SUPREME COURT OF INDIA

Radha Bai

Vs.

Ram Narayan

C.A.No.5889 of 2009

(A.M.Khanwilkar and Dinesh Maheshwari,JJ.,)

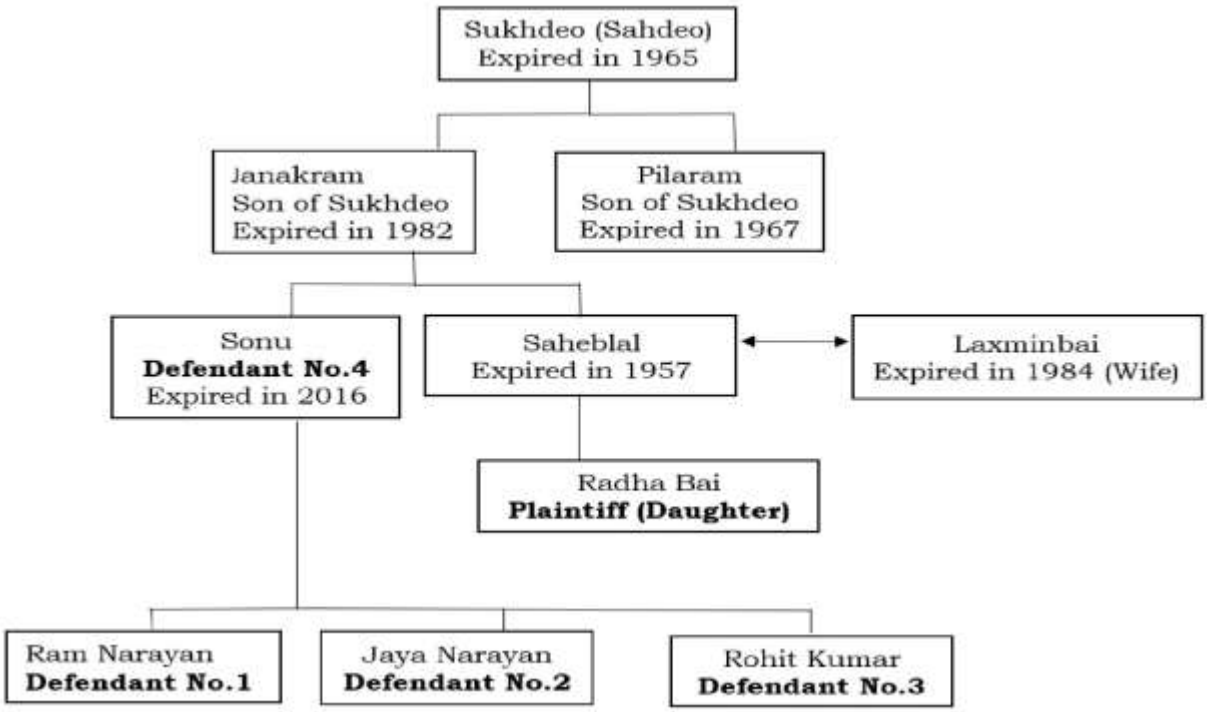
22.11.2019

JUDGMENT

A.M.Khanwilkar,J.,

1. This appeal takes exception to the judgment and order dated 12th February, 2007 of the High Court of Chhattisgarh at Bilaspur (for short, 'the High Court') in Second Appeal No.84 of 2002, whereby the appeal filed by the respondents-original defendant Nos. 1 to 4 was allowed and the judgment and decree passed by the Trial Court dismissing the suit filed by the appellant, came to be confirmed.

2. The parties are related as under:



3. The appellant filed suit in the Court of Civil Judge, Class - First, Shakti - District Bilaspur being Civil Suit No.31/A of 1985 asserting that the land situated in Village Barra, Tehsil Shakti, more particularly described in Schedule A of the plaint, was owned and possessed by Sukhdeo Chhannahu son of Sardha Chhannahu. Sukhdeo was a Hindu and governed by the Mitakshra Laws. The suit land came in the hands of Sukhdeo as ancestral property, in which Sukhdeo and his sons Janakram and Pilaram were having joint shares being coparceners. The appellant's father Saheblal was the son of Janakram, who had another son by name Sonu (original defendant No. 4, who has died during the pendency of the present appeal). The appellant's father Saheblal predeceased Janakram (his father) and Sukhdeo (his grand-father). He died in 1957, whereas Janakram died in 1982 and Sukhdeo, in 1965. Saheblal left behind Laxminbai, his wife and their daughter Radhabai (appellant/plaintiff). In this backdrop, the appellant asserted that she was entitled to a share in the suit property, claiming through her father Saheblal. The appellant's mother had already expired in 1984 before filing of the suit in 1985.

4. It is the case of the appellant that after the death of her mother, the appellant came to village Barra and requested the Patwari of the village to mutate the land in her name. In response, she was told that the land had already been mutated in the name of Ram Narayan (defendant No.1), Jaya Narayan (defendant No. 2) and Rohit Kumar (defendant No.3) - three sons of Sonu (deceased defendant No. 4), by virtue of the registered sale deed executed in their favour by Janakram on 21st July, 1979. It was further revealed that after the demise of Sukhdeo in 1965, his two sons Janakram and Pilaram partitioned the suit property in or around the year 1967, as a result of which, the suit property came to the exclusive share of Janakram and he had become absolute owner thereof, on the basis of which right, he executed registered sale deed in favour of his three grandsons (sons of his son Sonu (now deceased) - defendant Nos.1 to 3 respectively).

5. Immediately after becoming aware of the above, in 1985, the appellant instituted the suit for declaration and possession and sought the following reliefs:

"14.): Prayer of the plaintiff is as under:-

i) The court should award decree about the possession of the relevant disputed land to the plaintiff; I (a): By partitioning the disputed lands, half share be awarded to the plaintiff, and its land revenue should be determined separately.

ii) The plaintiff may be awarded expenses of the suit.

iii) Looking to the circumstances of the suit, whatsoever appropriate relief the court may consider it fit and just, the same may be awarded to the plaintiff."

6. The respondents-defendants resisted the said suit. On the basis of the rival pleadings, the

Trial Court framed as many as 9 issues, which read thus:

"ISSUES: CONCLUSION:

==========

(1.): Whether, after the death of Sukhdev, partition of the joint & united property had been carried in between Janakram & Pilaram. Yes.

(2.): Whether, the disputed land was received by Janakram in the said partition. Not proved.

(3.): Whether, up to the year 1982, the disputed land remained entered in joint & united accounts of Janakram, Laxminbai and the plaintiff.}

Due to negative conclusion of issue No.2, detailed appreciation has not been done.

(4.): Whether, Janakram had no right to sale the disputed property/land.

(5.): Whether, the sale deed dated 21st of July, 1997 is

illegal and void.

(6.): Whether, the plaintiff is entitled to obtain the possession of the disputed lands.

(7.): Relief & Expenses. Suit is dismissed. The rival parties shall bear their own expenses.

ADDITIONAL ISSUES:

(8.): Whether, the plaintiff is entitled to get half share in the disputed lands. Not proved.

(9.): Whether, the suit of the plaintiff is not maintainable. No. Its maintainable."

7. The Trial Court after analysing the evidence on record, proceeded to dismiss the suit preferred by the appellant vide judgement and decree dated 24th November, 2000.

8. Being aggrieved, the appellant filed appeal being Civil Appeal No.5-A of 2001 in the Court of Additional District Judge, Shakti, District Bilaspur-Chhattisgarh. The Appellate Court, however, reversed the conclusion reached by the Trial Court and allowed the appeal vide judgment and decree dated 22nd January, 2002. The operative order passed by the First Appellate Court reads thus:

"26.): On the basis of the abovementioned critical appreciation, decree may be drawn to the following effect:-

i): That, resultant to acceptance of the appeal of the appellant, the impugned judgment and the decree dated 24th of November, 2000 is set aside.

ii): That, resultant to acceptance of the appeal of the appellant, the suit of the plaintiff/appellant is accepted, and it is ordered that the plaintiff/appellant is entitled to obtain possession over the half share separately, by carrying out partition of half share of the disputed land, which has been enumerated in the
Schedule "A" annexed with the plaint; and accordingly land revenue to that effect should also be determined.

iii): The Schedule "A" annexed with the plaint shall be integral part of the decree

iv): The answering plaintiffs/respondents apart from bearing their own expenses of the case, shall also bear the expenses of the case of the plaintiff/appellant.

v): Advocate's fee, upon verification be payable in the decree at Rs.300/- (Rupees Three hundred only).

vi): Accordingly, decree may be drawn."

9. The respondents-original defendant Nos. 1 to 4 filed second appeal before the High Court, being Second Appeal No.84 of 2002. While admitting the second appeal, the Court formulated two questions as substantial questions of law. The same read thus:

"1. Whether the plaintiff being the female had got the right to partition to the property solely belonged to Sukhdeo and devolved upon Janak Ram by survivorship after the demise of his father Sukhdeo?"

2. Whether the suit land inherited by late Janak Ram from his father Sukhdeo, the sole owner of the same became the ancestral property for the plaintiff on the date of death of Sukhdeo in 1965 and on the date of death of Janak Ram in 1982?"

10. After analysing the factual matrix and the evidence on record, the High Court opined that the Appellate Court committed manifest error and misapplied the settled legal position. The High Court considered the matter in the following words:

"8. The sole point which thus arises for determination in the Second Appeal is whether the suit property was held by Janak Ram in his own right to the exclusion

of Pila Ram, and whether the rule of succession or the rule of survivorship shall apply. It has been pleaded in the plaint that three years after the death of Sukhdeo, a partition took place in which the suit properties had fallen to the share of Janak Ram. Once a partition of the coparcenary property takes place and the coparcener is put in exclusive possession of the property falling to his share to the exclusion of others he acquires an absolute right over the property. The plaintiff Radha Bai had a mere spes successionis and would have been entitled to a share by succession which would have opened only after the death of Janak Ram. In this view of the matter, since Janak Ram, prior to his death in 1982, had sold the suit lands to the defendants No.lto 3 by executing a registered sale deed, the plaintiff Radha Bai could question the same only on the limited ground of fraud or being without consideration. During life time of Janak Ram, Radha Bai, being the daughter of a predeceased son Saheblal, had merely a spes successionis to the suit property and nothing more.

There is no material on record to show that the defendant No.4 - Sonu had got the sale deed dated 21.7.1979 executed from Janak Ram perforce or without consideration. In this view of the matter, Janak Ram who, after partition, held the suit property to the exclusion of the other coparcener had an absolute right to sell it to the defendants no.1 to 3. Radha Bai, the plaintiff, having failed to prove that the sale deed was without consideration or was executed perforce could not challenge the said transaction on any ground. The evidence led by Radha Bai itself shows that she had full knowledge of the sale deed executed by Janak Ram in favour of defendants No.1 to 3. Radha bai, the plaintiff, did not enter the witness box despite present in Court and having been asked to do so. In this view of the matter, I am of the considered opinion that the suit filed by Radha Bai must fail because the rule of succession applied to the facts of the case and succession would have opened only after the death of Janak Ram, who was the exclusive owner of the share received by him in partition with Pilaram. The substantial question No.1 is thus answered in negative that Janak Ram being the exclusive owner of the suit property, during his life time Radha Bai had acquired no right to the suit properties and to file a suit for partition and possession of the suit lands which had already been sold by Janak Ram during his life time by executing a sale deed in favour of defendants No.1 to 3. Question No.2 is answered that after death of Sukhdeo, there was a partition of coparcenary property in which Janak Ram had received the suit lands as his share and was therefore, the absolute owner of the suit property. In this view of the matter, rule of survivorship does not apply to the facts of the present case, since suit property, after partition, was held by Janak Ram in his own right and to the exclusion of the other coparcener. Thus, the suit property had, after partition effected between Janak Ram and Pila Ram, ceased to be ancestral property and was held by Janak Ram as exclusive owner thereof. The rule of succession would thus apply to the present case and succession would have opened only after the death of Janak Ram. Therefore, Radha Bai, who had a mere spes successionis could succeed only by proving that the sale deed executed by Janak Ram was without consideration or was got executed by defendant no.4 - Sonu perforce. Having failed

to do so, the suit must fail.

9. Having answered both the substantial questions of law, the appeal deserves to be allowed. Accordingly, the appeal is allowed. The judgment and decree dated 22.1.2002 passed by Additional District Judge, Sakti, District Bilaspur in Civil Appeal No.5-A/2001 is set aside and the judgment and decree passed by Civil Judge, Class-II, Sakti dated 24.11.2000 in Civil Suit No.90-A/88 is affirmed. There shall be no order as to costs."

11. The appellant - plaintiff has assailed the aforesaid decision of the High Court on the ground that in the backdrop of the indisputable factual position and the decisions of this Court in *Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others*[1] and *Ramesh Verma (Dead) Through Legal Representatives Vs. Lajesh Saxena*[2] (Dead) By Legal Representatives and Another , the High Court committed manifest error of law in holding that the rule of survivorship will not apply and plaintiff had a mere spes successionis. According to the appellant, the suit property was admittedly ancestral property in the hands of Sukhdeo. After coming into force of the Hindu Succession Act, 1956 (for short "the 1956 Act") w.e.f. 17th June, 1956, as Saheblal had died after commencement of the 1956 Act, Section 6 of the 1956 Act and in particular Explanation-I thereof, was clearly attracted. As a result of which, the notional partition of the coparcenary property had taken place before the death of Saheblal. The proviso to Section 6 was also attracted since Saheblal left behind his wife Laxminbai and daughter Radhabai (appellant-plaintiff). Resultantly, the interest of deceased Saheblal in the Mitakashara coparcenary property stood devolved by succession under the 1956 Act and not by survivorship. The appellant-plaintiff being the sole surviving heir of Saheblal was claiming right in the entire share of Saheblal.

12. It is next urged that the sale deed executed by Janakram in favour of respondents-defendant Nos.1 to 3 respectively, dated 21st July, 1979, was ex facie illegal and not binding on the appellant-plaintiff. Janakram had no authority to sell the ancestral property, which had settled in the coparceners after the death of Sukhdeo. Similarly, the partition effected in 1967 between Janakram and Pilaram, leaving out the branch of predeceased Saheblal, would be of no avail and cannot be the basis to dislodge the claim of the plaintiff in the suit property.The appellant prays that the judgment and decree passed by the First Appellate Court, decreeing the suit in favour of the appellant- plaintiff be upheld and restored.

13. The respondents-defendants, on the other hand, would contend that in the present case, Saheblal died in 1957. The ancestral property was succeeded by two surviving sons of Sukhdeo - Janakram and Pilaram equally-when the succession had opened after the death of Sukhdeo in 1965. The appellant- plaintiff was not an heir in Class - I at the relevant time. Had the appellant been daughter of predeceased son of Sukhdeo, she may have had some chance of pursuing her claim. However, the appellant being the great-grand daughter of Sukhdeo, had no claim in the suit property in 1965. In law, the father of the appellant - Saheblal, could not have succeeded to the property during the life time of his father

Janakram. Whereas, on account of partition between Janakram and Pilaram after the demise of Sukhdeo, the suit property came to the exclusive share of Janakram and he had become absolute owner thereof. As Janakram held the suit property in his individual capacity and not on behalf of coparceners and family members, he could alienate the same as per his volition to any one, which he did in favour of his grandsons (respondents-defendant Nos.1 to 3 respectively) vide registered sale deed dated 21st July, 1979. In such a situation, it is settled law that the grand daughter cannot be treated as an heir so as to have a share in the suit property.

14. To buttress the above noted submission, reliance is placed on the decision of the Madhya Pradesh High Court in the case of *Chandrakanta and Others Vs. Ashok Kumar and Others*[3] and two decisions of this Court in *Hardeo Rai Vs. Sakuntala Devi and Others*[4] and *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others*[5]. Additional reference is made to the dictum in *Yudhishter Vs. Ashok Kumar*[6] and *Smt. Raj Rani Vs. Chief Settlement Commissioner, Delhi and Others*[6]. It is urged that the High Court has not committed any error, much less a manifest error, warranting interference by this Court. Hence, it is urged that this appeal being devoid of merits, be dismissed.

15. We have heard Mr. Sarabjit Dutta, learned counsel for the appellant and Mr. Manoj Prasad, learned Senior Counsel for the respondents.

16. Before we proceed to analyse the rival submissions, it may be apposite to reproduce Section 6 of the 1956 Act as applicable at the relevant time. The same read thus:

> "6. 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 the 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."

17. This Court has noted the incidents of co-parcenership under the Mitakshra Law, in the case of State Bank of India Vs. Ghamandi Ram (Dead) Through Gurbax Rai . In paragraph 5 of the reported decision, the Court observed thus:

> "5. 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 a quasi¬corporate capacity. The textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint family members then living and thereafter to be born (see Mitakshara, Chapter I, 1-27). The incidents of co- parcenership under the Mitakshara law are: first, the lineal male descendants of a person up to 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, conjointly 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 be for 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 latter."
>
> (emphasis supplied)

This exposition has been taken note of in Hardeo Rai (supra). After noticing this exposition, the Court went on to observe in paragraph Nos.20 to 23 as follows:

> "20. The first appellate court did not arrive at a conclusion that the appellant was a member of a Mitakshara coparcenary. The source of the property was not disclosed. The manner in which the properties were being possessed by the appellant vis-a-vis the other co-owners had not been taken into consideration. It was not held that the parties were joint in kitchen or mess. No other documentary or oral evidence was brought on record to show that the parties were in joint possession of the properties.
>
> 21. One of the witnesses examined on behalf of the appellant admitted that the appellant had been in separate possession of the suit property. The appellant also in his deposition accepted that he and his other co-sharers were in separate possession of the property.
>
> 22. For the purpose of assigning one's interest in the property, it was not necessary that partition by metes and bounds amongst the coparceners must take place. When an intention is expressed to partition the coparcenary property, the share of each of the coparceners becomes clear and ascertainable. Once the share of a coparcener is determined, it ceases to be a coparcenary property. The parties in such an event would not possess the property as "joint tenants" but as "tenants-in-common". The

decision of this Court in SBI1, therefore, is not applicable to the present case.

23. Where a coparcener takes definite share in the property, he is owner of that share and as such he can alienate the same by sale or mortgage in the same manner as he can dispose of his separate property."

In the case of Chander Sen (supra), this Court considered the interplay between Sections 4, 6 and 8 of the 1956 Act including Chapter II and heirs in Class-I of the Schedule. The Court noted as follows:

"10. The question here, is, whether the income or asset which a son inherits from his father when separated by partition the same should be assessed as income of the Hindu undivided family of son or his individual income. There is no dispute among the commentators on Hindu law nor in the decisions of the court that under the Hindu law as it is, the son would inherit the same as karta of his own family. But the question is, what is the effect of Section 8 of the Hindu Succession Act, 1956? The Hindu Succession Act, 1956 lays down the general rules of succession in the case of males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and Class I of the Schedule provides that if there is a male heir of Class I then upon the heirs mentioned in Class I of the Schedule. Class I of the Schedule reads as follows:

"Son; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son."

11. The heirs mentioned in Class I of the Schedule are son, daughter etc. including the son of a predeceased son but does not include specifically the grandson, being, a son of a son living. Therefore, the short question, is, when the son as heir of Class I of the Schedule inherits the property, does he do so in his individual capacity or does he do so as karta of his own undivided family?

12. Now the Allahabad High Court has noted that the case of CIT v. Ram Rakshpal, Ashok Kumar after referring to the relevant authorities and commentators had observed at p. 171 of the said report that there was no scope for consideration of a wide and general nature about the objects attempted to be achieved by a piece of legislation when interpreting the clear words of the enactment. The learned judges observed, referring to the observations of Mulla's Commentary on Hindu Law and the provisions of Section 6 of the Hindu Succession Act, that in the case of assets of the business left by father in the hands of his son will be governed by Section 8 of the Act and he would take in his individual capacity. In this connection reference was also made before us to Section 4 of the Hindu Succession Act. Section 4 of the said Act provides for overriding

effect of Act. Save as otherwise expressly provided in the Act, 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 this Act shall cease to have effect with respect to any matter for which provision is made in the Act and any other law in force immediately before the commencement of the Act shall cease to apply to Hindus insofar it is inconsistent with any of the provisions contained in the Act. Section 6 deals with devolution of interest in coparcenary property and it makes it clear 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. The proviso indicates 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 Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship."

(emphasis supplied)

Again in paragraph 15:

"15. It is clear that under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes 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. But the question is: is the position affected by Section 8 of the Hindu Succession Act, 1956 and if so, how? The basic argument is that Section 8 indicates the heirs in respect of certain property and Class I of the heirs includes the son but not the grandson. It includes, however, the son of the predeceased son. It is this position which has mainly induced the Allahabad High Court in the two judgments, we have noticed, to take the view that the income from the assets inherited by son from his father from whom he has separated by partition can be assessed as income of the son individually. Under Section 8 of the Hindu Succession Act, 1956 the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own family. On the other hand, the Gujarat High Court has taken the contrary view."

After considering the divergent views expressed by the Allahabad High Court, Full Bench of the Madras High Court, Madhya Pradesh and Andhra Pradesh High Courts on one side and the Gujarat High Court on the other, it proceeded to opine as follows:

"21. It is necessary to bear in mind the preamble to the Hindu Succession Act, 1956. The preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

22. 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 that the property which devolved on a Hindu under Section 8 of the Hindu Succession Act 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 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.

23. 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 pp. 924-26 as well as Mayne's on Hindu Law, 12th Edn., pp. 918-19.

24. 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 includes son of a predeceased son cannot be ignored."

(emphasis supplied) This decision has been quoted with approval in Yudhishter (supra). In paragraph 10 of the said decision, the Court observed thus:

"10. This question has been considered by this Court in CWT v. Chander Sen 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 becomes 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. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as karta of his own undivided family but takes it in his individual capacity. At p. 577 to 578 of the Report, this Court dealt with the effect of Section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn., pp. 924-26 as well as Mayne's Hindu Law, 12th Edn. pp. 918-19. Shri Banerji relied on the said observations of Mayne on Hindu Law, 12th Edn., at p. 918-19. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn., p. 919. In that view of the matter, it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis his own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."

18. The respondents have also invited our attention to the decision of Madhya Pradesh High Court in Chandrakanta (supra), which had followed the aforementioned dictum to reject the claim of the plaintiffs on the ground that so long as their father was alive, they cannot claim any right.

19. Reverting to the factual matrix of the present case, it is noticed that Sukhdeo had inherited ancestral property and was alive till 1965. The father of appellant, Saheblal, predeceased him in 1957. Saheblal was the son of Janakram. Janakram died in 1982. During the life time of Janakram, in terms of Section 6 of the 1956 Act, Saheblal could not have succeeded to the property as he could claim only through Janakram. Janakram, however, was alive till 1982. If Saheblal himself had no claim in his own rights, the question of appellant, being his daughter, succeeding to the property does not arise.

20. The consistent view of this Court, including of three Judge Bench, is that the grand son or grand daughter is clearly excluded from heirs in Class-I. Saheblal himself was grand son of Sukhdeo, who predeceased Sukhdeo. After the demise of Sukhdeo in 1965, therefore, the ancestral suit property could be and came to be partitioned between Janakram and Pilaram in 1967. As a result of that partition, the suit property came to the exclusive share of Janakram in his individual capacity. He could, therefore, legitimately dispose of the same in the manner he desired and which he did in favour of his grandsons (defendant Nos.1 to 3 respectively) vide registered sale deed dated 21st July, 1979. Neither the stated partition of 1967 nor the registered sale deed in favour of respondents (defendant Nos.1 to 3) dated 21st July, 1979 has been challenged. The relief sought in the suit as filed by the appellant/plaintiff is only for partition and awarding share to the appellant/plaintiff

alongwith possession. Suffice it to observe that, the grand-daughter of Janakram (appellant herein) could not have claimed a higher right than the right of her father Saheblal.

21. Reliance placed by the appellant on the decision of this Court in Gurupad Khandappa Magdum (supra), is inapposite. In that case, the plaintiff, being heir in Class-I, claimed to have share in the interest of her husband which he had at the time of his death in the coparcenary property. In that view of the matter, in terms of proviso to Section 6 of the 1956 Act, the interest of her husband in the coparcenary property would devolve by succession under the 1956 Act. Similarly, in the case of Raj Rani (supra), the Court was called upon to consider the dispute between the widow, three sons and three daughters of the deceased who being heirs in Class-I had succeeded to interest in equal shares, as the property in question was Mitakshara coparcenary property, by virtue of Explanation-I of Section 6 of the 1956 Act. That analysis can be discerned from paragraph 17 of the reported judgment. Even the recent decision of this Court in Ramesh Verma (supra), does not take the matter any further for the appellant. Inasmuch as, even in that case, the dispute was between the concerned heirs in Class-I after the demise of Bhagwan Das. Before commencement of the 1956 Act, the notional partition had taken place and as per Section 82 of the Madhya Bharat Land Code, his sons and wife became entitled to get 1/3 share in the property. On partition, share had fallen to one of the sons which became his separate property and no longer remained a Mitakshara property. This factual position could be discerned from paragraph 11 of the reported judgment.

22. A priori, we uphold the view taken by the High Court that after the death of Sukhdeo in 1965, the property devolved upon his two sons Janakram and Pilaram. They succeeded to the ancestral property equally. They later effected partition in 1967, as a result of which, the property came to the exclusive share of Janakram. The father of appellant, Saheblal, had predeceased his father Janakram and even his grandfather Sukhdeo. During the life time of Janakram, Saheblal could not have succeeded to the property and for the same reason, the appellant being his daughter cannot be heard to claim any right higher than that of Saheblal. Applying the settled legal position to the present case, the grounds urged by the appellant need to be rejected.

23. Accordingly, this appeal must fail. Hence, the same is dismissed with no order as to costs.

24. All pending applications are also disposed of in the above terms.

Judgment Referred.

[1]*(1978) 3 SCC 0383*
[2]*(2017) 1 SCC 0257*
[3]*(2002 (3) MPLJ 0576*
[4] *(2008) 7 SCC 0046*
[5] *(1986) 3 SCC 0567*
[6] *(1987) 1 SCC 0204*
[7] *(1984) 3 SCC 0619*