Supreme Court of India
Prasanta Kumar Sahoo vs Charulata Sahu . on 29 March, 2023
Author: Hon'Ble The Justice
Bench: A.S. Bopanna, J.B. Pardiwala

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2913-2915 OF 2018

PRASANTA KUMAR SAHOO & ORS. ….APPELLAN

VERSUS

CHARULATA SAHU & ORS. ….RESPONDEN

JUDGMENT

J. B. PARDIWALA, J.

1. Since the issues involved in both the captioned appeals are interrelated; the parties are also same and the challenge is also to the self-same judgment and decree passed by the High Court of Orissa, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. Both the captioned appeals are at the instance of the legal representatives and heirs of the original defendant No. 1 (Late Shri Prafulla Sahoo S/o Kumar Sahoo) and are directed against the judgment, order and decree passed by a Division Bench of the High Court of Orissa at Cuttack dated 5.05.2011 in AHO No. 133 of 2000 by which the Division Bench of the High Court dismissed the Letters Patent Appeal filed by the appellants herein thereby affirming the judgment and decree of partition passed by the Signature Not Verified Digitally signed by Manish Issrani Trial Court in the Title Suit No. 348 of 1980 instituted by the original plaintiff Date: 2023.03.29 15:55:18 IST Reason:

(Respondent No. 1 herein) and on the other hand allowed the cross-objections filed by the Original Defendant No. 2, thereby setting aside and declaring the compromise recorded by the First Appellate Court entered into between the Late Prafulla Sahoo and his sister i.e., the Defendant No. 2 in the suit to be invalid.

FACTUAL MATRIX

3. This litigation relates to the partition of ancestral properties of one Kumar Sahoo, between the appellants who are the legal representatives and heirs of the Defendant No. 1 (Late Mr. Prafulla Sahoo S/o of Kumar Sahoo), the Respondent No. 1 herein i.e., the Plaintiff (Mrs. Charulata Sahoo daughter of Kumar Sahoo) and the Respondent No. 2 who are the legal representatives and heirs of the Defendant No. 2 (Mrs. Santilata D/o Kumar Sahoo)

4. For the sake of convenience, the relationship of the parties will appear from the following genealogical table, drawn as under: -

> Hadibandhu Dhruba Kumar Ananta Rohita Charulata Santilata (Dead) Prafulla (Dead) (Plaintiff) (Defendant No.2) (Defendant No.1) (Respondent No.1) (Respondent No.2) (Appellant)

5. It appears from the materials on record that sometime in 1940 upon partition Late Shri Kumar Sahoo i.e., the father of the Plaintiff, Defendant No. 1 and Defendant No. 2 resply as a co-parcener received the subject properties. In 1969, when Shri Kumar Sahoo passed away, he was survived by the Plaintiff and Defendant Nos. 1 and 2 resply.

6. On 3.12.1980, the Respondent No. 1 (herein Original Plaintiff) filed a suit for partition being the T.S. No. 348 of 1980, claiming 1/3rd share in the properties ‘A’ to ‘F’ as scheduled in the plaint.

7. The Respondent No. 1 (herein Original Plaintiff) prayed for the following reliefs in the title suit No. 348 of 1980 referred to above:

“(i) Let a preliminary decree be passed for partition in respect of the plaintiff’s 1/3rd share in schedule 'A' to 'F' and the plaintiff be put in specific possession of the same on a separate allotment being curved out in final decree proceeding by appointment of Civil Court Survey knowing commissioner and a decree for mesne profit be passed against Defendant No. 1 from 1977 till the date of the suit and from the date of suit till the decree is made final and the share of Defendant No. 1 in the suit properties be charged for payment of the same.

(ii) Let the Defendant No. 1 be permanently restrained from interfering with the plaintiff’s separate allotment in the final decree proceeding at any time in future.

(iii) Let a degree be passed for the costs of the suit against the Defendants.

(iv) Let a decree be passed for such other relief that the plaintiff is ultimately found entitled in his favour against the Defendants.

DESCRIPTION OF THE PROPERTIES SCHEDULE-A

1. Dist- Cuttack, S. R. Cuttack, Village- Chauliaganj, P.S. No. 213. P.S. Madhupatna Khata No. 34, plot No. 1088 Area Ac. 0.465 dec. Khata No. 32, Plot No. 1088.

KhataNo. 33 Plot No. 1086 Ac. 142. dec.

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Khata No. 260          Plot No. 1087                Ac. 0.502 dec.
                       Plot No. 818                 Ac 0.266 dec.
Khata No. 264          Plot No. 1090                Ac 0.012 dec.
                            -------------------------
                                                    Ac 1.508 dec.
                            (A.V. Rs. 1,03,930/-)
                            SCHEDULE- 'B'
      Mouza- Paisa (Hal - Gandarpur)
Khata No. 108          Plot No. 110          Ac. 0.48 dec.
Khata No. 106          Plot No. 97           Ac. 0.89 dec
Khata No. -do-         Plot No. 98,          Ac. 0.09 dec.
                       Plot No. 99           Ac. 0.14 dec
                       Plot No. 100          Ac. 0.37 dec.
Khata No. 107          Plot No. 95           Ac. 0. 17 dec.
Khata No. 184          Plot No. 101          Ac. 0.45 dec.
Khata No. 114          Plot No. 199 Ac. 0.21- ½ dec.
Khata No. 8      Plot No. 96          Ac. 0.10 dec.
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                                  Ac. 2.90-½ dec.
(.A.V. RS. 2850/-)
                           SCHEDULE -'C'

            District- Cuttack. S.R. Cuttack, Mouza- Rajahans,
            Khata No. 855, Plot No. 316.         Ac. 0.18 dec
            Khata No. 228 Plot No. 535             Ac. 0.08 dec.
                          Plot No. 539 Ac. 0.02 dec
                          Plot No. 548 Ac. 0.03 dec.
                          Plot No. 553 Ac. 0.41 dec.

                                       ___________
                                       Ac. 0.72 dec.
      (A.V. RS. 720/-)
                                SCHEDULE -'D'
            Mouza- Safipur, P.S. Sadar, Cuttack,
                                .... A.V .... Rs.
                          SCHEDULE -'E'
            Mouza- Dian Rajhans Khata No. 1 Plot No. 73                  Ac. 0.13 dec.
                   Plot No. 76          Ac. 0.12 dec
                                                 -------------
                                                        Ac. 0.25 dec
                   Khata No. 2. Plot No. 85             Ac. 0.12 dec.
                                Plot No. 87             Ac. 0.14 dec
                                Plot No. 93             Ac. 0.18 dec.
                                Plot No. 70             Ac. 0.19 dec.
                                Plot No. 72             Ac. 0.29 dec.
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	Plot No. 104	Ac. 0. 19 dec.
		Ac. 1.10 dec
		. . ... valued at Rs. 205/-
Khata No. 18	Plot No. 128	Ac. 0.50
	Plot No. 135	Ac. 27.59 dec
	Plot No. 179	Ac. 1.93 dec
	Plot No. 180	Ac. 2.22 dec
	Plot No. 181	Ac. 10.18 dec
	Plot No. 127	Ac. 2.13 dec.
	Plot No. 130	Ac. 1.23 dec.
	Plot No. 101/186	Ac. 0.24 dec.
	Plot No. 132	Ac. 0.35 dec.
	Plot No. 132	Ac. 0.35 dec.
	Plot No. l37	Ac. 0.20 dec.
	Plot No. 136	Ac. 0.26 dec.
	Plot No. 99/185	Ac. 0.42 dec.
No. 47.25 dec. valued at Rs. 450/-		

Khata No. 19	Plot No. 75	Ac. 0.31 dec
	Plot No. 64	Ac. 0.22 dec.
	Plot No. 74	Ac. 0.30 dec.
	Plot No. 79	Ac. 0.15 dec.
	Plot No. 34	Ac. 0.15 dec.
	Plot No. 38	Ac. 0.11 dec.
	Plot No. 69	Ac. 0.23 dec.
	Plot No. 68	Ac. 0.37 dec.
		Ac. 1.74 dec.
		Valuation Rs. 350/-
Khata No. 21	Plot No. 145	Ac. 0.68 dec.
	Plot No. 71	Ac. 0.30dec
	Plot No. 58	Ac. 0.22 dec.
	Plot No. 182	Ac. 0.03 dec.
	Plot No. 57	Ac. 0.21 dec.
	Plot No. 194	Ac. 0.20 dec.
	Plot No. 107	Ac. 0.11 dec.
	Plot No. 139	Ac. 0.25 dec.
	Plot No. 83	Ac. 0.06 dec.
		Ac. 3.06 dec
		Valuation Rs. 595/-

SCHEDULE -'F'

Mouza- Nagagajpur, P.S. Sadar, S.R. Cuttack, Dist- Cuttack.

Khata No. 61.

	Plot No. 51	Ac. 0.080 dec.

Plot No. 54 Ac. 0.023dec.
Plot No. 57 Ac. 0.012 dec.
Plot No. 61 Ac. 0.035 dec.
Plot No. 62 Ac. 0.22dec.
Plot No. 91 Ac. 0.006 dec.
Plot No. 93 Ac. 0.007 dec.
Plot No. 108 Ac. 0.044 dec.

Ac 1.89 decimals
. . . . . Rs/ 1.890/-

Agricultural and other lands Ac. 60.79 dec.
...Valued at Rs. 1.20, 610/-
VERIFICATION."

8. The Trial Court framed the following issues:

"(1) Is the suit maintainable in law?

(2) Are the plaintiff and Defendant No. 2 members of the family of Defendant No. 1 in view of introduction of Urban Land Ceiling & Regulation Act, 1976, and can the plaintiff maintain a suit for partition of the suit property?

(3) Is the suit property liable for partition among the parties?

(4) What are the respective shares of the plaintiff, Defendant No. 1 and Defendant No. 2 in the suit property?

(5) Which of the properties in suit are ancestral and self-acquired of Kumar Sahu?

(6) What are the shares of plaintiff and Defendant No. 2 in the mesne profit and from what date they are entitled to the same?

(7) Are the alienations made by different parties out of the suit property at different points of time to be adjusted to their respective shares?

(8) Whether the settlement deed dated 20.07.1985 executed by late Nisamani Dei has been acted upon and are plaintiff and Defendant No. 2 bound by the same?

(9) Was there sufficient joint family nucleus in the hand of Defendant No. 1 for alleged construction of the estate of the joint family?

(10) Whether the property of Khata No. 18 in Schedule E of the amended plaint is available for partition?

(11) To what relief the parties are entitled?

The trial court decreed the suit and observed that the plaintiff had one-sixth share in the ancestral property and one-third share in the separate property. The said decree is being challenged by Defendant No. 1."

9. The suit between the parties was adjudicated and vide the judgment and order dated 30.12.1986 the Civil Judge drew a preliminary decree as under:

" ORDER The suit is decreed preliminarily on contest against defendant No: 1 with costs an D-2 without cost. Plaintiff is entitled to 2 annas 8 pies (1/6th) share and 1/3rd share in respect of ancestral and self acquired properties and super structures thereon (Houses and buildings) respectively of Late Kumar Charan Sahu out of the suit properties. She is also entitled to the same share in respect of mense profits thereof, from the date of institution of the suit. Defendant No-2 is also entitled to same share of properties and mense profits. Defendant No: 1 is entitled to 10 annas 8 pies (2/3rd) and 1/3rd share in ancestral and self acquired properties respectively and superstructure thereon of Late Kumar Charan Sahu and mense profits thereof. An Amin Commissioner is to be deputed for effecting partition on the above basis who is the final decree proceeding will apportion shares on above basis after ascertaining the details of ancestral and self acquired properties an superstructures thereon and also the quantum of mense profits in the light of indications and finding reached on different issues discussed in the judgment. After ascertainment of such share plaintiff and Defendant No:2 are to be put in possession of such properties that would be allotted to them separately in consequence of the final decree proceeding. Hearing fee at contested useable."

10. Thus, the Trial Court directed that:

> (i) the properties listed in the Schedule 'A' to 'F' referred to above shall be considered as ancestral properties, while the properties listed in the Schedule 'J' (1 to 8 properties) were considered as the self-acquired properties of Late Shri Kumar Sahoo.
>
> (ii) the Respondent No. 1 (herein Original Plaintiff) was held entitled to 1/6th share in the ancestral properties and 1/3rd share in the self-acquired properties of Late Shri Kumar Sahoo. The Civil Court also directed that the plaintiff was entitled to mesne profits.
>
> (iii) similar shares and benefits accrued to the Defendant No. 2 (Respondent No. 2 herein)
>
> (iv) the Defendant No. 1 (the Plaintiff herein) was held entitled to 4/6 th share in the ancestral properties and 1/3rd share in the self-acquired properties of Late Shri Kumar Sahoo including the mesne profits.

11. It is pertinent to note that as against the judgment and decree of the Trial Court referred to above, it is only the Defendant No. 1, who thought fit to file F.A. No. 359 of 1986 before the High

Court of Orissa. This appeal was essentially filed on the ground that all the properties of Late Shri Kumar Sahoo, as scheduled in the plaint should have been held to be ancestral properties.

12. It appears from the materials on record that while the first appeal referred to above was pending before the High Court, the Defendant No. 2 (Respondent No. 2 herein) entered into a settlement with the Defendant No.1 thereby relinquishing her share in accordance with the decree passed by the Trial Court in lieu of consideration of Rs. 50, 000/- and the portions of land in Schedule 'A' and 'B'. In such circumstances referred to above, a compromise petition dated 29.03.1991 duly signed on affidavit by the Defendant Nos. 1 and 2 resply, was filed before the High Court which came to be registered as the Miscellaneous Case No. 643 of 1990 in F.A. No. 359 of 1986 referred to above.

13. The learned Single Judge of the High Court, while disposing of the F.A. No. 359 of 1986 observed as under:

> "4. In this appeal, it is first contended that certain properties having been given to the daughters by the father during his life time and certain properties having been gifted to them at the time of their marriage and certain other properties having been purchased by the father in the names of the two daughters, namely plaintiff and Defendant No. 2, they are not entitled to any separate share after death of the father.
>
> 5. There is no challenge as such to the validity of the gift deeds, if any, in favour of the daughters at the time of their marriage. There is also no material to indicate that certain properties had been purchased in the names of the daughters as name-lenders and actually the property belonged to the father. Therefore, even assuming that certain properties had been gifted and had been purchased in the names of plaintiff and Defendant No. 2, that cannot be a ground to negate the right of succession of the plaintiff and Defendant No. 2, which accrued after death of the father.
>
> 6. The learned counsel for the appellant also contended that some properties were self-acquired properties of Defendant No. 1 himself. A perusal of the written statement indicates that no such specific case had been made out in the written statement, nor any such material is available on record. In absence of any evidence worth the name, it is difficult to accept such a contention raised by the appellant.
>
> 7. The learned counsel appearing for the appellant then contended that during pendency of the appeal, a compromise has been effected between the present appellant and Respondent No. 2, wherein Respondent No.2 has given up her share in favour of Defendant No. 1. Since such compromise is otherwise lawful and it does not prejudicially affect the right of the plaintiff, it can be given effect to and the decree of the trial court is to be modified accordingly."
>
> 8. Thus, though all other contentions of the appellant are not acceptable, in view of the compromise the decree of the trial court is modified to the extent that Defendant

> No. 1 shall also be entitled to the share of Respondent No. 2. In other words, he would be entitled to 5/6th share in the ancestral property and 2/3rd share in the separate properties as determined by the trial court. The decree of the trial court is modified to the above extent.
>
> 9. It appears that during the pendency of the appeal, receivers had been appointed at different times and presently Defendant No. 1-appellant is continuing as the receiver. It further appears that certain amounts have been deposited in this Court which have been kept in fixed deposit. The fixed deposit in this court shall be renewed from time to time for appropriate period to fetch maximum interest. The amount which is not yet kept in fixed deposit shall also be kept in fixed deposit in similar manner so that the amount can be disbursed in accordance with the direction to be made in the final decree after the final decree proceedings are over. If the parties do not come to any amicable arrangement, the plaintiff or Defendant No. 1 may initiate the final decree proceeding. The trial court after making necessary adjustment towards any justified expenditure, et cetera, shall pass a direction regarding disbursement of the amount in accordance with the shares now indicated in this judgment. The receiver shall henceforth act under the direction of the trial court and all necessary obligation relating to accounting and maintenance of the properties etc. shall be determined by the trial court and if any deposit is required to be made by the receiver, the same shall be made in the trial court which shall make similar arrangements regarding fixed deposits. Applications for removal of the receiver or for imposing any fresh conditions can be made before the trial court which is free to deal with all such applications." (Emphasis supplied)

14. The Defendant No. 1 (Appellants herein) continued with the litigation by filing the Letters Patent Appeal under Chapter VI of the Rules of High Court of Orissa, 1948. The Letters Patent Appeal was filed essentially on the ground that the learned Single Judge of the High Court had failed to correctly adjudicate the issue whether some of the properties as mentioned in the schedule to the plaint were self-acquired properties of Late Shri Kumar Sahoo or all the properties were ancestral properties.

15. The Defendant No. 1 (Appellants) went in appeal before the Division Bench of the High Court essentially on the ground that all the properties were ancestral as the same are derived out of the same nucleus of the existing ancestral properties. The appeal before the Division Bench was registered as the Appeal bearing No. AHO No. 133 of 2000.

16. On 28.06.2001, the Defendant No. 2 (Respondent No. 2 herein) challenged the validity of the settlement deed referred to above vide cross appeal in the AHO No. 133 of 2000.

17. In the Letters Patent Appeal filed by the Appellants herein, the Court addressed itself on the following points of determination:

> "(i) whether the findings and reasons recorded on the contentious issues by the learned trial judge are either erroneous or error in law warranting interference by

this Court in exercise of its power?

(ii) whether the first appellate judge in not dealing with the grounds urged by the first defendant by framing appropriate point on the findings recorded on the contentious issues by the learned trial court, this court requires interference with the impugned judgment in this appeal though, this Court's jurisdiction in this Letter Patent Appeal is also analogous to the first appellate court?

(iii) whether the findings recorded in issue no.5, holding that some of the schedule properties are self-acquired properties of late Kumar Sahoo is erroneous or error in law and liable to be interfered with by this Court in this appeal?

(iv) whether the compromise petition filed by the counsel for defendants 1 & 2 In the First Appeal without special authorization in their favour for signing the compromise petition by defendant no. 2, and plaintiff is not a party to the compromise petition, could have been accepted by the learned Single Judge and modified the judgment of the trial court in so far as the share assigned to the defendant no.2, the same is legal and valid?

(v) what decree the parties are entitled to?"

18. The Division Bench of the High Court vide its impugned judgment and order dated 5.05.2011 dismissed the appeal i.e., the AHO No. 133 of 2000 filed by the Defendant No. 1 (Appellant herein) and allowed the cross appeal filed by the Defendant No. 2. Thus, the Division Bench of the High Court set at naught the compromise entered into between the Defendants.

19. In such circumstances referred to above, the Appellants (Legal heirs of the Original Defendant No. 1) are here before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

20. Mr. R. Basant, the learned Senior Counsel appearing for the appellants vehemently submitted that the courts below committed a serious error in recording a finding that the properties in Schedule 'J' (1 to 8 properties) were self-acquired properties of Late Shri Kumar Sahoo. According to Mr. Basant all the properties devolving upon the Plaintiff and Defendants are ancestral in nature.

21. It was submitted that there is nothing on record to indicate that Late Shri Kumar Sahoo had any independent source of income through which, he during his lifetime had acquired certain properties which, does not form part of the ancestral properties. According to Mr. Basant, the J series properties (1 to 8 properties) were bought by Late Shri Kumar Sahoo with the aid of the income derived from the ancestral properties and in such circumstances, the J series (1 to 8 properties) would form part of the same nucleus of existing ancestral properties which could now be said to have been devolved on the Plaintiff and the Defendants as ancestral properties.

22. Mr. Basant, thereafter, addressed the Court on the effect of the Hindu Succession (Amendment) Act, 2005 (for short, 'the Amendment Act, 2005' or '2005 Amendment') to the Hindu Succession Act, 1956 (for short, 'the Act 1956'). He submitted that the Respondent should not be allowed to raise the plea of effecting rights under the amendment to Section 6 of the Act 1956 after these many years. He further submitted that assuming for the moment that the 2005 Amendment has altered the rights of the parties, more particularly, the sisters as co-parceners, however, in view of the settlement deed, the rights of the Respondent No. 2 (herein Original Defendant No. 2) could be said to have been extinguished and transferred to the Appellants. He submitted that the transfer by the Defendant No. 2 of her entire share in favour of the Defendant No. 1 would be a disposition of her share/rights in the suit properties. The disposition which took place in 1991 cannot be permitted to be unsettled in view of the 2005 Amendment.

23. He submitted that the retrospective effect of the 2005 Amendment would cause havoc to the alienation made between 1965 and 2005 and in such circumstances, the rights of the Respondent No. 1 (Plaintiff), if any, would accrue to the heirs qua the unalienated/encumbered ancestral property, as available with the nucleus of the joint family property with effect from 20.12.2004 only.

24. Mr. Basant submitted that as the alienations which might have been taken place prior to 20.12.2004 cannot be reopened in order to ascertain which properties are available for partition, the matter should be remitted to the Trial Court.

25. He further submitted that in accordance with the proviso to sub-section (1) of Section 6 of the Act 1956 (as amended on 9.09.2005) no disposition or alienation including partition or testamentary disposition of property which took place before 20.12.2004 shall be invalidated or set aside on account of the 2005 Amendment.

26. Mr. Basant in support of his aforesaid submission invited the attention of this Court to the decision of this Court in the case of Vineeta Sharma v. Rakesh Sharma and Others reported in (2020) 9 SCC 1, more particularly, the observations in para 76 at page 58, which reads thus:

> "76. It was argued that in case Parliament intended that the incident of birth prior to 2005 would be sufficient to confer the status of a coparcener, Parliament would need not have enacted the proviso to Section 6(1). When we read the provisions conjointly, when right is given to the daughter of a coparcener in the same manner as a son by birth, it became necessary to save the dispositions or alienations, including any partition or testamentary succession, which had taken place before 20-12-2004. A daughter can assert the right on and from 9-9-2005, and the proviso saves from invalidation the above transactions." (Emphasis supplied)

27. Mr. Basant submitted that there was no good reason for the High Court to look into the validity and execution of the settlement deed between the Defendant Nos. 1 and 2 resply. If all the properties are considered to be ancestral, the Plaintiff is entitled to 1/6th share of the total ancestral properties, while the Defendant No. 1 would be entitled to 5/6th share of the total ancestral property. He submitted that in the event, it is determined that the J series properties (1 to 8 properties) are in fact

self-acquired, then the Plaintiff is entitled to 1/6th share of the ancestral property and 1/3rd share of the self-acquired property, while the Defendant No. 1 would be entitled to 5/6th share of the total ancestral property and 2/3rd share of the self-acquired property.

28. In support of his submission that the settlement between Defendant Nos. 1 and 2 resply was lawful, just and proper, he relied on the following decisions of this Court:

(i) Bai Chanchal and Others v. Syed Jalaluddin and Others reported in (1970) 3 SCC 124 at para 8,

(ii) Byram Pestonji Gariwala v. Union Bank of India and Others reported in (1992) 1 SCC 31 at para 38-41,

(iii) D.S. Lakshmaiah and Another v. L. Balasubramanyam and Another reported in (2003) 10 SCC 310 at para 18,

(iv) Jineshwardas (Dead) by LRs. and Others v. Jagrani (Smt) and Another reported in (2003) 11 SCC 372 at para 7-8 and

(v) Pushpa Devi Bhagat (Dead) through LR. Sadhna Rai (Smt) v. Rajinder Singh and Others reported in (2006) 5 SCC 566 at paras 18, 19, 23-25.

29. In such circumstances referred to above, Mr. Basant prays that there being merit in his appeals, the same may be allowed and the impugned judgment and order passed by the High Court be modified accordingly.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1 (ORIGINAL PLAINTIFF)

30. Ms. B. Sunita Rao, the learned counsel appearing for the Respondent No. 1 (Original Plaintiff) vehemently submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment and decree. She submitted that in view of the decision of this Court in the case of Vineeta Sharma (supra) the Plaintiff is now entitled to 1/3 rd share in all the properties of Late Shri Kumar Sahoo, which were available at the time of filing of the suit. She submitted that in view of the decision of this Court, in the case of Ganduri Koteshwaramma and Another v. Chakiri Yanadi and Another reported in (2011) 9 SCC 788, the preliminary decree can be awarded/altered or modified in the event of the changed circumstances, even if no appeal has been filed.

31. The learned counsel further submitted that in view of the amendment of 2005 to Section 6 of the Act 1956 and the decision of this Court in case of Vineeta Sharma (supra) the daughters are entitled to equal share with that of the son in the coparcenary properties. The Plaintiff being one of the daughters of Late Kumar Sahoo is entitled to a larger and equal share in the ancestral property and in such circumstances the decree now needs to be modified on account of the operation of law.

32. The learned counsel submitted that the Plaintiff and Defendants are now each entitled to 1/3rd share of both ancestral and self-acquired properties of Late Kumar Sahoo. While explaining the true import of the operation of the amended provision of Section 6(1) of the Act 1956, she submitted that the alienations before 20.12.2004 are permitted but the property alienated would fall to the share of the co-parcener, who made the alienation, if no legal binding necessity is proved. The learned counsel pointed out that the Trial Court has held that alienation would be a part of the share of the Defendant No. 1. She submitted that any alienation after the date of filing of the suit would be hit by the doctrine of lis pendens. The alienation prior to the filing of the suit was considered by the Trial Court and specific finding in that regard has been recorded.

33. It was pointed out that out of 4.408 acres of land in Schedule 'A' and 'B' properties, the unencumbered property available for immediate division is 3.762 acres (around 94 guntas). It was also pointed out that full extent of the suit properties in Schedule 'C', 'D', 'E' and 'F' resply are available for division, as at the time of the preliminary decree.

34. As regards the settlement between the Defendant Nos. 1 and 2, the learned counsel submitted that the Plaintiff was never a part of the compromise. No notice was issued to her nor she had put her signature on any part of the compromise deed or had agreed to the terms of the compromise. According to the learned counsel, the Plaintiff never joined in the settlement. On the issue of disbursement of the receivership amount deposited in the Court, the counsel submitted that the Plaintiff is 84 years old and has filed multiple IAs being IA No. 44977 of 2013, IA No. 127171 of 2019 and IA No. 190628 of 2022 resply in the present proceedings for disbursement of her 1/3 rd share in the amount already deposited by the receiver. It was submitted that the Plaintiff does not have any independent source of income and has to incur a lot of expenditure towards medical treatment etc.

35. In the written submissions filed by the learned counsel appearing for the Respondent No. 1, the defaults alleged to have been committed by the Defendant No. 1 as narrated in IA No. 190628 of 2022 has been highlighted as under:

> "1. Modification of the superstructures on suit property without leave of the Court. (Relevant page 10-13 of IA)
>
> 2. Dues with regard to suit properties:
>
> a. Water Bills - Rs. 51,478/-
> b. Revenue Tax - Rs. 80,733/-
> c. Electricity Bills - Rs.1,89,228.84
> total Rs. 3,21,439.84
> (Relevant page 14-15 of IA)
>
> 3. Illegal filling of two Jalasaya in Suit properties in contempt of the order of the Hon'ble High Court (Reports of tahsildar, Cuttack Municipal Corporation and FIR filed by police on complaint of tahsildar are annexed, Relevant pages 17-20 of IA)

4. Installation of 100 Kw Electric transformer on suit property after getting permission for different plot. (Relevant Page 21 of IA)

5. Obtained permission for Electric substation of 500 KVA for suit property by forging signature of plaintiff and Defendant 2 (in 2016 whereas Defendant no. 2 died in 2008) (Relevant Page 22 of IA)

6. A case for authorized construction on suit properties has been instituted by Cuttack Development Authority being U.C. No. 249/2016. (Relevant Page 23 of IA)"

36. The learned counsel vehemently submitted that the Defendant No. 2 should be removed as a receiver forthwith and the Plaintiff should be appointed as the receiver of the properties.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 3, 4, 5, 7 AND 8 RESPLY (LEGAL HEIRS OF THE ORIGINAL DEFENDANT NO. 2)

37. Mr. V. Chitambaresh, the learned Senior Counsel addressed himself on four issues:

(i) Whether the properties as scheduled in the plaint are ancestral or self-

acquired properties of the predecessor-in-interest of the plaintiff and defendants 1 and 2 and what share the parties are entitled to?

(ii) Whether a cross-appeal is maintainable for the purpose of challenging the alleged compromise?

(iii) Whether the alleged settlement deed dated 28.03.1991 is valid and binding under order XXIII Rule 3 Code of Civil Procedure, 1908 (for short, 'the CPC')?

(iv) Whether the compromise was acted upon by the Defendant Nos. 1 and 2?

(v) Whether the counsel can sign the Compromise Petition without an express consent?

38. On the first issue, the learned Senior Counsel submitted that there is a concurrent finding on the nature of the suit properties recorded by all the three courts i.e., the Trial Court, the Single Judge of the High Court and the Division Bench of the High Court.

He would submit that the Plaintiff as well as the Defendant No. 2 being daughters and co-parceners are entitled to equal share in the ancestral properties as along with their brother i.e., the Defendant No. 1 (Appellant). He would submit that the law in this regard is now well settled as explained by this Court in the case of Vineeta Sharma (supra). Relying on the decision of this Court, in the case of Ganduri Koteshwaramma (supra) he submitted that even if no appeal has been filed by the Plaintiff and the Defendant, the shares will have to be determined in accordance with the amendment and

the law as laid down in Vineeta Sharma (supra). Over and above the share reckoned in the alleged compromise in dispute, the Defendant No. 2 would be entitled to additional 1/6th share in the ancestral property.

39. On the second issue referred to above, the learned Senior Counsel submitted that a cross-appeal is maintainable for the purpose of challenging the compromise. He submitted that a cross-appeal under Order XLI Rule 22 of the CPC is as good as a regular first appeal and the same would be maintainable, even if, the regular first appeal is dismissed or withdrawn. A cross-appeal is an exercise of substantive right of appeal and only the procedure would vary.

40. The learned Senior Counsel also invited the attention of this Court to the provisions of Order XLIII Rule 1-A (2) of the CPC. He would submit that the cross- objector is entitled under Order XLI Rule 22 of the CPC read with Order XLIII Rule 1- A (2) of the CPC to contend in his or her cross-appeal that the alleged settlement deed or agreement should not have been reckoned as a valid compromise and recorded under Order XXIII Rule 3 of the CPC.

41. In such circumstances referred to above, the learned Senior Counsel prays that there being no merit in the appeals the same may be dismissed and the shares of the parties be determined in accordance with the 2005 Amendment.

ANALYSIS

42. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

(i) In what manner, the rights of the parties would be governed keeping in mind the dictum as laid by this Court in its decision in the case of Vineeta Sharma (supra)

(ii) Whether the High Court was justified in declaring the settlement between the appellants herein (Defendant No. 1) and Respondent No. 2 (Defendant No. 1) as invalid? In other words, whether the High Court was right in allowing the cross-appeal filed by the Original Defendant No. 2 (Respondent No. 2 herein).

43. Before adverting to the rival submission canvassed on either side, we should give a fair idea as regards the history and development of Hindu Law as well as look at the Law Commission Report, Report of the Standing Committee of Parliament and the Statement of Objects and Reasons of the Bill introduced in Parliament with the purpose of finding out the true intent of the Parliament in amending Section 6 of the Act 1956 by the 2005 Amendment.

44. We have traced the history and development of Hindu Law from a Full Bench decision of the Bombay High Court, in the case of Badrinarayan Shankar Bhandari and Others v. Omprakash Shankar Bhandari reported in AIR 2014 Bom 151 (FB).

Old Hindu Law

45. Before the enactment of the Principal Act, Hindus were covered by shastric and customary law which varied from region to region. Principally, there were two schools of Hindu Law in India i.e. Dayabhaga which was prevalent in eastern part of India i.e. Bengal and the adjoining areas and Mitakshara which was prevalent in the rest of India. Under the Mitakshara School of Hindu Law, woman in a joint Hindu family had merely a right of maintenance/ sustenance but had no right of inheritance to property. The basis of Hindu joint family was a common male ancestor and the properties of the family were held as a coparcenary property with male member of the family having a right to the property by virtue of birth and their interest in the coparcenary property would keep varying depending upon the death or a birth of a male in the joint Hindu Family. The property of a male coparcener on his death used to pass by survivorship in the Mitakshara School of Hindu Law. No female is a member of the coparcenary though, she is a member of the joint Hindu family. The coparcenary would normally consist up to four degrees i.e. the common ancestor (coparcener), his son, grandson and great grandson.

46. Under the Dayabhaga School of Hindu Law, the daughters also got equal share along with their brothers. Under the Dayabhaga School property is transmitted by Succession and not by Survivorship. In this School, a female could be a coparcener. So far as the Dayabhaga School was concerned, there was no concept of a coparcenary property and every member of a Hindu family would hold property in his/her own right and was entitled to dispose of the property as he/she deems fit either by gift or Will. There was no concept of passing of property by survivorship nor did a Hindu male in Dayabhaga School acquire rights to property merely by virtue of his birth. Consequently, women had a right equal to the rights to that of men belonging to the family in the Dayabhaga School of Hindu Law.

47. The earliest legislation with regard to right of female inheritance was made in 1929 called the Hindu Law of Inheritance Act, 1929. This Act conferred inheritance right to three female heirs-son's-daughter, daughter's-daughter and sister. Thus, bringing about restrictions on the exclusive Rule of Survivorship. The next legislation was the Hindu Women’s Right to Property Act 1937. This Act enabled the widow to succeed along with the son of the deceased in equal share to the property of her deceased husband. However, the widow was entitled only to limited estate in the property i.e. life estate and could not dispose of the property during her life time.

48. In 1950, while framing the Constitution, Articles 14, 15(2) & (3) and 16 of the Constitution of India, sought inter alia to restrain practice of discrimination against women and made equal treatment of women a part of the fundamental rights guaranteed under the Constitution. In line with the above Constitutional objective, the Parliament enacted the Hindu Succession Act,1956 i.e. the Principal Act. This Act applies to all Hindus including Buddhists, Jains and Sikhs. It lays down a uniform and comprehensive system of inheritance and applies to all Hindus, whether governed by Mitakshara or Dayabhaga School of Hindu Law. However, Section 6 of the Principal Act as originally enacted retained substantially the Rule of passing of property in a coparcenary by survivorship, although it did give rights of testamentary disposition to Hindu males in respect of his properties including his coparcenary share. The erstwhile Section 6 of the Principal Act (pre-amended Section 6) inter alia provided that the interest of a coparcener in the coparcenary property if not disposed of by Will under Section 30 of the Principal Act, would devolve in terms of pre-amended Section 6. The

main part of pre-amended Section 6 provided that the right of male Hindu at the time of his death in the coparcenary property will devolve by survivorship. However, the proviso provided that if the deceased coparcener has any female relatives specified in Class I of the Schedule to the Act, then the property will devolve in terms of pre- amended Section 6. The Explanation 1 provides that there would be notional partition immediately before his death so as to allocate the share in the coparcenary to the deceased coparcener.

49. It is interesting to note that the Hindu Code Bill wanted to do away with the Mitakshara coparcenary completely. However, the same was opposed to and the erstwhile Section 6 was enacted in the Principal Act. Consequently, if a partition took place in the coparcenary property, then each male coparcener would get his share and the mother and wife/widow would not become a coparcener but would get a share in the coparcenary property. But a daughter would get no share in the coparcenary property. The daughter would only get a share as one of the heirs on the death of coparcener, out of the share of the deceased in the coparcenary property on notional partition, in view of proviso to pre-amended Section 8 of the Principal Act. In terms of Section 30 of the Principal Act, a Hindu male can dispose of his entire property including his interest in coparcenary property by testamentary disposition/ Will and also in the process deprive his female heirs of any share.

Making of Amendment Act, 2005

50. Keeping the aforesaid position of Hindu Law, in its 174 th Report (May 2000), the Law Commission of India was of the view that the gender reforms were called for to ensure equality. The Commission noted the fact that in various States such as Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka, attempts had already been made to bring about the gender equality. But all these States, except Kerala, while conferring coparcenary rights on daughters also denied such rights to daughters married prior to State Acts coming into force.

51. The Law Commission recommended that the daughter should be made coparcener by birth and that she should be entitled to get a share on partition and/or on the death of the male coparcener. The Commission also recommended that a daughter who is married after the commencement of the Amendment Act, should be entitled to a share in the ancestral property as she has already become a coparcener prior to her marriage. One more recommendation of the Law Commission was to do away with the erstwhile Section 23 of the Principal Act which provided that a woman would have a right to stay in the family house as a member of the joint Hindu Family but unlike a male, she would have no right to demand a partition of the family house. The Commission recommended that she should have rights equal to the male in respect of a family house.

52. The Law commission also observed that the Law of Succession falls under Entry V of the List III (concurrent list) in VII Schedule of the Constitution. In view of Article 246 of the Constitution of India the laws made by the above mentioned five States, would stand repealed to the extent they are repugnant to the Principal Act on amendment.

53. On 20th December, 2004, the Hindu Succession Amendment Bill 2004 was introduced in the Rajyasabha, inter alia, seeking to amend the erstwhile Section 6 and doing away/omitting the erstwhile Section 23 of the Principal Act.

“Statement of Objects and Reasons for amending the ‘Principal Act’ read as follows:-

STATEMENT OF OBJECTS AND REASONS The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act-lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudir laws.” The Act applies to every person who is a Hindu by 28 of 72 SA.566.2011 religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Parathana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognizes the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts to. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need of render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

3. It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.”

4. The above proposals are based on the recommendations of the Law Commission of India as contained in its 174th Report on 'Property Rights of Women: Proposed Reform under the Hindu Law.

5. The Bill seeks to achieve the above objects."

(Emphasis supplied)

54. The Bill inter alia provided in proviso to proposed Section 6(1) that the Amendment Act would not apply to a daughter married before the commencement of the Amendment Act and also that the Amendment Act will have no application to a partition in case the partition had been affected before the commencement of the Amendment Act. The aforesaid Bill was thereafter referred to the Standing committee of Parliament. The Standing Committee after recording the historical growth of Hindu Law and Gender inequality with regard to the property right practiced against a female Hindu suggested that proviso 1 to proposed Section 6(1) of the Bill which sought to exclude the daughter married before the commencement of the Amendment Act from the benefit of the Act should be done away with.

55. The Standing Committee also suggested that the partition of the Hindu family property should be properly defined in the Amendment Act. It was suggested that partition for all purposes should be either by registered documents or by decree of Court. However, where oral partition is pleaded, the same should be backed by evidence in support. Further omission of Section 23 as suggested by the Law Commission, will enable the Hindu Women to seek partition of a family house occupied by the family members just as male member could seek partition.

56. Thereafter, on 9.09.2005, the Amendment Act, 2005 came to be passed as Act 39 of 2005. Section 3 of the Amendment Act, 2005 substituted erstwhile Section 6 of the Principal Act. The Amendment Act, 2005 did away with exclusion of married daughter from getting the benefit of the amendment and also added a proviso to Section 6(1) of the Principal Act saving partitions done prior to 20.12.2004 (the date of introduction of the Bill in Rajya Sabha). The Explanation to Section 6(5) of the Principal Act provided that for the purposes of the Section 6 of the Act partition only means partition by registered document or decree of Court.

57. Before averting to the rival submissions canvassed on either side, it would be apposite to reproduce the erstwhile Section 6 as appearing in the Principal Act and the amended Section 6 of the Principal Act, as substituted by Section 3 of the Amendment Act for the sake of convenience. The pre-amended Section 6 of the Principal Act reads as under:

> “Section 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 has 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."

58. The substituted Section 6 of the Principal Act as amended by the Amendment Act, 2005 which is in force w.e.f. 9.09.2005 reads as under:

> "6. Devolution of interest of coparcenary property.— (1) On and from the commencement of the Hindu Succession (Amendment) Act, 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 in 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 in, 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, 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, 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, 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 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.

(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."

59. Before we proceed to discuss the dictum, as laid by this Court in Vineeta Sharma (supra) we must look into the decision of this Court in the case of Ganduri Koteshwaramma (supra). In Ganduri

Koteshwaramma (supra) this Court, in paras 11, 12, 13 & 14 resply, observed as under:

> "11. The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from 9-9-2005. The legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from 9-9-2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.

12. The right accrued to a daughter in the property of a joint Hindu family governed by the Mitakshara law, by virtue of the 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to sub-section (1) of Section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely, (i) where the disposition or alienation including any partition has taken place before 20-12-2004; and (ii) where testamentary disposition of property has been made before 20-12-2004. Sub-section (5) of Section 6 leaves no room for doubt as it provides that this section shall not apply to the partition which has been effected before 20-12-2004. For the purposes of new Section 6 it is explained that "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a court. In light of a clear provision contained in the Explanation appended to sub-section (5) of Section 6, for determining the non-applicability of the section, what is relevant is to find out whether the partition has been effected before 20-12-2004 by deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. In the backdrop of the above legal position with reference to Section 6 brought in the 1956 Act by the 2005 Amendment Act, the question that we have to answer is as to whether the preliminary decree passed by the trial court on 19-3-1999 and amended on 27-9-2003 deprives the appellants of the benefits of the 2005 Amendment Act although final decree for partition has not yet been passed.

13. The legal position is settled that partition of a joint Hindu family can be effected by various modes, inter alia, two of these modes are (one) by a registered instrument of a partition and (two) by a decree of the court. In the present case, admittedly, the partition has not been effected before 20-12-2004 either by a registered instrument of partition or by a decree of the court. The only stage that has reached in the suit for partition filed by Respondent 1 is the determination of shares vide preliminary decree dated 19-3-1999 which came to be amended on 27-9-2003 and the receipt of the report of the Commissioner.

14. A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend

the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation."

60. Thus, in Ganduri Koteshwaramma (supra) this Court made the following things explicitly clear:

> (i) The equal share given to the daughter of a coparcener governed by Hindu Mitakshara Law along with brothers is by way of a substantive right;
>
> (ii) Though the substantive right is created on and from 9-9-2005, it relates back to the incidence of birth;
>
> (iii) The substantive right would not be available only if the coparcenary property is disposed of or alienated including by any partition or testamentary disposition of property before 20-12-2004 and;
>
> (iv) If there is disposition of a coparcenary property by any partition, such partition must be by execution of a Deed of Partition duly registered under the Registration Act, 1908 or effected by a decree of the Court.
>
> (v) A preliminary decree of partition only determines the rights and interests of the parties. It is only by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, if there is any change in law necessitating determination of shares accordingly then, there would be no impediment for the Court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation.

61. Before the position of law came to be settled by this Court in Vineeta Sharma (supra) there were to decisions of this Court governing the rights of the parties: (i) Prakash and Others v. Phulavati and Others reported in (2016) 2 SCC 36 and (ii) Danamma alias Suman Surpur and Another v. Amar and Others reported in (2018) 3 SCC 343. In Prakash (supra) it was held that Section 6 is not retrospective in operation and it would apply when both the coparcener and his daughter were alive on the date of commencement of the Amendment Act i.e., 9.09.2005. Accordingly, the provisions of Section 6 were held to be prospective. In Danamma (supra) this Court held that the amended provisions of Section 6 conferred full rights upon the daughter coparcener. Any coparcener including a daughter could claim a partition in the coparcenary property.

62. In Danamma (supra), one Gurulingappa who was the father and coparcener of the claimant daughter, died in the year 2001, leaving behind two daughters, two sons and a widow. Thus, the father of the daughter and coparceners was not alive when the substituted provision of Section 6 came into force. Accordingly, the daughters, sons and the widow were given 1/5th share in the properties. In this background, this Court took the view that when a daughter, claiming and

demanding a share in the coparcenary property is alive on 9.09.2005, she would be entitled to the benefit of the amended provision irrespective of the effect whether a coparcener had died before the commencement of the Amendment Act.

63. A three-Judge Bench of this Court doubted the correctness of the dictum as laid in Prakash (supra) as there was an apparent conflict between the dictum as laid in Prakash (supra) and Danamma (supra) referred to above. The question concerning the interpretation of Section 6 of the Act 1956 was referred to a larger Bench.

64. The larger Bench ultimately settled the position of law in Vineeta Sharma (supra). The three-Judge Bench of this Court considered the following main questions amongst the others:

> (i) Whether the substituted Section 6 of the Hindu Succession Act, 1956 would apply to cases where male coparcener had already died prior to the commencement of the Amendment Act, 2005?
>
> (ii) Liability of daughter for the debts contracted by the deceased coparcener.
>
> (iii) What is the interpretation, scope and impact of sub-section (5) of substituted Section 6 of the Hindu Succession Act, 1956?

65. In Vineeta Sharma (supra) (paras 60, 68, 69 and 129), the Court held that for the applicability of substituted Section 6 of the Hindu Succession Act, 1956, it is not necessary that the male coparcener must be alive on the date of commencement of the Amendment Act, 2005 (i.e., 9.9.2005). Hence, it follows that the substituted Section 6 of the Hindu Succession Act, 1956 is not confined to cases where male coparcener dies after the commencement of the Amendment Act, 2005. Substituted Section 6 also applies to cases where male coparcener had already died prior to the commencement of the Amendment Act, 2005.

66. The Court explained the difference between prospective statute, retrospective statute and retroactive statute. It has been observed in para 61:

> "61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backward and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of Amendment Act." (Emphasis supplied)

67. Interpreting sub-section (1) of substituted Section 6 of the Act 1956, the Court opined in para 60 as under:

> "60. The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son". Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9-9-2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20-12-2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated." (Emphasis supplied)

68. The Court further observed in para 68 as follows:

> "68. 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 Sections 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)." (Emphasis supplied)

69. The Court has further observed in para 69 as under:

> "69. ... Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9-9-2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living

> coparcener dies after 9-9-2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).” (Emphasis supplied)

70. Explaining sub-section (3) of substituted Section 6, the Court observed in paragraph 66 as under:

> “66. With respect to a Hindu who dies after the commencement of the Amendment Act, as provided in section 6(3) his interest shall pass by testamentary or intestate succession and not by survivorship, and there is a deemed partition of the coparcenary property in order to ascertain the shares which would have been allotted to his heirs had there been a partition. The daughter is to be allotted the same share as a son; even surviving child of predeceased daughter or son are given a share in case the child has also died then the surviving child of such predeceased child of a predeceased son or predeceased daughter would be allotted the same share, had they been alive at the time of deemed partition. Thus, there is a sea-change in substituted Section 6. In case of death of coparcener after 9-9-2005, succession is not by survivorship but in accordance with Section 6(3). The Explanation to Section 6(3) is the same as Explanation I to Section 6 as originally enacted. ...” (Emphasis supplied)

71. The following propositions, amongst others, follow from the abovequoted paragraphs of the decision in Vineeta Sharma (supra):

> (A) Sub-section (1) of the substituted Section 6 of the Hindu Succession Act, 1956 recognises a joint Hindu family governed by Mitakshara law.
>
> (B) The coparcenary must exist on 9.9.2005, i.e., the date of commencement of the Amendment Act, 2005.
>
> (C) The daughter has been recognised and treated as a coparcener by birth, with equal rights and liabilities as of that of a son.
>
> (D) It is not necessary that a coparcener whose daughter is conferred with the rights is alive or not on the date of commencement of the Amendment Act, 2005. The daughter would step into the coparcenary as that of a son by birth.
>
> (E) Though the daughter would step into the coparcenary as that of a son by birth whether the daughter is born before the commencement of the Amendment Act, 2005 or after the commencement of the Amendment Act, 2005, but the daughter born before the commencement of the Amendment Act, 2005 can claim coparcenary 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).

> (F) In case a coparcener living on the date of commencement of the Amendment Act, 2005 (i.e., 9.9.2005) dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).

72. As noted earlier, sub-section (5) of substituted Section 6 of the Hindu Succession Act, 1956 provides that nothing contained in the substituted Section 6 shall apply to a partition, which has been effected before 20th December, 2004 (i.e., date on which the Bill corresponding to the Amendment Act, 2005 was presented in the Rajya Sabha). Explanation to the substituted Section 6 provides that for the purposes of Section 6 "partition" means (i) any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908), or (ii) any partition effected by a decree of a court. Interpreting sub-section (5) of substituted Section 6 and Explanation to substituted Section 6, the Court in Vineeta Sharma (supra), has observed in para 67 as under:

> "67. The proviso to Section 6(1) and Section 6(5) saves any partition effected before 20-12-2004. However, Explanation to Section 6(5) recognises partition effected by execution of a deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. Other forms of partition have not been recognised under the definition of "partition" in the Explanation."

73. In regard to the sub-section (5) of substituted Section 6 and Explanation to substituted Section 6, the Court held:

(A) It has been held that the daughter has now become entitled to claim partition of coparcenary with effect from 9.09.2005 like a son.

The Court observed in para 85 as under:

"85. The right to claim partition is a significant basic feature of the coparcenary, and a coparcener is one who can claim partition. The daughter has now become entitled to claim partition of coparcenary w.e.f. 9-9-2005, which is a vital change brought about by the statute. A coparcener enjoys the right to seek severance of status. Under Sections 6(1) and 6(2), the rights of a daughter are pari passu with a son. In the eventuality of a partition, apart from sons and daughters, the wife of the coparcener is also entitled to an equal share. The right of the wife of a coparcener to claim her right in property is in no way taken away." (Emphasis supplied) (B) As noted earlier, under the law pertaining to partition as existing prior to the Amendment Act, 2005, if there would be a partition of coparcenary property between father (F) and sons (S1 and S2) then the wife (W) of father (F) as well as widowed mother (M) of father (F) would get one share equal share to that of a son (S1 or S2). This position continues to exist as is evident from the observation made in the last portion of the above-quoted paragraph 85 of this Court's decision. Hence, if there is a partition of coparcenary property between father and sons (and now also daughters), then wife of father as well as widowed mother of father would get one share equal share to that of a son (or a daughter).

(C) Under Mitakshara School of Hindu Law, a member of a joint Hindu Family can bring about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate

himself from the family and enjoy his share in severalty. Thus, the institution of a suit for partition by a member of a joint family is a clear intimation of his intention to separate, and there was consequential severance of the status of jointness. Question before this Court in Vineeta Sharma (supra) was: in case during the pendency of partition suit or during the period between the passing of preliminary decree and final decree in the partition suit, any legislative amendment or any subsequent event takes place which results in enlargement or diminution of the shares of the parties or alteration of their rights, whether such legislative amendment or subsequent event can be into consideration and given effect to while passing final decree in the partition suit. The Court held that even though filing of partition suit brings about severance of status of jointness, such legislative amendment or subsequent event will have to be taken into consideration and given effect to in passing the final decree in the partition suit. This is because, the partition suit can be regarded as fully and completely decided only when the final decree is passed. It is by a final decree that partition of property of joint Hindu Family takes place by metes and bounds. (See: paragraphs 89 to 102, and paragraphs 106, 114, 133 and 136).

The Court observed in para 107 as under:

> "107. Once the constitution of coparcenary changes by birth or death, shares have to be worked out at the time of actual partition. The shares will have to be determined in changed scenario. The severance of status cannot come in the way to give effect to statutory provision and change by subsequent event. The statutory fiction of partition is far short of actual partition, it does not bring about the disruption of the joint family or that of coparcenary is a settled proposition of law. For the reasons mentioned above, we are also of the opinion that mere severance of status by way of filing a suit does not bring about the partition and till the date of the final decree, change in law, and changes due to the subsequent event can be taken into consideration." (Emphasis supplied) (D) Prior to the Amendment Act, 2005, partition in joint Hindu Family could be made by oral partition or oral family settlement/family arrangement. If subsequently terms of such oral partition or oral family settlement/family arrangement could be recorded in a Memorandum. Such Memorandum was not required to be registered. [See: paragraphs 115, 116, 119, 120, 121, 125 and 130].

74. As noted above, Explanation to substituted Section 6 provides that for the purposes of Section 6 "partition" means (i) any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908), or (ii) any partition effected by a decree of a court. The Court in further considered the impact of the aforesaid Explanation on the oral partition or oral family settlement/family arrangement made prior to 20th December, 2004. The Court opined in para 124 as under:

> "124. The intendment of amended Section 6 is to ensure that daughters are not deprived of their rights of obtaining share on becoming coparcener and claiming a partition of the coparcenary property by setting up the frivolous defence of oral partition and/or recorded in the unregistered memorandum of partition. The court

has to keep in mind the possibility that a plea of oral partition may be set up, fraudulently or in collusion, or based on unregistered memorandum of partition which may also be created at any point of time. Such a partition is not recognised under Section 6(5)." (Emphasis supplied)

75. The Court further held para 135 as under:

"135. A special definition of partition has been carved out in the Explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in Section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of Section 6, the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of Section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigour of very heavy burden of proof which meet intendment of Explanation to Section 6(5). It has to be remembered that the courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place." (Emphasis supplied). (Reference: Article titled 'Changing Dimensions of Hindu Coparcenary and Section 6, Hindu Succession Act, 1956 by Justice Satya Poot

Mehrotra, Former Judge Allahabad High Court.)

76. The reference was ultimately answered in paras 137.1 to 137.5 resply as under:

> "137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.
>
> 137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.
>
> 137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.
>
> 137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.
>
> 137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

77. The decision of Vineeta Sharma (supra) also highlights that a change in law during the pendency of an appeal must be considered and appropriately applied. This Court relied upon United Bank of India, Calcutta v. Abhijit Tea Company Private Limited and Others reported in (2000) 7 SCC 357, wherein, it was held that:

> "20. Now, it is well settled that it is the duty of a court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. (See G.P. Singh: Interpretation of Statutes, 7th Edn., p. 406.) If, while a suit is pending, a law like the 1993 Act that the

civil court shall not decide the suit, is passed, the civil court is bound to take judicial notice of the statute and hold that the suit — even after its remand — cannot be disposed of by it."

78. This Court in Vineeta Sharma (supra) clarified the entire position as follows:

"107. Once the constitution of coparcenary changes by birth or death, shares have to be worked out at the time of actual partition. The shares will have to be determined in changed scenario. The severance of status cannot come in the way to give effect to statutory provision and change by subsequent event. The statutory fiction of partition is far short of actual partition, it does not bring about the disruption of the joint family or that of coparcenary is a settled proposition of law. For the reasons mentioned above, we are also of the opinion that mere severance of status by way of filing a suit does not bring about the partition and till the date of the final decree, change in law, and changes due to the subsequent event can be taken into consideration.

Xxx xxx xxx

114. In the instant case, the question is different. What has been recognised as partition by the legislation under Section 6, accordingly, rights are to be worked out. This Court consistently held in various decisions mentioned above that when the rights are subsequently conferred, the preliminary decree can be amended, and the benefit of law has to be conferred. Hence, we have no hesitation to reject the effect of statutory fiction of the proviso to Section 6 as discussed in Prakash v. Phulavati [(2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] and Danamma [Danamma v. Amar, (2018) 3 SCC 343 : (2018) 2 SCC (Civ) 385]. If a daughter is alive on the date of enforcement of the Amendment Act, she becomes a coparcener with effect from the date of the Amendment Act, irrespective of the date of birth earlier in point of time."
APPLICATION OF THE AFORESAID PRINCIPLES OF LAW TO THE FACTS OF THE PRESENT CASE

79. Let us assume for the moment that the Trial Court would have decreed the suit in favour of the plaintiff i.e., the daughter giving her 1/3rd share uniformly in all the properties including the ancestral properties. It could have been argued that the Trial Court could not have done so, having regard to the position of law, prevailing at the relevant point of time. However, after the decision of this Court in the case of Vineeta Sharma (supra) such allotment of share would be in accordance with law. Let us also assume one another alternative. Take for instance, the Trial Court would have decreed the suit giving (i) 1/3rd share to the daughter in self-acquired property and (ii) giving 1/3rd share in the half were of father's portion of ancestral properties. This was the law prevailing at the relevant point of time and this is exactly what the Trial Court has done in the present case, while passing the preliminary decree as affirmed by the High Court. However, the law has now changed as discussed above.

80. It is in the aforesaid background that daughters are entitled to 1/3rd share in all the properties as scheduled in the plaint. The same would be in accordance with the dictum as laid in Vineeta Sharma (supra), while passing the final decree. At the cost of repetition, we state that by virtue of the preliminary decree passed by the Trial Court, which was confirmed by the Division Bench of the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. As the law governing the parties has been amended before the conclusion of the final decree proceedings, the party benefitted by such amendment (like the two daughters in the case on hand) can make a request to the Trial Court to take cognizance of the Amendment and give effect to the same.

81. We do not find any merit in the submissions canvassed by Mr. Basant, learned Senior Counsel appearing for the Appellants that in a partition suit, the preliminary decree cannot be varied in the final decree proceedings, despite the amendment of the law governing the parties.

82. In our opinion, no error not to speak of any error of law could be said to have been committed upon Courts below, while determining the shares of the parties. The only thing that needs to be done now is to give effect to the amendment in the provisions of Section 6 of the 1956 Act and redetermine the shares of the parties accordingly. To put it straight, the Plaintiff is entitled to 1/3 rd share in all the properties of her Late father. The issue whether all the properties were ancestral as raised on behalf of the Appellants pale into insignificance.

83. We shall now proceed to answer the issue No. 2 whether the High Court was justified in allowing the cross-appeal filed by the Original Defendant No. 2 on the ground that the settlement arrived at between the Appellants (Defendant No 1 and Defendant No. 2) was not valid and binding under Order XXIII Rule 3 of the CPC.

84. Mr. Basant, learned Senior Counsel vehemently submitted that the settlement between the Defendant No. 1 and his sister i.e., the Defendant No. 2 was duly signed on affidavit way back on 29.03.1991. The said settlement was taken on record by the High Court on 9.04.1991 i.e., at the time of the final hearing of the first appeal. The first appeal came to be disposed of on 1.08.2000, modifying the decree to the extent of incorporating the terms of the compromise agreement between the two Defendants. It is only after a lapse of ten years that during the pendency of the appeal filed by the Appellants herein before the Division Bench of the High Court that the Defendant No. 2 thought fit to file cross-appeal, challenging the alleged compromise. Mr. Basant submitted that such cross-appeal is not maintainable and even if it held to be maintainable, the same should not have been entertained and allowed after the lapse of almost ten years from the date of recording of the settlement.

85. We are not much impressed by the aforesaid submissions of Mr. Basant. It is a settled position of law that right of appeal is the creature of statute. There is no inherent right of appeal. No appeal can be filed, heard or determined on merits unless the statute confers right on the appellant and power on the Court to do so. At this stage, we may look into the provisions of Order XLI Rule 22 of the CPC:

> "22. Upon hearing respondent may object to decree as if he had preferred a separate appeal.—(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [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.] (2) Form of objection and provisions applicable thereto.—Such cross- objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.
>
> [3***] (4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.
>
> (5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule."

86. The right to prefer cross-objection partakes of the right to prefer an appeal. The learned counsel appearing for the Defendant No. 2 (Respondent No. 2 herein) that a cross-appeal under Order XLI Rule 22 of the CPC is as effective as a regular first appeal and the same would sustain, even if, the regular first appeal is dismissed or withdrawn. A cross-appeal is the exercise of substantive right of appeal and only the procedure varies. (See: Urmila Devi and Others v. Branch Manager, National Insurance Company Limited and Another, (2020)11 SCC 316, para 16.)

87. Our attention was also drawn to the provisions of Order XLIII of Rule 1-A (2) of the CPC. The same reads as under:

> "1A. Right to challenge non-appealable orders in appeal against decrees.— Xxx xxx xxx (2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded."

88. We are of the view that the cross-appeal objector is entitled under Order XLI Rule 22 of the CPC read with Order XLIII Rule 1-A (2) of the CPC as referred to above, to make good the submission

that she was entitled in law to question the legality and validity of the settlement agreement recorded under Order XXIII Rule 3 of the CPC by way of a cross-appeal.

89. In the aforesaid context, we may refer to the decision of this Court in the case of Banwari Lal v. Chando Devi (Smt) and Another reported in (1993) 1 SCC 581, more particularly, paras 9 to 13 resply therein:

> "9. Section 96(3) of the Code says that no appeal shall lie from a decree passed by the Court with the consent of the parties. Rule 1-A(2) has been introduced saying that against a decree passed in a suit after recording a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should not have been recorded. When Section 96(3) bars an appeal against decree passed with the consent of parties, it implies that such decree is valid and binding on the parties unless set aside by the procedure prescribed or available to the parties. One such remedy available was by filing the appeal under Order 43, Rule 1(m). If the order recording the compromise was set aside, there was no necessity or occasion to file an appeal against the decree. Similarly a suit used to be filed for setting aside such decree on the ground that the decree is based on an invalid and illegal compromise not binding on the plaintiff of the second suit. But after the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3-A of Order

23. As such a right has been given under Rule 1-A(2) of Order 43 to a party, who challenges the recording of the compromise, to question the validity thereof while preferring an appeal against the decree. Section 96(3) of the Code shall not be a bar to such an appeal because Section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute.

10. The learned counsel appearing for the respondent took a stand that the High Court was justified in taking the view that the suit had been simply withdrawn by the plaintiff-appellant under Rule 1 of Order 23 and it had not been compromised in terms of Rule 3 of the said Order 23; as such there was no occasion for the appellant to file an application for recall of the said order and for restoration of the suit in question for being heard on merit. From the copy of the petition which was filed on February 27, 1991 it appears that the terms and conditions of settlement and agreement had been mentioned saying that both parties had entered into a compromise because of which the plaintiff-appellant had thereafter no connection with the disputed land and defendant-respondent shall be deemed to be in possession and the owner of the said disputed land. The prayer made in the said petition also says that the compromise may be ordered to be accepted. On basis of that petition, as already mentioned above, the court passed an order saying that the compromise had been accepted. In the order it has been mentioned that the suit of the plaintiff be "dismissed as per compromise deed Ex. C". In view of the aforesaid facts and circumstances, it is difficult to hold that by order dated February 27, 1991 the Court allowed the suit to be withdrawn in terms of Rule 1 of Order 23. The order on face of it purported to dismiss the suit of the plaintiff on basis of the terms and conditions mentioned in the petition of compromise. As such, the validity of that order has to be judged treating it to be an order deemed to have been passed in purported exercise of the power

conferred on the Court by Rule 3 of Order 23 of the Code. The learned Subordinate Judge should not have accepted the said petition of compromise even if he had no knowledge of the fraud alleged to have been practised on the appellant by his counsel, because admittedly the petition of compromise had not been signed either by the respondent or his counsel. This fact should have been discovered by the Court. In the case of Gurpreet Singh v. Chatur Bhuj Goel [(1988) 1 SCC 270 : AIR 1988 SC 400] it has been said: (SCC p. 276, para 10) "Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The court must therefore insist upon the parties to reduce the terms into writing." The requirement of the petition of compromise being signed by the parties concerned has been considered also in the case of Byram Pestonji Gariwala v. Union Bank of India [(1992) 1 SCC 31 : AIR 1991 SC 2234] . It appears the attention of learned Judges was not drawn to the aforesaid case of this Court in Gurpreet Singh v. Chatur Bhuj Goel [(1988) 1 SCC 270 : AIR 1988 SC 400].

11. The present case depicts as to how on February 27, 1991 the court recorded the alleged agreement and compromise in a casual manner. It need not be impressed that Rule 3 of Order 23 does not require just a seal of approval from the Court to an alleged agreement or compromise said to have been entered into between the parties. The statute requires the Court to be first satisfied that the agreement or compromise which has been entered into between the parties is lawful, before accepting the same. Court is expected to apply its judicial mind while examining the terms of the settlement before the suit is disposed of in terms of the agreement arrived at between the parties. It need not be pointed out that once such a petition of compromise is accepted, it becomes the order of the Court and acquires the sanctity of a judicial order.

12. On behalf of the respondent a stand was taken that the learned Subordinate Judge by his order dated September 20, 1991 could not have recalled the order dated February 27, 1991 and restored the suit to its original number. It cannot be disputed that the respondent can support the order of the High Court setting aside order dated September 20, 1991 on any other reason than the reason given by the High Court.

13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, "the Court shall decide the question", the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more comprehensive, the explanation to the proviso says that an agreement or compromise "which is void or voidable under the Indian Contract Act ..." shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under the Indian

Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code." (Emphasis supplied)

90. We may also refer to and rely upon the decision of this Court in the case Vipan Aggarwal and Another v. Raman Gandotra and Others reported in 2022 SCCOnLine SC 1357 more particularly paras 4 and 5 resply therein:

> "4. This Court in a judgment reported in 'Banwari Lal v. Chando Devi (Smt.) (Through LRS.)' (1993) 1 SCC 581 held the question as to whether an aggrieved person against the compromise decree has a right to file an application before the Court which granted the decree or an appeal in terms of Order 43 Rule 1A of the Civil Procedure Code, 1908 (for short, 'the CPC'). It was held as under:— "13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, "the Court shall decide the question", the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more comprehensive, the explanation to the proviso says that an agreement or compromise "which is void or voidable under the Indian Contract Act..." shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code."
>
> 5. The appellants had thus the right to avail either the remedy of appeal in terms of Order 43 Rule 1A CPC or by way of an application before the court granting decree. Therefore, the application filed by the appellants before the Court which granted the decree cannot be said to be without jurisdiction." (Emphasis supplied)

91. Thus, in view of the aforesaid discussion, we hold that the cross-appeal filed by the Original Defendant No. 2, questioning the legality and validity of the settlement was maintainable in law.

92. We shall now look into the circumstances, as highlighted by the learned Senior Counsel appearing for the Defendant No. 2, rendering the settlement agreement dated 28.03.1991 invalid and not binding under Order XXIII Rule 3 of the CPC:

"First, the alleged compromise agreement has admittedly not been signed by the plaintiff who concededly has a share in the property as a coparcener. A written consent of all parties is necessary. Secondly, a coparcenary undivided property in specie (Plot No. 140) has been allotted to Defendant 2 by Defendant No. 1 over which the plaintiff also has an interest.

Thirdly, there is variance between the agreement and the compromise petition producing the agreement.

The Variance noted is as follows-

(a) The compromise petition takes in consideration yet another property already purchased by Defendant No. 2 by her own income (Schedule B property) which was not a part of compromise agreement.

(b) The sketch map appended to the petition shows plot no. 1086 and 1085 which for part of plot No. 141 instead of plot no. 140 mentioned in clause 3 of compromise agreement, and does not indicate any consensus ad idem, therefore, the execution of the compromise agreement becomes unenforceable.

(c) The species of suit property, which was given/provided to Defendant no.2 in clause 3 (page 141) of agreement was changed to will be allotted to her in final decree proceeding.

(d) The payment of Rs. 12000 which was to be deposited to court without any caveat in agreement (See para 4 @ 141) was made subject to further orders of the Court in the petition.

(e) There is no express mentioning about the mesne profits in agreement whereas a definite clause was inserted in the compromise petition.

(f) The easement rights to property of Defendant No. 2 were recognised in agreement and later in petition was altered to that Defendant No. 2 along with others have to file and take steps to easement rights for which the Defendant 1 shall not object.

(h) The agreement provided that the defendant no. 2 shall sign the compromise petition which was later altered to signing and swearing the affidavit in compromise petition.

Fourthly, the judgment dated 01.08.2000 of the first appellate court accepting the compromise does not make allotment of the property allotted in specie to the Defendant No. 2. The first appellate court has proceeded on the wrong premise that the Defendant No. 2 has surrendered her rights to the Defendant No. 1. The first appellate court was further wrong in specifically noting that the compromise

> agreement does not cause any prejudice to the rights of the plaintiff and therefore can be given effect.
>
> Fifthly, the compromise agreement was entered into by beckoning a smaller share to the Defendant No. 2, while she has a larger share in view of Vineeta Sharma (supra). The consideration for the alleged compromise/settlement was therefore inadequate and whole agreement has to fall to the ground due to changed and supervening circumstances effectuated by change in law.
>
> Lastly, even otherwise, the allotment of a co-ownership property in a specie to one coparcener cannot be modified in a preliminary decree. Moreover, under Hindu Law, the gift/renunciation/relinquishment or alienation by one coparcener of his undivided coparcenary interest to another coparcener without consent of other coparceners is void."

93. It is now well settled that under Order XXIII Rule 3 of the CPC as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. (See: Gurpreet Singh v. Chatur Bhuj Goel, (1988) 1 SCC 270.)

94. Indisputably, in the case on hand, the plaintiff has not put her signature on the deed of settlement, which was produced before the High Court in first appeal. The Plaintiff has made herself very clear that she never joined in the settlement between her brother i.e., the Defendant No. 1 and her sister i.e., the Defendant No. 2. On this ground alone, the settlement could be said to be unlawful, being without any written consent of all the parties. In a suit for partition of joint property, a decree by consent amongst some only of the parties cannot be maintained.

95. In Nityamoni Dasi v. Gokul Chandra Sen reported in (1911) 9 Ind Cas 210 (Cal), the Calcutta High Court observed:

> "... The decree of the Subordinate Judge must be set aside and the whole case retried, because as this is a suit for partition of joint property, a decree by consent amongst some only of the parties cannot possibly be maintained....."

96. In Vir Singh and Others v. Kharak Singh and Others reported in AIR 1925 Lah 280, all the proprietors had not assented to the compromise, Moti Sagar, J. observed:— "...the alleged compromise not having been assented to by all the proprietors was clearly contrary to law and the Court was, therefore, fully justified in refusing to enforce it. ..."

97. In Taraprasanna Sarkar and Another v. Kalikamohan Sarkar and Others reported in AIR 1924 Cal 80 Mookerjee and Rankin, JJ., held:— "...There can be no compromise binding upon, all the parties to a partition suit until and unless all the parties have joined in the compromise:..."

98. In the aforesaid context, we shall also now look into the findings recorded by the Division Bench of the High Court while allowing the cross-appeal filed by the Defendant No. 2. We quote the relevant observations as under:

> "The appeal was filed by defendant no. 1 before this Court. In this Appeal challenging the correctness of the decision of the learned Single Judge in F.A. No. 359/96 on the basis of the compromise petition dated 28.3.1991, which is flied and accepted by him is not signed by defendant no.2 and the same is signed by her advocate and not signed by the plaintiff and her counsel. Therefore, it is urged that the same is not legal compromise as provided under Order 23, Rule 3, CPC and on behalf of defendant no.2 her advocate could not have signed the compromise petition as she has not executed special 'vakalatnama' giving the authorization in favour of her lawyer to compromise the matter between defendant no.1 and 2 In the First Appeal. Therefore, First Appellate Judge should not have received the compromise petition and accepted the same. The acceptance of the compromise petition by the learned Single Judge should have entered between the parties including the plaintiff. In support of the said legal contention, reliance is placed by the learned counsel on behalf of defendant no.2 on the decisions of the apex Court in Ramasrey & Puspa Devi (supra). The compromise petition is in variance to the schedule properties of the suit and, therefore, it is voidable. The compromise was neither recorded by the first appellate court at the time-of filing compromise petition in writing, nor the parties were present in the court nor signed the petition in court. Therefore, the alleged compromise cannot be termed as compromise between the parties in relation to the subject matter covered therein as the same is illegal for the reason that it is opposed to Order 23, Rule 3, CPC. Hence the learned Single Judge could not have accepted the same. In support of this contention, learned Single Judge had rightly placed reliance upon the decisions of the Hon'ble Supreme Court In the case of Gurpreet Singh v. Chatur Bhuj Goel, AIR 1988 SC 400; and of this Court in the case of Sanyasi Jena and others v. Mina Jena and others, AIR 1984 Orissa 213. Further the reliance placed by the learned counsel for the defendant no.1 upon the judgment of Puspa Devi (supra) is distinguished by defendant no.2 counsel stating that compromise petition is being typed in English. Further the same is not signed by defendantno.2. Defendant no.1 with a view to deprive allotment of share assigned in favour of defendant no.2 by the trial court in respect of the suit schedule properties in the absence of signing the compromise petition by defendant no.2 and there is no special 'vakalatnama' executed in favour of her lawyer, the said compromise petition is unlawful and the same could not have been accepted by the first appellate court In the Impugned judgment and modified the trial court judgment. Therefore, the cross-objection/appeal filed by defendant no.2 has to be allowed by setting aside the compromise recorded by the first appellate court In the Impugned judgment by modifying trial court judgment in relation to the share of the defendant no.2 allotted in respect of the suit schedule properties. Having set aside the said compromise, as recorded in the impugned judgment of the First Appellate Court, the trial court judgment is restored with regard to the share assigned by him in favour in of

> defendant no.2 In respect of suit schedule properties. Accordingly the cross-objection of the second defendant is allowed by answering the aforesaid point no.(iii) in her favour." (Emphasis supplied)

99. We are in complete agreement with the aforesaid findings recorded by the High Court in its impugned judgment and order while allowing the cross-appeal.

100. The third question that arises for our consideration in context with the legality and validity of the settlement is whether the learned advocate appearing for the cross- objector i.e., Defendant No. 2 could have signed the compromise petition without an express consent. It is an imperative duty of the Court to ascertain the genuineness and lawfulness of the compromise deed. Indisputably, in the case on hand, the First Appellate Court had neither recorded the statements of the parties in the Court nor had made any inquiry into the terms of the settlement. It is in such circumstances that the High Court in its impugned order has observed that the Compromise Petition was signed by the advocate without any express authority or without special vakalatnama executed in favour of the advocate. In fact, the authority was expressly curtailed in the compromise deed.

101. In the aforesaid context, we may refer to the decision of this Court in the case of Himalayan Cooperative Group Housing Society v. Balwan Singh and Others reported in (2015) 7 SCC 373, more particularly, paras 22 to 33, which read thus:

> "22. Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-

lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

23. The Bar Council of India Rules, 1975 (for short "the BCI Rules"), in Part VI Chapter II provide for the "Standards of Professional Conduct and Etiquette" to be observed by all the advocates under the Advocates Act, 1961 (for short "the 1961 Act"). In the Preamble to Chapter II, the BCI Rules

provide as follows:

> "An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned."

24. The Preamble makes it imperative that an advocate has to conduct himself and his duties in an extremely responsible manner. They must bear in mind that what may be appropriate and lawful for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may be improper for an advocate in his professional capacity.

25. Section II of the said Chapter II provides for duties of an advocate towards his client. Rules 15 and 19 of the BCI Rules, have relevance to the subject-matter and therefore, they are extracted below:

> "15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.
>
> ***
>
> 19. An advocate shall not act on the instructions of any person other than his client or his authorised agent."

26. While Rule 15 mandates that the advocate must uphold the interest of his clients by fair and honourable means without regard to any unpleasant consequences to himself or any other. Rule 19 prescribes that an advocate shall only act on the instructions of his client or his authorised agent. Further, the BCI Rules in Chapter I of the said Section II provide that the Senior Advocates in the matter of their practice of the profession of law mentioned in Section 30 of the 1961 Act would be subject to certain restrictions. One of such restrictions contained in clause (cc) reads as under:

> "(cc) A Senior Advocate shall, however, be free to make concessions or give undertaking in the course of arguments on behalf of his clients on instructions from the junior advocate."

27. Further, the “Code of Ethics” prescribed by the Bar Council of India, in recognition of the evolution in professional and ethical standards within the legal community, provides for certain rules which contain canons of conduct and etiquette which ought to serve as general guide to the practice and profession. Chapter III of the said Code provides for an “Advocate's duty to the client”. Rule 26 thereunder mandates that an “advocate shall not make any compromise or concession without the proper and specific instructions of his/her client”. It is pertinent to notice that an advocate under the Code expressly includes a group of advocates and a law firm whose partner or associate acts for the client.

28. Therefore, the BCI Rules make it necessary that despite the specific legal stream of practice, seniority at the Bar or designation of an advocate as a Senior Advocate, the ethical duty and the professional standards insofar as making concessions before the Court remain the same. It is expected of the lawyers to obtain necessary instructions from the clients or the authorised agent before making any concession/statement before the court for and on behalf of the client.

29. While the BCI Rules and the Act, do not draw any exception to the necessity of an advocate obtaining instructions before making any concession on behalf of the client before the court, this Court in Periyar & Pareekanni Rubber Ltd. v. State of Kerala [(1991) 4 SCC 195] has noticed the sui generis status and the position of responsibility enjoyed by the Advocate General in regard to the statements made by him before the courts. The said observation is as under: (SCC p. 209, para 19) “19. ... Any concession made by the Government Pleader in the trial court cannot bind the Government as it is obviously, always, unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the Bar since the Advocate General makes the statement with all responsibility.” (See: Joginder Singh Wasu v. State of Punjab [(1994) 1 SCC 184] .)

30. The Privy Council in Sourendra Nath Mitra v. Tarubala Dasi [(1929-

30) 57 IA 133 : (1930) 31 LW 803 : AIR 1930 PC 158] , has made the following two observations which hold relevance to the present discussion: (IA pp. 140-41) “Two observations may be added. First, the implied authority of counsel is not an appendage of office, a dignity added by the courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief.” (See: Jamilabai Abdul Kadar v. Shankarlal Gulabchand [(1975) 2 SCC 609] and Svenska Handelsbanken v. Indian Charge Chrome Ltd. [(1994) 2 SCC 155])

31. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of

the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.

33. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

> "an advocate, in the discharge of his duty knows but one person in the world and that person is his client". [Ed.: The statement was made by Mr Henry Brougham, as His Lordship then was, while defending Queen Caroline in the House of Lords. See The Whole Proceedings on The Trial of Her Majesty, Caroline Amelia Elizabeth, Queen of England, for "Adulterous Intercourse" with Bartolomeo Bergami, Vol. II, p. 2 containing Her Majesty's Defence, printed and published by John Fairburn, Broadway, Ludgate Hill (1820).]" (Emphasis supplied)

102. We also refer to the decision of this Court in the case of Byram Pestonji Gariwala (supra), more particularly, the observations made in para 37, which read thus:

> "37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession." (Emphasis supplied)

103. Almost six decades back, the Madras High Court speaking through Justice Ramaswami (as His Lordship then was) in the case of Govindammal v. Marimuthu Maistry and Others reported in AIR 1959 Mad 7 had sounded the note of caution observing as under:

> "5. ... The decisions appear to be fairly clear that even in cases where there is no express authorization to enter into a compromise, under the inherent authority impliedly given to the Vakil he has power to enter into the compromise on behalf of his client. But in the present state of the clientele world and the position in which the Bar now finds itself and in the face of divided judicial authority and absence of statutory backing prudence dictates that unless express power is given in the vakalatnama itself to enter into compromise, in accordance with the general practice obtaining a special vakalatnama should be filed or the specific consent of the party to enter into the compromise should be obtained. If an endorsement is made on the plaint etc., it would be better to get the signature or the thumb impression of the party affixed thereto, making it evident that the party is aware of what is being done by the Vakil on his or her behalf."

104. Thus, in view of the aforesaid discussion, we hold that the High Court committed no error in holding that the settlement between the Defendant Nos. 1 and 2 resply was unlawful.

OUR FINAL CONCLUSIONS

105. We may draw our final conclusions as under:

> (i) The preliminary decree drawn by the Trial Court as affirmed by the High Court is modified to the extent that the daughters are entitled to 1/3rd share in all the properties scheduled in the plaint i.e., ancestral and self-acquired properties of Late Shri Kumar Sahoo. The Trial Court shall modify the decree accordingly.
>
> (ii) As we have held that the settlement between the Original Defendant Nos.
>
> 1 and 2 resply was not in accordance with law, the Appellants herein will not be entitled to the share of the Original Defendant No. 2.
>
> (iii) The Appellants shall be entitled to only their 1/3rd share in the suit properties.
>
> (iv) Since the Defendant No. 1 was appointed as receiver, the Appellants shall now furnish accounts before the Trial Court.

106. With the aforesaid clarifications, both the Appeals fail and are hereby dismissed.

107. This litigation by now is almost four decades old. The Original Plaintiff as on date is almost 85 years of age. In such circumstances, the Trial Court shall draw the final decree within a period of three months from the date of receipt of the certified copy of this judgment and order.

108. Parties to bear their own costs.

109. Pending applications, if any, also stand disposed of.

.....J.

(A.S. BOPANNA) .....J.

(J.B. PARDIWALA) NEW DELHI;

MARCH 29, 2023.