REPORTABLE

2023INSC785

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No. 4494 OF 2010**

**DERHA** ….. **Appellant**

**Vs.**

**VISHAL & ANR.** ..... **Respondents**

**J U D G M E N T**

**SANJAY KUMAR, J.**

**1.** Tried and tested many times over, the issue of succession to Mitakshara coparcenary property continues to raise its head time and again like an undying Hydra of Lerna. The case on hand is one such instance.

**2.** Phannuram Sahu died on 22.06.1959 with surviving interest in Mitakshara coparcenary properties, being agricultural land admeasuring 24.64 acres in Village Dhaneli along with house properties. He left behind Kesar Bai, a daughter born through his first wife, Dukalhin Bai, along with Vishal and Keja Bai, a son and a daughter born through his second wife, Ganga Bai. Both his wives predeceased him.

**3.** It was the case of Kesar Bai that a partition was effected on 12.03.1964 amongst Vishal; Ramnath, Phannuram's nephew; and Manbat Bai, Phannuram's sister-in-law. Having received Phannuram's 1/3rd share in the coparcenary properties, Vishal rejected Kesar Bai's demand for partition and allotment of her individual share therein. Kesar Bai thereupon instituted a partition suit, which came to be numbered as Civil Suit No. 146A of 1991 on the file of the learned First Civil Judge, Division-II, Raipur. Therein, she claimed her share in the coparcenary properties along with mesne profits. During the pendency of the suit, Kesar Bai died on 17.06.1988 and her son, Derha Ram, the present appellant, succeeded to her estate under registered will dated 16.12.1980.

**4.** Upon considering the issues settled for trial and on the strength of the evidence, oral and documentary, the Trial Court decreed the suit on 06.11.1996, holding that Derha was entitled to 1/3rd share in the suit scheduled agricultural land and a 1/3rd share in two house properties. The Trial Court also held him entitled to mesne profits @ ₹.400 per annum from 1979 till separate possession was delivered to him.

**5.** Aggrieved by the Trial Court's judgment and decree, Vishal and Keja Bai filed Civil Appeal No. 6A of 1998 before the learned District Judge-III, Raipur. However, by Order dated 13.04.1999, the Appellate Court dismissed the appeal in toto.

**6.** The matter was then carried in appeal by Vishal and Keja Bai to the High Court of Chhattisgarh in Second Appeal No. 891 of 1999. By judgment dated 31.03.2009, the High Court partly allowed the second appeal and held that Derha would be entitled to 1/6$^{th}$ share in the suit properties, i.e., the agricultural land and two dwelling houses. Aggrieved by the reduction of his share, Derha filed the present appeal by special leave.

**7.** By Order dated 09.10.2009, this Court directed *status quo* obtaining as on that date to be maintained by both parties.

**8.** A feeble attempt was made by the learned counsel for the appellant to contend that the suit properties were not coparcenary properties but were joint properties held by Phannuram and his brothers. However, this argument cannot be countenanced as the original plaintiff, Kesar Bai, had approached the Trial Court contending that the suit properties were ancestral properties. Her son and heir cannot be permitted to take a different stand now, contrary to her pleadings. Further, the argument that Manbat Bai, Phannuram's sister-in-law, would not have been allotted a share in the partition on 12.03.1964 had the properties been coparcenary properties, needs mention only to be rejected. The said partition was never subjected to challenge and without details as to when Manbat Bai's husband died, this Court cannot venture an opinion on whether allotment of a share to her in that partition was lawful. In any event, allotment of a share to her would not have the effect of branding the properties in question as being other than

coparcenary properties. More so, as Kesar Bai herself filed a suit claiming that the properties in which she wanted a share were ancestral properties.

**9.** Once it is held that the properties which were the subject matter of the partition suit were coparcenary properties, the only issue that remains is as to how the said properties were to be divided amongst the legal heirs of Phannuram upon his death in 1959, i.e., after the advent of the Hindu Succession Act, 1956 (for brevity, 'the Act of 1956'). Section 6 of the Act of 1956 would govern the situation, as rightly observed by the Chhattisgarh High Court. Section 6 of the Act of 1956, as it then stood, states that when a male Hindu died after the commencement of the Act of 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in that property shall devolve by survivorship upon the surviving members of the coparcenary. However, the *proviso* thereto states that, if the deceased left behind him a surviving female relative specified in Class I of the Schedule or a male relative specified in that class who claimed 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 of 1956 and not by survivorship. Explanation 1 clarified that, for the purposes of Section 6, 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 such partition or not.

**10.** Section 8 of the Act of 1956 elaborates on intestate succession in the case of males. It provides that a property of a male Hindu, dying intestate, shall devolve firstly, upon Class I heirs; secondly, upon Class II heirs; thirdly, if there is no heir of any of the two Classes, upon the agnates of the deceased; and lastly, if there is no agnate, then upon the cognates of the deceased.

**11.** In ***Gurupad Khandappa Magdum vs. Hirabai Khandappa Magdum and others [(1978) 3 SCC 383]***, a 3-Judge Bench of this Court dealt with Section 6 of the Act of 1956 in depth. It was held therein that, in order to ascertain the shares of the heirs in the property of a deceased coparcener, the first step is to ascertain the share of the deceased himself in the coparcenary property and Explanation 1 to Section 6 provides a fictional expedient, namely, that his share is deemed to be the share in the property that would have been allotted to him if a partition had taken place immediately before his death. It was pointed out that once that assumption has been made for the purpose of ascertaining the share of the deceased, one cannot go back on the assumption and ascertain the shares of the heirs without reference to it, and all the consequences which flow from a real partition have to be logically worked out, which means that the shares of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life-time of the deceased. In effect, the Bench held that the inevitable corollary of this position is that the heir will get his or her share in the interest which the

deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition.

**12.** This principle finds affirmation in ***Shyama Devi (Smt) and others vs. Manju Shukla (Mrs) and another [(1994) 6 SCC 342]*** and several other decisions of this Court and various High Courts across the country.

**13.** Applying this principle, the share of Phannuram would first have to be determined as on the date of his death. He seems to have had two brothers and would have been entitled to a 1/3rd share in the coparcenary properties, if a partition had been effected before his death. In fact, such a partition was actually effected in 1964 and Phannuram's 1/3rd share was allotted to his only son, Vishal. However, Vishal was a coparcener in his own right in a separate coparcenary with his father and would be entitled to a share in that coparcenary property by birth. Therefore, he would be entitled to a half-share by birth in the I/3rd share of the coparcenary properties that was allotted as Phannuram's share. The other half-share therein belonged to Phannuram and as he died intestate, it would firstly devolve upon his Class I heirs, in terms of Section 8 of the Act of 1956. His Class 1 heirs, as on the date of his death, were Kesar Bai, Vishal and Keja Bai, his three children. His half-share would therefore be divided equally amongst the three of them, i.e., 1/6th each. In consequence, the final division of the 1/3rd share of Phannuram in the coparcenary properties would be as follows: Vishal would be entitled to

4/6th share (1/2+1/6) therein, while his sisters, Kesar Bai and Keja Bai, would each get 1/6th share therein, as they would be entitled to lay claim only to the half-share of Phannuram. As this is exactly what the Chhattisgarh High Court did and directed, we see no reason whatsoever to interfere in the matter.

**14.** The Civil Appeal is devoid of merit and is accordingly dismissed.

Interim order dated 09.10.2009 shall stand vacated.

In the circumstances, parties shall bear their own costs.

**……J**
**[C.T. RAVIKUMAR]**

**……J**
**[SANJAY KUMAR]**

**New Delhi;**
**September 1, 2023.**