh High Court held in the second appeal that the grandson had no right in the properties owned by the grandfather in view of Sections 4,6 and 8. He, therefore, cannot claim partition during the lifetime of his father.

It was observed that, *'In the present case, it is undisputed that Jagannath had died in the year 1973, leaving behind respondents No. 1 to 4 i.e. his four sons covered by Class I heirs of the Schedule therefore, the properties had devolved upon them when succession had opened on the death of Jagannath. It has also been found proved that no partition had taken place between respondents No. 1 to 4. The appellant who is the grandson of Jagannath is not entitled to claim partition during the lifetime of his father Mohan Singh in the properties left behind by Jagannath since the appellant has no birth right in the suit properties.'*<sup>5</sup>

## IV. ISSUES

The Supreme Court, in deciding the given case, dealt with a number of important issues of family law such as:

- 1) Whether the joint family property retained its character as joint family property after the death of Jagannath Singh.
- 2) Whether the appellant, being a coparcener, had a right in the disputed property by birth.

<sup>5</sup> Uttam (n 1) [4].



3) Whether the appellant had a right to sue for partition while his father (Class 1 heir) was alive.

## V. CONTENTIONS

### A. Appellant

Firstly, it was contended that as the widow of the deceased was alive at the time of his death, the case would be under the purview of proviso to Section 6. As a result of this, the interest of the deceased in the coparcenary property would devolve by intestate succession under Section 8 of the Act, and not by survivorship.

Moreover, it was argued that only the interest of the deceased in the coparcenary property would devolve by intestate succession and that the joint family property would not otherwise have any effect whatsoever. As a result of this, it was well within the plaintiff's rights to sue for partition even while his father was still alive. The status of the plaintiff as a coparcener and his right of partition in the joint family property continued to subsist even after the death of Jagannath Singh which in turn meant that his right to sue for such partition remained intact.

It was further argued that Section 8 of the Act would not bar such a suit because it would only be applicable at the time of the death of the plaintiff's grandfather in 1973 and not thereafter to the plaintiff, who as a living, was entitled to a partition before any other death in the joint family occurred.

Finally, it was contended that the Act only abrogated the Hindu Law to the extent indicated, and that it is necessary to read Section 6 in harmony with Section 8. As a result, it cannot be concluded that the status of joint family property recognised under Section 6 is taken away upon the application of Section 8 on the death of the plaintiff's grandfather.

### B. Respondent

The primary contention was that the joint family property ceases to be joint family property once Section 8 is brought into application by reason of the proviso to Section 6 being applied.

Such property can only be succeeded to by application of either Section 30 or Section 8, in case a will had been made or in case a member of the joint family dies intestate respectively.

As a result, the respondent supported the judgment given by the High Court and cited two cases in furtherance of his contention. These cases, namely *Commissioner of Wealth Tax, Kanpur and Ors. v Chander Sen and Ors.*<sup>6</sup> and *Bhanwar Singh v Puran*<sup>7</sup>, asserted that once Section 8 is applied to the facts of a given case, the property then ceases to be considered as joint family property. This being the case, no member of the family exercises the right to partition in a property which is no longer joint family property.

## VI. REASONINGS OF THE COURT

The Supreme Court referred to some judgments where the proviso to Section 6

<sup>6</sup> *Commissioner of Wealth Tax, Kanpur and Ors. v Chander Sen and Ors.* (1986) 3 SCC 567.

<sup>7</sup> *Bhanwar Singh v Puran* (2008) 3 SCC 87.



before the 2005 amendment and the Section 8 had been applied by the courts. Referring to *Gurupad Khandappa Magdum v Hirabhai Khandappa Magdum*<sup>8</sup> and *Shyama Devi (Smt) and Ors. v Manju Shukla (Mrs) and Anr.*,<sup>9</sup> the court said that in order to determine the deceased's share in the joint family property under the proviso to Section 6 of the Hindu Succession Act, a fictional partition is to be necessarily carried out just before the deceased's death. Thus, the defendant's property was devolved by intestate succession under the Act and not by survivorship. Explanation 1 to Section 6 was the main subject-matter of the dispute between parties in the case.

The court also stated that, *All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased.*<sup>10</sup> It was held that explanation 1 should be given full effect while dealing with the proviso to Section 6.

In another case which was referred here, the Supreme Court had held that due to the application of explanation 1 of Section 6, the membership of a female, who inherits a share of the joint family property on the death of her husband, will not be affected after partition takes place.<sup>11</sup>

<sup>8</sup> *Gurupad Khandappa Magdum v Hirabhai Khandappa Magdum* (1978) 3 SCC 383.

<sup>9</sup> *Shyama Devi (Smt) and Ors. v Manju Shukla (Mrs) and Anr.* 1994 6 SCC 342.

<sup>10</sup> *ibid* [13].

<sup>11</sup> *State of Maharashtra v Narayan Rao Sham Rao Deshmukh and Ors.* 1985 3 SCR 358.

It was also observed that, *'Also, his case in the suit filed by him is not that he is entitled to this share but that he is entitled to a 1/8th share on dividing the joint family property between 8 co-sharers in 1998. What has therefore to be seen is whether the application of Section 8, in 1973, on the death of Jagannath Singh would make the joint family property in the hands of the father, uncles and the plaintiff no longer joint family property after the devolution of Jagannath Singh's share, by application of Section 8, among his Class I heirs.'*<sup>12</sup> For this matter, the court referring to *Commissioner of Wealth Tax, Kanpur and Ors. v Chander Sen and Ors.*<sup>13</sup> And *Yudhishter v Ashok Kumar*<sup>14</sup> held that the preamble of the Act clearly envisages that the Act is to amend and codify the laws relating to intestate succession. It was noted that Schedule 1 did not include a son's son but included a predeceased son's son.

Additionally, in *Bhanwar Singh v Puran*<sup>15</sup> the Supreme Court had held that according to Section 19<sup>16</sup> of the Act, in the event of succession by two or more heirs, the property shall be divided among them per capita and not per stirpes, as also tenants-in-common and not as joint tenants. Accordingly, it was concluded that they did not continue to be joint coparcenary.

The Court therefore said that when a Hindu male, who has an interest in a Mitakshara

<sup>12</sup> *Uttam* (n 1) [15].

<sup>13</sup> *Commissioner* (n 6).

<sup>14</sup> 1987 1 SCC 204.

<sup>15</sup> *Bhanwar* (n 7).

<sup>16</sup> Hindu Succession Act 1956, s 19.



coparcenary property, dies after the commencement of the 1956 Act, by virtue of Section 6, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary.

The exception contained in the explanation to Section 30 of the Act makes it clear that the interest of a male Hindu in Mitakshara coparcenary property is that which can be disposed of by him by executing a will or by any other form of testamentary disposition.

The aforementioned exception is provided for in the proviso to Section 6, which states that if such a male Hindu had died leaving behind either a female relative specified in Class I of the Schedule or a male relative specified in the same Class who claims through such female relative surviving him, then the dissolution of the interest of the deceased in the coparcenary property would take place by testamentary or intestate succession instead of survivorship.

Additionally, on the death of a Hindu male coparcenary, by virtue of proviso to Section 6, the determination of share is to be done by considering that a partition had taken place immediately before his death. When a male Hindu dies leaving behind self-acquired property then under Section 8 and proviso to Section 6, such property would devolve only by intestacy and not survivorship.

Finally, on reading Sections 4, 8 and 19 of the Act comprehensively, it can be concluded that after the dissolution of JHF property according Section 8, the various persons who have succeeded to it hold the property as tenants in common and not as joint tenants.

It was conclusively held that the property was ancestral property and on death of Jagannath Singh, it ceased to be joint family property. Also, the widow and 4 sons were then tenants' in common and not joint tenants of the property. The suit was held to be not maintainable and was dismissed with no order as to costs.

#### VII. ANALYSIS

The court, in its judgment, held that because Jagannath Singh died leaving behind a widow and 4 children, he fell within the proviso to Section 6 and Section 8 of the Act. The widow fell under Class 1 heir of Jagannath Singh under the Schedule 1.

For instance, if the widow had not been there, proviso to Section 6 of the Act could not have been applied and the succession would have been by survivorship as per Section 6 of the Hindu Succession Act, 1956. Uttam would have the right over the property of his grandfather for being a coparcenary to the ancestral property. This means that every coparcenary has a right in the ancestral property under Section 6 unless the proviso is attracted.

The existence of coparcenary property and more than one coparcener are the essentials for application of Section 6. Therefore, a coparcenary cannot consist of single individual even if the property in his possession is coparcenary property. Section 6 prescribes devolution of interest in the coparcenary property but not distribution of property. Therefore, coparcenary property would remain intact till partition is given effect. It is only the interest of the deceased in the coparcenary property that is devolved by way of survivorship. Thus, the coparceners take shares in the interest of the



deceased coparcener as tenants in common as per Section 19 of the Act.

Where a son inherits property owned by his father, the nature of the property is not ancestral. Even if it is assumed that grandfather's property was ancestral in the hands of the father, the grandson would not have an interest in the property. The operation of the provision of the statute, thus interpreted with the existing Hindu Law and disrupted the accrued right by birth in the joint family property of the son's son when the son is living.<sup>17</sup>

Further, the *Gurupad*<sup>18</sup> judgment has been highly relied upon in this judgment and it means that even in case of notional partition, the JHF property is converted into separate property entirely. However, in *Mulla*<sup>19</sup> and *State of Maharashtra v Narayan Rao*<sup>20</sup> the concept of notional partition is dealt with differently whereby notional partition is seen as a mere calculation for the purpose of distribution of deceased's property and not to be considered as dissolution of coparcenary.

Notably, the decision of *Chander Sen*<sup>21</sup> has been relied upon wrongly because it cannot be used in this case to justify the fact that even ancestral property will devolve upon the son in his individual capacity. The case only talks particularly about how after the inheritance of father's self-acquired property under Section 8, the son is not the karta of his own JHF but he takes the property in his individual capacity as individual property.

Same is the problem with *Yudhishter*<sup>22</sup> judgment where the question is with respect to self-acquired property and not ancestral property.

#### VIII. CONCLUSION

On the application of the principles laid down by the judgments of the Supreme Court, it was observed that on the death of Jagannath Singh, his property would be divided as per the proviso to Section 6 and a partition is said to have taken place immediately before his death. Due to this it was clear that the plaintiff would be entitled to his share in 1973. However, because the plaintiff had taken birth only in 1977 which was after the death of his grandfather, he was not entitled to anything.

The main issue in the judgment lies in the assumption that the entire coparcenary property is to be divided by succession in the notional partition upon the death of the deceased in a case covered by the proviso to Section 6. Also, merely where Section 8 is applied, the situation of son's son not being able to get a share on partition if the son of the deceased is alive, comes into play. However, what is most important to note is that Section 8 cannot apply to devolution of coparcenary property that remains after the extraction of the share of the deceased which has converted into self-acquired by reason of one of the exceptions to the normal rule of Section 6.

\*\*\*\*\*

<sup>17</sup> *Additional Commissioner of Income Tax, Madras v PL Karuppan Chettiar* AIR 1979 Mad 1.

<sup>18</sup> *Gurupad* (n 8).

<sup>19</sup> Sir Dinshaw Fardunji Mulla, *Mulla on Hindu Law* (Satyaajeet A Desai ed, 21<sup>st</sup> edn, LexisNexis Butterworths Wadhwa Nagpur 2010) 1107.

<sup>20</sup> *State* (n 10).

<sup>21</sup> *Commissioner* (n 6).

<sup>22</sup> *Yudhishter* (n 14).