Bhanwar Singh vs Puran & Ors on 12 February, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1490, 2008 AIR SCW 1565, (2008) 69 ALLINDCAS 77 (SC), 2008 (2) SRJ 440, 2008 (1) HRR 360, 2008 (2) SCALE 355, 2008 (69) ALLINDCAS 77, 2008 (3) SCC 87, (2008) 5 ALLMR 15 (SC), (2008) 1 CLR 612 (SC), (2008) 1 MARRILJ 473, 2008 HRR 1 360, 2008 (1) MARR LJ 473, 2008 (5) ALL MR 15 NOC, (2008) 104 REVDEC 703, (2008) 105 REVDEC 199, (2008) 2 ALL RENTCAS 86, (2008) 2 ALL WC 1364, (2008) 2 GUJ LH 376, (2008) 1 HINDULR 337, (2008) 1 WLC(SC)CVL 494, (2008) 2 ANDH LT 80, (2008) 2 CAL HN 119, (2008) 1 CURLJ(CCR) 461, (2008) 2 LANDLR 181, (2008) 2 MAD LJ 1158, (2008) 2 MAD LW 424, (2008) 2 PUN LR 186, (2008) 2 RECCIVR 99, (2008) 2 ICC 604, (2008) 2 SCALE 355, (2008) 71 ALL LR 852

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Bench: S.B. Sinha, V.S. Sirpurkar

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           CASE NO.:
Appeal (civil)  1233 of 2008

PETITIONER:
Bhanwar Singh

RESPONDENT:
Puran & Ors

DATE OF JUDGMENT: 12/02/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
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J U D G M E N T CIVIL APPEAL NO. 1233 OF 2008 (Arising out of SLP (C) No.9503 of 2007) S.B. Sinha, J.

1. Leave granted.

2. Applicability of Section 8 of the Hindu Succession Act, 1956 (the Act) to the facts of the present case is in question in this appeal which arises out of a judgment and order dated 14.11.2006 passed by a learned Single Judge of the Punjab and Haryana High Court whereby and whereunder the second appeal preferred by the appellant herein was dismissed.

3. One Bhima was the owner of the property. He died in the year 1972 leaving behind his son, Sant Ram and three daughters, Shanti, Manti and Shakuntala. Appellant, who is son of Sant Ram was born in the year 1977. He attained majority in the year 1995. The properties in suit were partitioned between Sant Ram and his sisters. Their names were mutated in the revenue records of rights. Their shares in the properties of the deceased Bhima were shown to be 1/4th each in the revenue records of 1973-74.

4. Inter alia, on the premise that the properties of Bhima were joint family properties and the same were transferred by Sant Ram, firstly by way of mortgage and thereafter by sale in favour of the respondents herein in the year 1985, the appellant filed a suit for setting aside the said alienations. It was contended that the consideration for the said transaction being a meager sum of Rs.12,000/- and furthermore being not for legal necessity, the same should be set aside.

5. The said suit was decreed by the learned Trial Judge holding that the property was joint family one and Sant Ram being the 'Karta', could not have transferred the same, save and except by way of legal necessity. The learned First Appellate Court, however, reversed the same findings, inter alia, holding that upon the death of Bhima, Sant Ram became a co-sharer of the property and having regard to the entries of the jamabandi for the year 1973-74, it had been established that he, along with his sisters, having inherited the same in equal shares, the property lost the character of ancestral property in terms of Section 8 of the Hindu Succession Act.

6. It was furthermore opined that even if the property was a joint property, the interest of Sant Ram being 1/4th in the half share therein and the other half of Bhima having been inherited by Sant Ram and his sisters, the disputed property ceased to be a Hindu Undivided Family Property. In any event, the Deed of Sale executed by Sant Ram having been executed for legal necessity as the suit property had already been mortgaged, the deeds of sale could not have been cancelled.

A limited notice was issued by this Court as to whether the father of the petitioner had inherited the property from his forefathers.

7. Mr. Gagan Gupta, learned counsel appearing on behalf of the appellant, would submit that the Appellate Court as also the High Court committed a serious error in so far as they failed to take into consideration the well settled principles of Hindu Law that transfer made by the father after the birth of the son would be held to be illegal unless legal necessity therefor is proved, as such transactions could be entered into by the manager or karta of the family only for legal necessity and for no other. The Appellate Court, it was contended, committed a serious error in so far as it proceeded to hold that the property in question became separate property at the hands of Sant Ram, but, despite the same, it proceeded to determine the question of legal necessity also. It was furthermore submitted that only because some entries have been made in the record of rights, the same by itself would not lead to deprivation of the title in the property in the appellant.

8. Mr. Manoj Swarup, learned counsel appearing on behalf of the respondents, on the other hand, would submit that in view of Section 8 of the Hindu Succession Act, as the son of Bhima and his daughters inherited his property and not the appellant as a grandson, the impugned judgment is

unassailable.

9. The fact that the property at one point of time was a joint family property stands admitted.

10. The only question arises for consideration is as to whether the appellant had acquired any interest therein by his birth in the year 1977; Bhima having died in 1972.

11. The Act brought about a sea change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non-obstente provision in terms whereof any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolve according to the provisions of the Chapter as specified in clause (1) of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed in Class-I heirs but a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stirpes, as also tenants-in-common and not as joint tenants.

12. Indisputably, Bhima left behind Sant Ram and three daughters. In terms of Section 8 of the Act, therefore, the properties of Bhima devolved upon Sant Ram and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record of rights. A partition had taken place amongst the heirs of Bhima.

13. Although the learned First Appellate Court proceeded to consider the effect of Section 6 of the Act, in our opinion, the same was not applicable in the facts and circumstances of the case. In any event, it had rightly been held that even in such a case, having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal representatives of Bhima would succeed to his interest as tenants in common and not as joint tenants. In a case of this nature, the joint coparcenary did not continue.

14. Interpretation of Section 8 of the Hindu Succession Act came up for consideration before this Court in Commissioner of Wealth Tax, Kanpur & Ors. v. Chander Sen & Ors. [(1986) 3 SCR 254]. Mukherjee, J. (as the learned Chief Justice then was) upon considering the changes effected by the Hindu Succession Act as also the implication thereof and upon taking into consideration the decisions of Calcutta High Court, Madhya Pradesh High Court, Andhra Pradesh High Court as also Madras High Court on the one hand and the Gujarat High Court on the other, opined :

> "In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The

> Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son etc. Before we conclude we may state that we have noted the obervations of Mulla's Commentary on Hindu law 15th Edn. dealing with Section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on Hindu Law, 12th Edition pages 918-
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> 919. The express words of Section 8 of The Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored."

15. The Gujarat High Court in Commissioner of Income-tax, Gujarat-I v. Babubhai Manshkhbhai (Deceased) [108 ITR 417], however, it may be noticed, had taken the view that in the case of the Hindus governed by Mitakshara law, where a son inherited the self- acquired property of his father, he took it as a joint family property of himself and his son and not as his separate property. The said view, as indicated hereinbefore was not accepted by this Court.

The principle evolved in Chander Sen (supra) was reiterated by this Court in Yodhishter v. Ashok Kumar [(1987) 1 SCR 516 at 523]; Sunderdas Thackersay & Bros. v. Commissioner of Income-tax [1982 (137) ITR 646]; Commissioner of Income Tax v. P.L. Karuppan Chettiar [1993 Supp.(1) SCC 580]; and Additional Commissioner of Income-tax v. M. Karthikeyan [1994 Supp.(2) SCC 112].

In Yodhishter (supra), this Court observed:

> "This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. [(1987) 1 SCR 516] where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint

> Hindu family with him."

16. Moreover, recently in Sheela Devi & Ors. v. Lal Chand & Anr. [(2006 (8) SCC 581], a Bench of this Court of which one of us was a member, held:

> "21. The Act indisputably would prevail over the old Hindu law. We may notice that Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted the Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of the Amendment Act, 2005 would have no application. Sub-section (1) of Section 6 of the Act governs the law relating to succession on the death of a coparcener in the event the heirs are only male descendants. But, the proviso appended to sub- section (1) of Section 6 of the Act creates an exception. First son of Babu Lal viz. Lal Chand, was, thus, a coparcener. Section 6 is an exception to the general rules. It was, therefore, obligatory on the part of the respondent-plaintiffs to show that apart from Lal Chand, Sohan Lal will also derive the benefit thereof. So far as the second son, Sohan Lal is concerned, no evidence has been brought on record to show that he was born prior to coming into force of the Hindu Succession Act, 1956."

In that case, the properties in question were joint family properties. They were copercenars. After the death of Tulsi Ram, Babu Ram, whose heirs were the appellants therein, inherited 1/5th share in the property. The relationship between the parties was not in dispute. Tulsi Ram was the owner of the property. He died in the year 1889 leaving behind five sons, namely, Waliwati, Babu Ram, Charanji Lal, Hukam Chand and Uggar Sain. On the death of Uggar Sain 1/20th share of Tulsi Ram was also devolved on him. The High Court arrived at a finding of fact that the properties were coparcenary and ancestral property. It was held that the law which was applicable in the case would be the one which was prevailing before coming into force of the Hindu Succession Act and the parties would be governed thereby under the provisions thereof. It was in the aforementioned situation and having regard to the fact that the succession of the property was governed in terms of Section 6 of the Act, it was held :

> "12.The principle of law applicable in this case is that so long a property remains in the hands of a single person, the same was to be treated as a separate property, and thus such a person would be entitled to dispose of the coparcenary property as the same were his separate property, but, if a son is subsequently born to him or adopted by him, the alienation whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienations so made by his father before he was born or begotten {See C. Krishna Prasad v. CIT [(1975 1 SCC 160]}. But once a son is born, it becomes a coparcenary property and he would acquire an interest therein."

In that case, as noticed hereinbefore, Babu Ram had no son in the year 1922 but a son, Lal Chand, was born to him in the year 1938 and another son, Sohan Lal, was born in 1956. It was in the aforementioned situation, this Court held that a joint family revived on the birth of Lal Chand. This

Court, in that view of the matter also opined that as there was no proof as to whether the second son was born after the coming into force of the Hindu Succession Act, it was held that his heirs were not entitled to take the benefit of the coparcenary interest.

Sheela Devi, therefore, is not applicable to the fact of the present case.

17. It is true that the first Court of Appeal also entered into the question of legal necessity for Sant Ram to alienate the property in favour of the contesting respondents but the said issue was considered in the alternative to the principal issue. If the First Appellate Court was correct in its opinion and we do not see any reason to differ therewith that Section 6 of the Hindu Succession Act was not attracted to the facts of this case in view of the fact that Sant Ram and his sisters having partitioned their properties became owners to the extent of 1/4th share each, he had the requisite right to transfer the lands falling within his share.

18. Furthermore, in terms of Section 19 of the Act, as Sant Ram and his sisters became tenants in common and took the properties devolved upon them per capita and not per stirpes, each one of them was entitled to alienate their share, particularly when different properties were allotted in their favour. It is, therefore, not correct to contend that the Court of First Appeal arrived at a self-contradictory or inconsistent finding, as was submitted by Mr. Gupta.

19. For the reasons aforementioned, there is no infirmity in the impugned judgment. There is no merit in the case. It is dismissed accordingly. In the facts and circumstances of the case, however, there shall be no order as to costs.