



## **ISSUE 1 FOR THE MONTH OF MAY, 2020**

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**KANHAYA LAL VS SMT. JAMNA  
DEVI & OTHERS<sup>1</sup>.**

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1. Section 6 and 8 of Hindu Succession Act (1956), Scope of right of females in the Hindu Coparcenary Property

It was observed that the Hindu Coparcenary Property usually devolves on the members by survivorship but the Hindu Succession Act had brought into account some changes and created a class of statutory heirs. If a member in the Mitakshara Coparcenary dies having female survivors which are his widow and daughters then the interest of the property would go by succession not by survivorship.

To work out this right an explanation was added which provides notional partition in the family at the time of death and then the share which would upon notional partition would be allocated before his death and it would be inherited by his heirs.

2. Hindu Law- Manager of Joint Family – when he is liable to render accounts

It was observed that the manager of the joint family is liable to render accounts upon partition for the assets received and also for those which have gone for the expenses.

This appeal has been filed by Kanhaya Lal Plaintiff against the judgment and decree of the Subordinate Judge 1<sup>st</sup> class, Delhi.

The Plaintiff's father died on 25<sup>th</sup> Oct 1957 leaving behind Plaintiff and his other son's – Defendant's No.2, 3,4 and 5 and Defendant No.1 widow and Defendant No. 6 and 7 as daughter's. The death of his father occurred after the commencement of the Hindu Succession Act, 1956. This Suit for Partition mainly consisted of a Printing Press as it was alleged that the youngest son Defendant No.5 who was managing the business had fraudulently converted into his own use which was the part of the family properties and was liable to render accounts for the same and was also noted that their Mother(D-5) was too actively involved in this.

The suit was mainly consisted by Defendant No.5 although the written statements were filed on behalf of all the Defendants i.e. son's and daughter's. The following Issues were framed:

- Whether the Youngest Son (D-5) is an accounting party?
- Whether the site in question was validly gifted to the Youngest Son (D-5)?
- Whether the structure on this site was raised by the Youngest Son (D-5)?
- Whether the Daughter's (D- 6 and 7) are entitled to a share? If yes how much?
- Whether the Mother/Widow (D-1) is entitled to maintenance? If so with what effect?

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<sup>1</sup> AIR 1973 Delhi 160

- What are the assets and liabilities left by Shri Bhagwan Dass?
- Relief

The Lower Court on this gave the first issue in the favor of Plaintiff, Issue no.2 and No.3 was decided against the Defendant, in Issue No.4 the Court allotted 1/8 share of the property to both the daughter's and Issue No.5 was left open which would be decided later. In Issue No.6 the business was a part of the Joint Hindu Property and all the other plots which would be decided by the after the parties have given evidence to the Local Commissioner and the court ordered the Local Commissioner to prepare a report on the income and expenditure of the press before and after the death.

In this Appeal the Plaintiff has only challenged the finding's on the share of the Sisters and in the cross which was taken was whether the Youngest Son was accountable or not and the Appellant in support of his contention has relied upon Section 6 which came into force on 17<sup>th</sup> June,1956.

If the Partition had taken place immediately before the death of the deceased Bhagvan Dass in October 1957, the property would have been equally shared by the wife and sons. In this way the share of the deceased upon notional partition would be 1/7<sup>th</sup> of the whole estate which would get inherited by the heirs according to section 8 and this share would even get divided equally between all the sons, daughters and widow. The counsel of the Defendant 5 had raised an objection saying that daughters and widow are not a part of the coparcenary although they are the member of the Joint Hindu Family and the property in dispute is not coparcenary hence section 6 does not applies to the Joint Hindu Family Property.

The property of the deceased would, therefore, be coparcenary property and ordinarily it would have been inherited by

the members by survivorship but the act has made an inroad on this rule of ancient Hindu Law and created a class of statutory heirs.

In the case of Madhusudhan Ray vs. Ananta Charan Behera<sup>2</sup>, it was seen that the Acts purports to give better rights to widows and before the passing of the Act, a widow was not a coparcener until she exercised her right to partition but even passing up of the act she does not become the member of the coparcenary.

According to the Paragraph 315 of Mulla's Hindu Law the Share of the deceased on partition before his death would have come to 1/7<sup>th</sup> and would be entitled to obtain a share along with her five sons and even the daughters now would.

In the Cross-Appeal which has been treated as cross objections, in which the Youngest Son (D-5) has challenged the Issue No.1 with regard to his liability to render accounts, issues came up as the Defendant had been working with his father before and after his death and after the death he assumed exclusive control over the business and fraudulently converted the business into his own use but in his reply he stated that before and after the death of his father he worked as an employee under her mother too not as a Karta but this was disbelieved by the court.

The court order the rendition of account by Defendant No.5 before and after his death and in the grounds of appeal share of the daughters were also mentioned (1/48<sup>th</sup>) and as share of the mother would be same as the share of his son's (9/56<sup>th</sup>). The Court had left Issue with regard to claim of the mother Defendant No.1, for maintenance open therefore the court has not expressed any opinion on it. Both the appeal and the cross-appeal which was treated as cross-objections, stands disposed of. In view of

<sup>2</sup> A.I.R 1963 Orissa 183

the partial success of the parties, they will bear their respective costs in the case.

The above mentioned case dealt majorly with the Hindu Succession Act,1956 in which it was observed that before the Amendment in 2005 Widow and Daughters were not the coparcener in the Joint Hindu Property but according to Madhusudhan Ray vs. Ananta Charan Behera till the time the widow exercised her rights she was not a coparcener and the second issue was related to the Family Business which was handled by the Youngest Son who used to work with his Father before and after he death but it was seen that he fraudulently used to take share which used to earn by the business as his own but the business was of the whole Joint Family

After the coming up of the Amendment in 2005 it was observed that in Joint Hindu Family which were governed by Mitakshara Law, the daughter of the coparcener will now by birth become a coparcener in the same manner as the son, she would have same rights as of the son, she would be subjected to the same liabilities as that of the son.



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