



IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 84 of 2022

Sarat Chandra Panjiyara, aged 78 Years, Son of Late Devendra Panjiyara, Resident of Village- Kendpani, PO. Dumka, P.S. Dumka (M), District- Dumka **Defendant/Respondent/Appellant**

Versus

1. Purnima Panjiyara, D/o Late Amulya Charan Panjiyara,
2. Nilima Panjiyara @ Mandal, D/o Late Amulya Charan Panjiyara,
3. Gatun Panjiyara @ Mandal, D/o Late Amulya Charan Panjiyara
All r/o village – Kendpani, P.O.- Dumka, P.S.- Dumka, District
Dumka **Plaintiffs/Appellants/Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Mr. Atanu Banerjee, Advocate
	: Mr. Suman Kumar Ghosh, Advocate
For the Respondents	:

10/24.02.2025

Heard the learned counsel appearing on behalf of the appellant.

2. This second appeal has been filed against the judgment dated 26.03.2022 and decree dated 13.04.2023 passed by learned District Judge-III at Dumka in Civil Appeal No. 14/2019 whereby the learned appellate Court allowed the appeal and reversed the judgment dated 26.11.2018 and decree dated 05.12.2018 passed by learned Senior Civil Judge-I, Dumka in Title (P) Suit No. 60 of 2014.

3. Learned counsel for the appellant has submitted that the appellant is the defendant of the suit. The learned trial Court had dismissed the suit by recording a finding that there was no unity of title and possession with respect to the suit property, but the said finding has been reversed by the learned 1st appellate Court. He has also submitted that it is not dispute that the plaintiffs and defendant are governed by Mitakshara School of Hindu Law.

4. Learned counsel for the appellant has referred to the genealogy to submit that the property originally belonged to Bakra Nath Panjiyara who had two sons and the parties are some of the descendant of Karnadhar Panjiyara who had five sons. He submits that parties before this Court are descendants of one of the sons of Karnadhar Panjiyara namely Debendra Panjiyara. The learned counsel



has submitted that Debendra Panjiyara died sometimes in the year 1975 leaving behind his widow Kamini Panjiyara. He had three sons, one of whom, namely Braj Durlav Panjiyara died unmarried in the year 1998; another son namely Amulya Charan Panjiyara died in the year 1972 and the plaintiffs are the three daughters of Late Amulya Charan Panjiyara. He has also submitted that the sole defendant namely Sarat Chandra Panjiyara is the son of Debendra Panjiyara.

5. The learned counsel has also submitted that Evarani Panjiyara, widow of Amulya Charan Panjiyara as well as Kamini Panjiyara, widow of Debendra Panjiyara both expired in the year 1998/1997 and consequently, on the date of amendment to Hindu Succession Act on 09.09.2005, whereby the daughters were given status of coparcener, the surviving descendants of Debendra Panjiyara were Sarat Chandra Panjiyara – the son and three grand-daughters [plaintiffs] and all three daughters were married prior to 1998. The learned counsel for the appellant submits that accordingly the entire property devolved around the sole defendant namely Sarat Chandra Panjiyara prior to 09.09.2005, whereafter as per law the daughters were given the coparcenary status. The learned counsel submits that accordingly there was no unity of title and unity of possession with respect to the suit properties as the entire suit property devolved upon Sarat Chandra Panjiyara prior to 09.09.2005 and consequently, the daughters could not have claimed partition and the status of coparcener.

6. The learned counsel for the appellant has also submitted that it was the specific case of the plaintiffs that the plaintiffs had inherited and succeeded like that of defendant and came in joint possession of the suit property on payment of rent though for the sake of convenience, cultivation and supervision of the suit property, Evarani Panjiyara and Sarat Chandra Panjiyara separated in mess and property and similarly operated separate cultivation and supervision of lands without final partition by metes and bounds. The cause of action arose when the defendant had been quarreling with regard to supervision of cultivation and enjoyment of suit property and the plaintiffs demanded



and requested the defendant to partition the suit property by metes and bounds but the defendant became hostile.

7. The learned counsel for the appellant has further submitted that the learned 1st appellate Court, while reversing the decree whereby the partition suit was dismissed and it was held that there was unity of title and unity of possession amongst the parties, has observed that the learned trial Court ignored the presumption of jointness of the parties and came to erroneous finding. The learned 1st appellate Court also referred to the amendment dated 09.09.2005 to Hindu Succession Act which was subject matter of consideration by the Hon'ble Supreme Court in the case of ***"Vineeta Sharma Vs. Rakesh Sharma and others"*** reported in (2020) 9 SCC 1 and held that there was unity of title and possession amongst the parties and allowed the appeal.

8. The learned counsel for the appellant has submitted that once prior to coming into force of amendment dated 09.09.2005 to Hindu Succession Act, there was only one surviving coparcener, the entire property automatically devolved upon Sarat Chandra Panjiyara, the sole male survivor in the family and therefore, there was no question of any partition. He has submitted that the judgment passed by Hon'ble Supreme Court in the case of ***Vineeta Sharma (Supra)***, has been wrongly applied to the facts and circumstances of this case. He submits that substantial question of law on this point be framed and decided by this court.

9. Upon going through the judgment passed by the Hon'ble Supreme Court in the case of ***Vineeta Sharma (Supra)***, in particular paragraphs 80 and 81, this Court finds that it has been held by the Hon'ble Supreme Court that the daughters acquire the coparcenary right by birth and merely because they were married on the date of coming into force of the amendment to section 6 of Hindu Succession Act, which was made on 09.09.2005, their status of coparcenary does not get lost. Paragraphs 80 and 81 of the aforesaid judgment are quoted as under:

"80. A finding has been recorded in Prakash v. Phulavati (2016) 2 SCC 36 that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9-9-2005 irrespective



of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of “living coparcener”, as laid down in *Prakash v. Phulavati*, (2016) 2 SCC 36. In our opinion, the daughters should be living on 9-9-2005. In substituted Section 6, the expression “daughter of a living coparcener” has not been used. Right is given under Section 6(1)(a) to the daughter by birth. Declaration of right based on the past event was made on 9-9-2005 and as provided in Section 6(1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave no room to entertain the proposition that coparcener should be living on 9-9-2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part.

81. In *Mangammal v. T.B. Raju*, (2018) 15 SCC 662, the Court considered the provisions made in the State of Tamil Nadu, the State Government enacted the Hindu Succession (Tamil Nadu Amendment) Act, 1989, made effective from 25-3-1989, adding Section 29-A in the Hindu Succession Act, 1956. Section 29-A was held to be valid regarding succession by survivorship. Section 29-A provided equal rights to daughters in coparcenary property. The provisions were more or less similar, except Section 29-A(iv) treated a married daughter differently. The provisions were not applicable to the daughters married before the date of commencement of the Amendment Act, 1989. Thus, married daughters were not entitled to equal rights. That too, has been taken care of in Section 6, as substituted by the 2005 Act, and no discrimination is made against married daughters. In the said case, *Mangammal* got married in 1981, and *Indira* got married in or about 1984 i.e. before the 1989 Amendment. Therefore, it was held that because of Section 29-A(iv) of the Amendment Act, the appellant could not institute a suit for partition and separate possession as they were not coparceners. The decisions in *Prakash v. Phulavati* (2016) 2 SCC 36 and *Danamma v. Amar* (2018) 3 SCC 343 were referred, and it was opined that *Prakash v. Phulavati* (2016) 2 SCC 36 would still hold the value of precedent for right of a daughter in ancestral property and only “living daughters of living coparceners” as on 9-9-2005 would be entitled to claim a share in the coparcenary property.”



10. This Court is of the view that the learned 1st appellate Court has rightly applied the ratio of the aforesaid judgment and the issue having been settled by the Hon'ble Supreme Court, no substantial question of law is involved in the present case which is required to be determined.
11. Accordingly, this second appeal is dismissed.
12. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

Pankaj