

ITEM NO.103

COURT NO.2

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s). 3022/2006

BALHAR SINGH

Appellant(s)

VERSUS

SARWAN SINGH & ANR.

Respondent(s)

(with office report)

Date : 26/02/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE PRAFULLA C. PANTFor Appellant(s) Ms. Tanuj Bagga Sharma,Adv.
Mr. Rajinder Mathur,Adv.For Respondent(s) Mr. Vinay Kr. Garg,Sr.Adv.
Mr. Rakesh Mishra,Adv.
Mr. Imran Ahmed,Adv.
Mr. N. Dubey,Adv.

UPON hearing the counsel the Court made the following

O R D E R

Section 6 of the Hindu Succession Act, 1956 deals with devolution of interest in coparcenary property and postulates that when a male Hindu dies after the commencement of the 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 the Act. In

terms of the proviso however 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 the Act and not by survivorship.

It is common ground that Section 6, as substituted by Act 39 of 2005 w.e.f. 9th September, 2005, has made the daughter of a coparcenar also entitled to claim as a male coparcenar. That provision was not in existence earlier. Be that as it may the question that falls for determination in the present appeal shall have to be answered by reference to Section 6 as it stood before the said amendment.

The High Court has placing reliance upon the decision of this Court in Commissioner of Wealth-Tax, Kanpur, etc. v. Chander Sen etc. - AIR 1986 SC 1753; held that succession to the property in the case at hand shall be governed by general rule of succession as stipulated in Section 8 of the Hindu Succession Act, 1956. In Chander Sen's case (supra) while dealing with the provisions of the Wealth Tax Act and

the effect of partition of joint family between the father and his only son, this Court noticed the cleavage in the judicial opinion expressed by several high courts in the country and resolved the same by accepting the view taken by the High Courts of Allahabad, Madras, Madhya Pradesh and Andhra Pradesh while overruling that taken by the High Court of Gujarat. This Court observed:

"20. In view of the preamble to the Act, i.e., that 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.

21. Before we conclude we may state that we have noted the observations 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 918-919.

22. 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."

At the hearing before us, learned counsel for the appellant strenuously argued that the view taken by this Court in Chander Sen's case (supra) was not in tune with the latter decisions of this Court in Vellikannu v. R. Singhaperumal and Another - (2005) 6 SCC 622 and in Rohit Chauhan v. Surinder Singh and Others - (2013) 9 SCC 419. In Vellikannu's case (supra), this Court was dealing with the question whether a son who is held guilty of having murdered his father was disqualified from inheriting the coparcenary property and would be deemed to have

predeceased his father. It was in that context that this Court referred to the case law on the subject and the principles and precedents of Hindu Law as explained in N.R. Raghavachariar and S.V. Gupte's Hindu Law as also the decisions of this Court in State Bank of India v. Ghamandi Ram - (1969) 2 SCC 33; State of Maharashtra v. Narayan Rao Sham Rao Deshmukh - (1985) 2 SCC 321 and Kenchava Kom Sanyellappa Hosmani and Another v. Girimallappa Channappa Samasagar - AIR 1924 Privy Council 209; to sum up the legal position as under:

"14. In this connection, a reference may be made in the case of State Bank of India Vs. Ghamandi Ram reported in (1969) 2 SCC 33, it was held thus:-

"According to the Mitakshara School of Hindu Law all the property of a Hindu Joint Family is held in collective ownership by all the coparceners in the quasi-corporate capacity. The textual authority of the Mitakshara Lays down in express terms that the joint family property is held in trust from the joint family members then living and thereafter to be both (See Mitakshara, Chaper I, 1-27) The incidents of coparcenership under the Mitakshara Law are: first the lineal male descendants of a person upto the third generation, acquire on birth ownership in the ancestral properties of such person; Secondly that such descendants can at any time work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire

property co- jointly with the rest; fourthly, that as a result of such co-ownership the possession and enjoyment of the properties is common fifthly that no alienation of the property is possible unless it before necessity, without the concurrence of the coparceners, and sixthly; that the interest of a deceased member lapses on his death to the survivors. A coparcenary under the Mitakshara School is a creature of law and cannot arise by act of parties except in so far that on adoption the adopted son becomes a co-parcener with his adoptive father as regards the ancestral properties of the letter."

15. The concept of coparcener as given in the Mitakshara School of Hindu Law as already mentioned above, is that of a joint family property wherein all the members of the coparceners share equally. In this connection a reference may be made to a decision of this Court in the case of State of Maharashtra vs. Narayan Rao Sham Rao Deshmukh & Ors. reported in (1985) 2 SCC 321 in which Their Lordships have held as follows:

"A Hindu coparcenary is however, a narrower body than the joint family. Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of a joint family and his sons, grandsons and great grandsons constitute a coparcenary. A coparcener acquires right in the coparcenary property by birth but his right can be definitely ascertained only when a partition takes place. When the family is joint, the extent of the share of a coparcener cannot be definitely predicated since it is always capable of fluctuating."

16. Therefore, in view of various decisions of this Court it appears that Defendant No.1

and the plaintiff who was married to Defendant No.1 were members of joint Hindu family. If the defendant- appellant had not incurred the disqualification, then they would have inherited the property as per Mitakshara School of Hindu Law. But the question is that when the sole male survivor had incurred the disqualification can he still claim the property by virtue of Mitakshara School of Hindu Law ? If he cannot get the property by way of survivorship, then the question is whether his wife who succeeds through the husband can succeed to the property? Our answer to this question is in negative. In fact, prior to the amendment of the Hindu Succession Act, Sections like 25 & 27 were not there but the murderer of his own father was disqualified on the principle of justice, equity and good conscience and as a measure of public policy. This position of law was enunciated by the Privy Council way back in 1924 in the case of Kenchava Kom Sanyellappa Hosmani & Anr. vs. Girmallappa Channappa Somasagar reported in AIR 1924 PC 209 wherein Their Lordships have held as follows:

"In their Lordships' view it was rightly held by the two Courts below that the murderer was disqualified ;and with regard to the question whether he is disqualified wholly or only as to the beneficial interest which the Subordinate Judge discussed, founding upon the distinction between the beneficial and legal estate which was made by the Subordinate Judge and by the High Court of Madras in the case of Vedanayaga Mudaliar v. Vedammal , their Lordships reject, as did the High Court here, any such distinction. The theory of legal and equitable estates is no part of Hindu law, and should not be introduced into discussion.

The second question to be decided is whether the title can be claimed through the murderer. If this were so, the defendants as the murderer's sisters, would take precedence of the

plaintiff, his cousin. In this matter also, their Lordships are of opinion that the Courts below were right. The murderer should be treated as nonexistent and not as one who forms the stock for a fresh line of descent. It may be pointed out that this view was also taken in the Madras case just cited."

Their Lordships also explained the decision in the case of Gangu vs. Chandrabhagabai reported in (1908) 32 Bom. 275 and held as follows :

"It was contended that a different ruling was to be extracted from the decision of the Bombay High Court in Gangu v. Chandrabnagabai. This is not so. In that case, the wife of a murderer was held entitled to succeed to the estate of the murdered man but that was not because the wife deduced title through her husband, but because of the principle of Hindu family law that a wife becomes a member of her husband's gotra, an actual relation of her husband's relations in her own right, as it is called in Hindu law a gotraja-sapinda. The decision therefore has no bearing on the present case. "

Therefore, the principle which has been enunciated by their Lordships is in no uncertain terms totally disinherit the son who has murdered his father. Their Lordships have observed as follows:

"A murderer must for the purpose of the inheritance, be treated as if he were dead when the inheritance opened and as not being a fresh stock of descent; the exclusion extends to the legal as well as beneficial estate, so that neither he can himself succeed nor can the succession be claimed through him."

17. This position of law was incorporated by way of Section 25 of the Hindu Succession Act, 1956 as quoted above, which clearly enunciates that a person who commits murder or abates the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder. In fact, the objects and reasons also makes a reference to the Privy Council judgment (supra). The objects and reasons for enacting Section 25 read as under :

"A murderer, even if not disqualified under Hindu Law from succeeding to the estate of the person whom he has murdered, is so disqualified upon principles of justice, equity and good conscience. The murdered is not to be regarded as the stock of a fresh line of descent but should be regarded as nonexistent when the succession opens."

18. Therefore, once it is held that a person who has murdered his father or a person from whom he wants to inherit, stands totally disqualified. Section 27 of the Hindu Succession Act makes it further clear that if any person is disqualified from inheriting any property under this Act, it shall be deemed as if such person had died before the intestate. That shows that a person who has murdered a person through whom he wants to inherit the property stands disqualified on that account. That means he will be deemed to have predeceased him. The effect of Section 25 read with Section 27 of the Hindu Succession Act, 1956 is that a murderer is totally disqualified to succeed to the estate of deceased. The framers of the Act in the objects and reasons have made a reference to the decision of the Privy Council that the murderer is not to be regarded as the stock of a fresh line of descent but should be regarded as non-existent. That means that a person who is guilty of committing the murder cannot be treated to have any relationship whatsoever with deceased's

estate.""

To the same effect was the decision of this Court in Rohit Chauhan v. Surinder Singh and Others - (2013) 9 SCC 419 where this Court similarly noticed earlier decision of this Court in Bhanwar Singh v. Puran & Others - (2008) 3 SCC 87 and the decision of this Court in M.Yogendra and Others v. Leelamma N. and Others - (2009) 15 SCC 184 to conclude as under:

"14. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which Defendant 2 got on partition was an ancestral property and till the birth of the plaintiff he was the sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of Defendant 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth Defendant 2 could have alienated the property only as karta for legal necessity. It is nobody's case that Defendant 2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by

Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds and release deed, the parties can work out their remedies in appropriate proceeding."

It would thus appear from a careful reading of the above pronouncements that there is an apparent conflict in the views taken by this Court in the above decisions. This conflict needs to be resolved authoritatively by a larger Bench especial when the subsequent decisions of this Court in Rohit Chauhan's case and Vellikannu's case (supra) have not noticed the earlier decisions of this Court in Chander Sen's case (supra) and Yudhishter v. Ashok Kumar - (1987) 1 SCC 204.

We accordingly refer the matter to a larger Bench comprising three Judges for an authoritative pronouncement on the subject. The papers shall be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench.

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER