

DEPARTMENT OF LAWS  
PANJAB UNIVERSITY, CHANDIGARH

---

Before  
THE DISTRICT COURT

---

Case No. \_\_\_\_\_/2024

IN THE MATTER OF  
DRAUPADI (Petitioner)

VERSUS

Son

(Respondents)

---

Submitted to  
Prof. Meharpreet Singh

Counsel on Behalf of Respondent

Rajavikrant Sharma

Roll No. 288/22

Section I

**TABLE OF CONTENTS**

SERIAL No.	N	PAGE No.
1	LIST OF ABBREVIATIONS	
2	INDEX OF AUTHORITIES	
3	STATEMENT OF JURISDICTION	
4	STATEMENT OF FACTS	
5	LEGAL ISSUE	
6	SUMMARY OF ARGUMENTS	
7	ARGUMENTS ADVANCED	
8	PRAYER	

**LIST OF ABBREVIATIONS**

AIR	ALL INDIA REPORTER
U/S	UNDER SECTION
HC	HIGH COURT
ORS	OTHERS
SC	SUPREME COURT
v.	VERSUS
HON'BLE	HONOURABLE

## **INDEX OF AUTHORITIES**

### **LIST OF JUDICIAL PRECEDENTS CITED**

<b><u>Name of the case</u></b>	<b><u>Citation</u></b>
<b>Raoji Bhikaji Kondkar vs Anant Laxman Kondkar</b>	<b><u>2002</u></b>
<b>Sheo Dyal Tewaree v. Judoonath Tewaree</b>	<b><u>1868 SC 23</u></b>
<b>Commissioner of income tax vs Seth Govind Ram Sugar Mills,</b>	<b>AIR 1966 SC 24</b>

### **STATUTES**

The Hindu Marriage Act, 1955

Hindu Succession Act,

### **WEBSITES**

<https://indiankanoon.org/>

<http://www.scconline.com/>

<http://www.manupatra.com/>

<http://www.ebcreader.com/>

### **BOOKS REFERRED**

1. Family Law by Prof Supinder Kaur
2. Dr. P Diwan, Modern Hindu Law, 14th edition

## **STATEMENT OF JURISDICTION**

The jurisdiction of District Courts over matters related to the succession of property is generally governed by the provisions of the **Code of Civil Procedure (CPC), 1908**. Specifically, the relevant section is Section 9 of the CPC, r/w 16 which states that the courts shall have jurisdiction to try all civil suits unless barred either expressly or impliedly.

### **Section 9: Courts to try all civil suits unless barred.**

*The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

*[Explanation I].--A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*

*[Explanation II].--For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]*

### **Section 16: Suits to be instituted where subject-matter situate.**

*Subject to the pecuniary or other limitations prescribed by any law, suits*

*(a) for the recovery of immovable property with or without rent or profits,*

*(b) for the partition of immovable property,*

### **STATEMENT OF FACTS**

1. Ghansham, died on 31st December 2004 leaving behind his 2 sons and a daughter and his widow. He left behind his separate property worth 50 lakhs and joint family property worth 2 crores.
2. His eldest son divided the separate property amongst his brother and sister while dividing the joint family property only with his brother.
3. Draupadi filed a case in the court challenging the succession of the property.

## **LEGAL ISSUE**

1. Whether the partition of the property is valid?

## ADVANCED ARGUMENTS

### 1. Whether the partition of the property is valid?

It is humbly submitted before the hon'ble the district court that the partition of the property that petitioner' son divided the separate property amongst his brother and sister while dividing the joint family property only with his brother.

#### **Wife's claim in Separate property:**

With respect to division of separate property of the hindu male dying intestate among his legal heirs section 8 r/w section 10 of Hindu Succession act, 1956 are made applicable.

With the aim of applying the above the said section,

#### **8. General rules of succession in the case of males—**

*The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—*

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

#### **10. Distribution of property among heirs in class I of the Schedule:**

*The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:—*

*Rule 1.—The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.*

*Rule 2.—The surviving sons and daughters and the mother of the intestate shall each take one share.*

*Rule 3.—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.*

*Rule 4.—The distribution of the share referred to in Rule 3—*

*(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;*

*(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portion.*



For the application of above sections class 1 heirs of deceased Ghansham are identified, they are listed below:

1. Ghansham's widow -Draupadi
2. Ghansham's eldest son
3. Ghansham's younger son
4. Ghansham's daughter

Having identified Class1 heirs, distribution of property is carried out among them as per section 10 and the rules laid down thereunder:

1. As per Rule 1, Ghansham's widow -Draupadi will get one share
2. As per Rule 2, Ghansham's eldest son, Ghansham's younger son and Ghansham's daughter will get one share each. -

Therefore w.r.t. to total value of the separate property of deceased Ghansham the division will be as follows:

Family Member	Share	Amount in money
Ghansham's widow -Draupadi	1/4	12,50,000 rupees
Ghansham's eldest son	1/4	12,50,000 rupees
Ghansham's younger son	1/4	12,50,000 rupees
Ghansham's daughter	1/4	12,50,000 rupees

Thus, it can be determined without a shadow of question that the respondents in the aforementioned case are required to provide the petitioner a share. The partition that has already been made is now void because it was done without adhering to the correct procedures outlined in the Hindu Succession Act of 1956.

During her husband's lifetime, a wife has no claim to his ancestral property. Only coparceners of a Hindu joint family (Mitakshra) are entitled to inherit ancestral property. Because the wife is not a coparcener, she has no right or title to the ancestral property. The wife is still outside the coparcenary system. As a result, the amendment of Hindu succession act, 2005 cannot provide much to Hindu women on its own. Furthermore, the owner of such property might give it away during his lifetime.

However, despite being joint family members, the mother, wife, and daughter-in-law have no such entitlement in the joint family property.

It can be left to whoever he chooses in his will. In his self-acquired property, a Hindu parent can disinherit his wife or daughter by will.

### **Wife's claim in Joint Family property:**

It is imperative to appreciate that a category of people who can't claim partition but are entitled to share in the property when the partition takes place. The following set of persons are enumerated below:

1. Father's wife
2. Mother
3. Grandmother

In the present case the petitioner is 'mother' from the category of persons mentioned above, and mothers can claim partition only when following conditions are fulfilled:

1. Partition takes place between the sons
2. Mother is a widow
3. Partition is carried out by metes and bounds

If the above conditions are viewed w.r.t the case in hand, the partition between the sons haven't been carried out by metes and bounds as the same wasn't mentioned, in the absence of the same the partition so affected will be partition by severance of status ie. Partition carried out de facto and not de jure. -

In the case **Raoji Bhikaji Kondkar vs Anant Laxman Kondkar**<sup>1</sup>, Bombay high with due reference to earlier judgement of Allahabad high court in **Sheo Dyal Tewaree v. Judoonath Tewaree (1868)**<sup>2</sup> threw light on the importance of De jure partition qua the entitlement of share to a female in the capacity of the mother

*But we are of the opinion that she would obtain such a share only if an actual partition took place between the sons. The text of Yajnavalkya on this point is this :- 'Of heirs dividing after the death of the father, let the mother also take an equal share.' This in our opinion implies an actual*

<sup>1</sup> **Raoji Bhikaji Kondkar vs Anant Laxman Kondkar**

<sup>2</sup> **Sheo Dyal Tewaree v. Judoonath Tewaree (1868) 9W.R. 61**

*division of the family property, that is, a completed partition under which there is a division of interest as well as separate possession. We do not think that a mere severance of interest where no actual division of the property takes place confers on the mother a right to a share equal to that of each of her sons...It is only when the sons actually divide the property and effect a complete partition that the mother can get a share. There is nothing in the Mitakshara from which we may infer that upon a mere severance of the joint status of a Hindu family a mother can claim a share.*

Hindu widow cannot act as karta of a HUF, only males alone can be as they are only coparceners.

**Commissioner of income tax vs Seth Govind Ram Sugar Mills, AIR 1966 SC 24<sup>3</sup>.**

Division w.r.t. coparcenary property remains the same the property of the deceased father will be divided between the sons only i.e.

Family Member	Share	Amount in Rupees
Ghansham's eldest son	1/2	1cr
Ghansham's younger son	1/2	1cr

Therefore, the respondents in the said case are not required to again fairly undertake the division of coparcenary property qua their mother as she wasn't entitled for the same.

<sup>3</sup> Commissioner of income tax vs Seth Govind Ram Sugar Mills, AIR 1966 SC 24#

**PRAYER**

Wherefore in the light of the facts presented, issues raised, arguments advanced and authorities cited, it is humbly requested that this Hon'ble Court may be pleased to adjudge and declare:

1. That the petitioner be granted share in the separate property of the deceased as agreed upon by the respondents.
2. Petition should stand dismissed w.r.t. to Joint Family property where the petitioner claims share.

AND/OR

And pass any such order, writ or direction as the Honorable Court deems fit and proper.

Place:

Date:

Sd/-  
Counsel for the  
Respondent  
Rajavikrant Sharma