

RAM NATH SAO @ RAM NATH SAHU SINCE DECEASED
THR. L.RS.& ORS.

v.

GOBERDHAN SAO SINCE DECEASED THR. LRS. & ORS.

(Civil Appeal No. 1110 of 2006)

APRIL 06, 2017

[IRANJAN GOGOI AND ASHOK BHUSHAN, JJ.]

Partition – Allocation of shares as regards joint family properties – Under s.3(2) of Hindu Women's Rights to Property Act, 1937, on the death of husband, his widow becomes entitle to a share in the joint family property – Further, property of a joint family does not cease to belong to the family merely because the family is represented by a single co-parcener who possesses rights which an owner of property may possess – Hindu Women's Rights to Property Act, 1937 – s.3(2) – Hindu Succession Act, 1956 – s.6.

Partly allowing the appeal, the Court

HELD: 1. The common ancestor of parties 'FM' died in the year 1940. At the time of his death, the Hindu Women's Rights to Property Act, 1937 was in force. Under Section 3(2) of the 1937 Act, on the death of 'FM' his widow/wife 'PD' became entitled to a share in the joint family property. However, the share of 'PD' would remain undetermined till such time when there is a partition in the family. On the date of death of 'FM', his son 'MS' did not have any male issue. However, the joint family in question can be understood to have continued with 'MS' as the 'Karta' and the property continued to belong to the joint family. Thus, the position prior to the coming into force of the Hindu Succession Act, 1956 was that the joint family continued on the death of 'FM' with 'MS' as the sole coparcener and the joint family properties continued to belong to the family and furthermore 'PD' continued to have a share in the property. [Paras 9, 10, 11, 12] [817-E, G; 818-C, F-G]

2.1 After the death of 'MS' in the year 1961, following the provisions of Section 6 of the Hindu Succession Act, 1956, a notional partition just before the death of 'MS' will have to be

A presumed. There would, therefore, be 8 sharers in the joint family properties and the share of each one of them would equal i.e. 1/8th each. Insofar as 'BD', the wife of 'MS' is concerned, she would be entitled to 1/8th share of the joint family properties upon the notional partition being given effect to. [Para 14] [819-E-F; 820-A]

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2.2. Next aspect of the case is with regard to the 1/8th share of 'MS' and the devolution of the said share to the surviving members of the joint family. In this regard, it can be held without any difficulty that under the proviso to Section 6 of the Hindu Succession Act, 1956 the share of 'MS' in the joint family property (1/8th) would devolve by intestate succession among surviving members of the joint family. Thus after 1961, 'PD' being the widow of 'FM' had 1/8th plus 1/72th share in the joint family property, namely, 10/72th share. 'PD' died in the year 1967 leaving behind her daughter 'UD' and the children of her predeceased son 'MS'.

D

'UD' will be entitled to receive one-half share of 'PD' i.e. half of 10/72th share i.e. 10/144th share. The remaining 10/144th share that would go to the branch of 'MS' will have to be divided amongst 8 heirs of 'MS', namely, the widow and the seven children. The appellants-defendants are entitled to 38.1% share in the joint family property instead of 37.5% as ordered by the courts below. [Paras 15, 16, 18] [821-D-E, II; 822-A-B; 823-D]

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Potti Lakshmi Perumallu v. Potti Krishna Venamma [1965] 1 SCR 26; *Gowli Buddanna v. Commissioner of Income Tax, Mysore, Bangalore* [1966] 3 SCR 224; *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum and Ors.* (1978) 3 SCC 383 : [1978] 3 SCR 761 – relied on.

F

Case Law Reference

G

[1965] 1 SCR 26	relied on	Para 10
[1966] 3 SCR 224	relied on	Para 11
[1978] 3 SCR 761	relied on	Para 14

H

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1110 of 2006.

From the Judgment and Order dated 26.02.2003 of the High Court of Jharkhand at Ranchi in Appeal from Original Decree No. 307 of 1989.

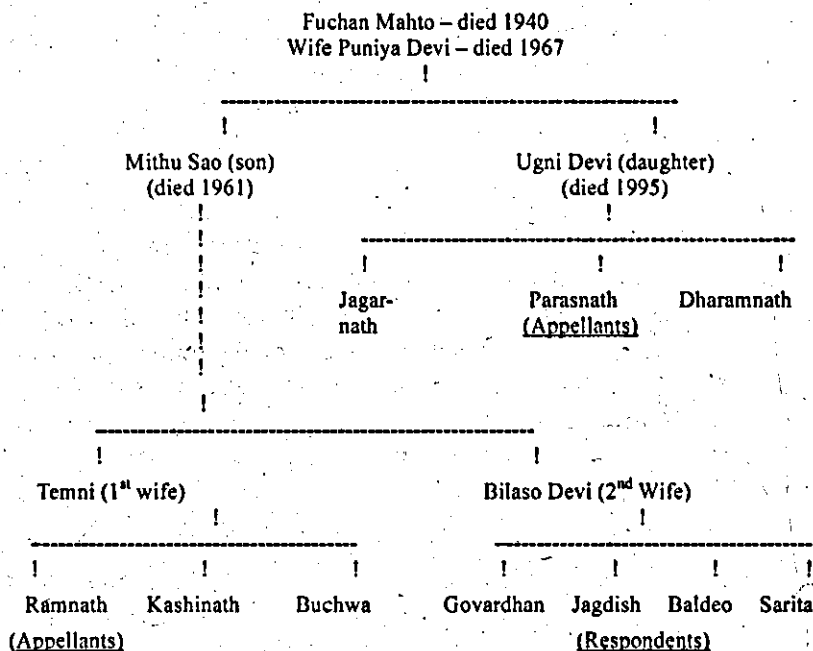
Gaurav Agrawal, Abhikalp Pratap Singh, Prashant Kumar, Advs. for the Appellants.

Arup Banerjee, M. K. Verma, Braj Kishore Mishra, Advs. for the Respondents.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. The appellants are the defendants in a partition suit filed by the respondents, as plaintiffs, seeking partition of various properties specifically mentioned in Schedule 'B' and Schedule 'C' of the plaint.

2. At the outset, the following genealogical table is being set out to enable a clear and easy understanding of the facts and the findings with regard to the entitlement of the parties that would be arrived at in the course of the deliberations that follow.



3. The case of the respondents plaintiffs is that Fuchan Mahto (died in 1940), the common ancestor of the parties had a son Muthu Sao

A who died in the year 1961. Mithu Sao had two wives, namely, Temni (1st wife) and Bilaso Devi (2nd wife). At the time of the filing of the suit for partition Temni (1st wife) was no more. The defendants in the suit Ramnath, Kashinath Buchwa are the sons and daughter of Mithu Sao and Temni (1st wife) whereas the plaintiffs Govardhan, Jagdish, Baldeo and Sarita are the sons and daughter of Mithu Sao and Bilaso Devi (2nd wife), who is a co-plaintiff.

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D 4. According to the plaintiffs, they along with the defendants constituted a joint Hindu Mitakshra family which owned ancestral land recorded under Khata No.19 of village Lapanga in the district of Hazaribagh. It is the case of the plaintiffs that the joint family also acquired lands in several other villages in the name of one or other members of the joint family. According to the plaintiffs, the parties continued in joint possession of the properties, both ancestral and subsequently acquired. As the members of joint family had increased it became inconvenient to continue to remain joint. Hence the suit for a decree of partition was filed.

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F 5. The defendants contested the suit, *inter alia*, on the ground that there was no unity of title and possession between the parties. According to the defendants, after the death of Mithu sao in the year 1961 or even before his death there was disruption in the family on account of the fact that Mithu Sao had married twice. There were serious differences in the family and the children of the first wife Temni separated from Mithu Sao. It is the case of the defendants that after the death of Mithu Sao the children of first wife and second wife again separated. The defendants pleaded that as there was no joint family in existence both the parties had separate earnings and only the ancestral lands of Khata No.19 are available for partition, major portion of which had been acquired by the Government and compensation amount had been evenly distributed amongst the parties according to their respective shares. According to the defendants, the other items of the Schedule property are self-acquired properties which are not liable to be partitioned.

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H 6. The learned trial Court decreed the suit holding that the plaintiffs are entitled to the extent of 63-1/2 paise share in the Schedule 'B' property; items 1 to 8 of village Labaga in Schedule 'C'; items 1 and 2 of village Rasda in Schedule 'C'; and items 1 to 8 of village Hafuwa in Schedule 'C' properties and 12 paise share in the properties mentioned in Item No.9 of village Hafuwa in Schedule 'C' properties. The defendants appellants, on the other hand, were found to be entitled to the remaining

37-1/2 paise in the Schedule 'B' property and items 1 to 8 of village Labaga; items 1 and 2 of village Rasda; and items 1 to 8 of village Hafuwa in Schedule 'C' properties. By the said decree which has been affirmed in appeal by the High Court, so far as the property mentioned in item No.9 of Schedule 'C' is concerned, 12 and 11 paise share therein in favour of the plaintiffs and department have been granted. As the said property i.e. item No.9 of Schedule 'C' pertain to 23 paise share of the five sons of Muthu Sao in property purchased by them along with other persons by 8 different sale deeds, the said property is not the subject matter of the present appeal in its truncated form, as indicated earlier.

7. This Court while issuing notice in the present appeal confined the area of scrutiny to the question of "allocation of shares as regards to the properties found to be joint family properties". In view of the aforesaid limited notice, the issue with regard to the shares of the respective parties in the joint family properties alone will have to be determined in the present appeal and no question of reopening the concurrent findings of the learned forums below with regard to the existence of joint family and the holding of properties jointly can arise.

8. We have heard the learned counsels for the parties.

9. Fuchan Mahto died in the year 1940. At the time of his death, the Hindu Women's Rights to Property Act, 1937 (hereinafter referred to as "the 1937 Act") was in force. Section 3(2) of the 1937 Act which is relevant for the present case provided as follows:

"3(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had."

10. Under Section 3(2) of the 1937 Act, on the death of Fuchan Mahto his widow/wife Puniya Devi became entitled to a share in the joint family property. However, the share of Puniya Devi would remain undetermined till such time when there is a partition in the family. This is what has been held by this Court in Potti Lakshmi Perumallu vs. Potti Krishna Venamma¹. The relevant paragraph in the said judgment to the above effect is extracted below:

¹ (1965) 1 SCR 26

A “According to the theory underlying the Hindu law the widow of
a deceased Hindu is his surviving half and, therefore, as long as
she is alive he must be deemed to continue to exist in her person.
This surviving half had under the Hindu law texts no right to claim
a partition of the property of the family to which her husband
belonged. But the Act of 1937 has conferred that right upon her.
B When the Act says that she will have the same right as her husband
had it clearly means that she would be entitled to be allotted the
same share as her husband would have been entitled to had he
lived on the date on which she claimed partition.”

C 11. On the date of death of Fuchan Mahto, his son Mithu Sao did
not have any male issue. However, the joint family in question can be
understood to have continued with Mithu Sao as the ‘Karta’ and the
property continued to belong to the joint family. The above view would
find support from the decision of this Court in Gowli Buddanna v.
D Commissioner of Income Tax, Mysore, Bangalore², relevant portion
of which is extracted below:

E “Property of a joint family therefore does not cease to belong to
the family merely because the family is represented by a single
coparcener who possesses rights which an owner of property
may possess. In the case in hand the property which yielded the
income originally belonged to a Hindu undivided family. On the
death of Buddappa the family which included a widow and females
born in the family was represented by Buddanna alone but the
property still continued to belong to that undivided family and
income received therefrom was taxable as income of the Hindu
undivided family.”

F 12. The position, therefore, prior to the coming into force of the
Hindu Succession Act, 1956 was that the joint family continued on the
death of Fuchan Mahto with Mithu Sao as the sole coparcener and the
joint family properties continued to belong to the family and furthermore
Puniya Devi continued to have a share in the property.

G 13. At this stage, the provisions of Section 6 of the Hindu Succession
Act, 1956 will require a specific notice which is extracted below:

“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: A

Provided that, if the deceased had left him surviving a female relative specified in class-1 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. B

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. C

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.” D

14. After the death of Mithu Sao in the year 1961, following the provisions of Section 6 of the Hindu Succession Act, 1956, a notional partition just before the death of Mithu Sao will have to be presumed. There would, therefore, be 8 sharers in the joint family properties and the share of each one of them would be as follows: E

Mithu Sao	1/8	F
Bilaso Devi (wife)	1/8	
Puniya Devi(mother)	1/8	
Ramnath (son)	1/8	G.
Kashinath (son)	1/8	
Goverdhan (son)	1/8	
Jagdish (son)	1/8	
Baldeo (son)	1/8	H

A Insofar as Bilso Devi, the wife of Mithu Sao is concerned, she would be entitled to 1/8th share of the joint family properties upon the notional partition being given effect to. The share of the widow of a Hindu male coparcener following a notional partition has been recognized by this Court in Gurupad Khandappa Magdum versus Hirabai Khandappa Magdum and others³, Paragraph 9 and 14 of the report in B Gurupad Khandappa Magdum (supra) may be usefully noted herein below:

C “9. The next step, equally important though not equally easy to work out, is to find out the share which the deceased had in the coparcenary property because after all, the plaintiff has a 1/6th interest in that share. Explanation 1 which contains the formula for determining the share of the deceased creates a fiction by providing that 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. One must, therefore, imagine a state of affairs in which a little prior to Khandappa’s death, a partition of the coparcenary property was effected between him and other members of the coparcenary. D Though the plaintiff, not being a coparcener, was not entitled to demand partition yet, if a partition were to take place between her husband and his two sons, she would be entitled to receive a share equal to that of a son. (see E Mulla’s Hindu Law, Fourteenth Edition, page 403, para 315). In a partition between Khandappa and his two sons, there would be four sharers in the coparcenary property, the fourth being Khandappa’s wife, the plaintiff. Khandappa would have therefore got a 1/4th share in the coparcenary property on the hypothesis of F a partition between himself and, his sons.

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14. The interpretation which we are placing upon the provisions of section 6 its proviso and explanation I thereto will further the legislative intent in regard to the enlargement of the share of female heirs, qualitatively and quantitatively. The Hindu Law of Inheritance (Amendment) Act, 1929 conferred heirship rights on the son’s daughter, daughter’s daughter and sister in all areas where the Mitakshara law prevailed. Section 3 of the Hindu Women’s Rights to Property Act, 1937, speaking broadly,

H ³ (1978) 3 SCC 383

conferred upon the Hindu widow the right to a share in the joint family property as also a right to demand partition like any male member of the family. The Hindu Succession Act, 1956 provides by section 14(1) that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as a full owner thereof and not as a limited owner. By restricting the operation of the fiction created by Explanation I in the manner suggested by the appellant, we shall be taking a retrograde step, putting back as it were the clock of social reform which has enabled the Hindu Woman to acquire an equal status with males in matters of property. Even assuming that two interpretations of Explanation I are reasonably possible, we must prefer that interpretation which will further the intention of the legislature and remedy the injustice from which the Hindu women have suffered over the years."

[underlining is ours]

15. Next aspect of the case is with regard to the 1/8th share of Mithu Sao and the devolution of the said share to the surviving members of the joint family. In this regard, it can be held without any difficulty that under the proviso to Section 6 of the Hindu Succession Act, 1956 the share of Mithu Sao in the joint family property (1/8th) would devolve by intestate succession, in the absence of a will, in the following manner.

Bilaso Devi	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$
Puniya Devi	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$
Ramnath	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$
Kashinath	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$
Goverdhan	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$
Jagdish	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$
Baldeo	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$
Buchwa Devi	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$
Sarita	$\frac{1}{8 \times 9}$	=	$\frac{1}{72}$

- A 16. Thus after 1961 Puniya Devi being the widow of Fuchan Mahto had $\frac{1}{8}$ th plus $\frac{1}{72}$ th share in the joint family property, namely, $\frac{10}{72}$ th share. Puniya Devi died in the year 1967 leaving behind her daughter Ugni Devi and the children of her predeceased son Mithu Sao. Ugni Devi will be entitled to receive one-half share of Puniya Devi i.e. half of $\frac{10}{72}$ th share i.e. $\frac{10}{144}$ th share. The remaining $\frac{10}{144}$ th share that would go to the branch of Mithu Sao will have to be divided amongst 8 heirs of Mithu Sao, namely, the widow and the seven children. Thus, the aforesaid $\frac{10}{144}$ th share would devolve in the following manner.

C	Bilaso Devi	$\frac{1}{8}$	x	$\frac{10}{144}$	=	$\frac{10}{1152}$
	Ramnath	$\frac{1}{8}$	x	$\frac{10}{144}$	=	$\frac{10}{1152}$
	Kashinath	$\frac{1}{8}$	x	$\frac{10}{144}$	=	$\frac{10}{1152}$
D	Goverdhan	$\frac{1}{8}$	x	$\frac{10}{144}$	=	$\frac{10}{1152}$
	Jagdish	$\frac{1}{8}$	x	$\frac{10}{144}$	=	$\frac{10}{1152}$
	Baldeo	$\frac{1}{8}$	x	$\frac{10}{144}$	=	$\frac{10}{1152}$
E	Buchwa Devi	$\frac{1}{8}$	x	$\frac{10}{144}$	=	$\frac{10}{1152}$
	Sarita	$\frac{1}{8}$	x	$\frac{10}{144}$	=	$\frac{10}{1152}$

- F 17. Consequently the share of each of the parties would be as follows:

G	Bilaso Devi	$\frac{1}{8}$	+	$\frac{1}{72}$	+	$\frac{10}{1152}$	= 14.76%
	Ramnath	$\frac{1}{8}$	+	$\frac{1}{72}$	+	$\frac{10}{1152}$	= 14.76%
	Kashinath	$\frac{1}{8}$	+	$\frac{1}{72}$	+	$\frac{10}{1152}$	= 14.76%
	Goverdhan	$\frac{1}{8}$	+	$\frac{1}{72}$	+	$\frac{10}{1152}$	= 14.76%

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$$\text{Jagdish} \quad \frac{1}{8} + \frac{1}{72} + \frac{10}{1152} = 14.76\% \quad \text{A}$$

$$\text{Baldeo} \quad \frac{1}{8} + \frac{1}{72} + \frac{10}{1152} = 14.76\%$$

$$\text{Buchwa Devi} \quad \frac{0}{0} + \frac{1}{72} + \frac{10}{1152} = 2.25\% \quad \text{B}$$

$$\text{Sarita} \quad \frac{0}{0} + \frac{1}{72} + \frac{10}{1152} = 2.25\%$$

$$\text{Ugni Devi} \quad \frac{10}{144} = 6.94\% \quad \text{C}$$

Thus calculated the share of the appellants would be :

$$14.76 \text{ (Ramnath)} + 14.76 \text{ (Kashinath)} + 2.25 \text{ (Buchwa Devi)} + 6.94 \text{ (LRs. of Ugni Devi)} = 38.1\%$$

18. In view of the above, it will be necessary to modify the decree passed by the learned trial Court as affirmed by the High Court by holding that the appellants – defendants are entitled to 38.1% share in the joint family property instead of 37.5% as ordered by the courts below. D

19. The appeal consequently is allowed to the extent indicated above and with the aforesaid modification of the decree passed by the learned trial Court as affirmed by the High Court. E