2026 INSC 1208

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7020 OF 2012

J. RAJESH (MINOR) THR.
HIS MOTHER AND NATURAL
GUARDIAN J. GOMATHI **APPELLANT(S)**

VERSUS

M. KUMARAN. (DEAD) THR.
LRS. & ORS. **RESPONDENT(S)**

J U D G M E N T

SUNITA AGARWAL, J

1. A short question for consideration in this appeal is as to whether the appellant would be entitled to half share in the property of his father who is still alive and can seek a decree of partition on the premise of the property in question being ancestral/joint family property.

2. The facts in brief are that the Original Suit No.1698 of 1997 was filed on behalf of the appellant as minor through his mother being natural guardian seeking relief of partition and possession half share claimed by the appellant in the suit property, which is the land admeasuring 1811 sq. ft. (described at the foot of the

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plaint). It was pleaded on behalf of the plaintiff/appellant that the suit property being joint family property belonging to his grandfather namely late N. Ramakrishnan, has been inherited by him along with his father who was the first defendant in the suit.

3. As averred in the plaint itself, the first defendant's sister G. Lalitha filed a suit namely C.S. No.1728 of 1993 for partition and possession of the divided share of N. Ramakrishnan, i.e., the grandfather. The suit was decreed on the basis of a compromise dated 03.02.1994, whereunder the first defendant had got his share in a land to the extent of 1811 sq. ft.

4. Original defendant nos. 2 and 3 are purchasers of the suit property *vide* sale deeds dated 03.04.1997 and 17.04.1997 executed by the first defendant. As per the plaint averments, the plaintiff/appellant herein while seeking to establish his entitlement to half share in the suit property would plead that the first defendant was trying to alienate the suit property to deprive the valuable right of the plaintiff/appellant to the same. However, there is no challenge to the compromise decree dated 03.02.1994 or the aforementioned sale deeds executed in favour of defendant nos. 2 and 3. Only relief sought was for partition and possession of half share to the plaintiff/appellant herein in the suit property.

5. The suit was contested by defendant nos. 2 and 3, on the ground that the first defendant was absolute owner by virtue of the compromise decree dated 03.02.1994 and the defendants had paid sale consideration and had taken possession of the suit property and are enjoying the same since the date of purchase.

6. The learned II Additional Judge, City Civil Court, Chennai passed the preliminary decree of partition which was challenged in the first appeal filed by the original defendant nos. 2 and 3.

7. The facts considered by the First Appellate Court in setting aside the preliminary decree of partition granted by the Trial Court are that the property originally belong to the father of the first defendant by name late N. Ramakrishnan. The plaintiff/appellant is son of the first defendant/respondent and being minor is represented by his mother and natural guardian.

8. The plaintiff was born on 06.01.1994 and the suit for partition and possession of properties belonging to N. Ramakrishnan was filed by the first defendant's sister namely G. Lalitha in the year 1993. The first defendant did not contest the suit filed by the appellant and had executed two sale deeds in favour of the defendant nos. 2 and 3 with regard to the property

which he obtained as a result of the partition decree under the compromise dated 03.02.1994.

9. The question answered by the First Appellate Court is as to whether the plaintiff acquired right by birth in the property which fell into the share of the first defendant/his father and as such is entitled to the decree of partition as prayed for. Considering decisions of this Court, the First Appellate Court has held that as per the Class I heirs listed in the Schedule under Section 8 of the Hindu Succession Act, 1956, the son of a male dying intestate will become an absolute owner of the property which he derives from his father and holds the property as absolute one and his son has no right by birth over such property.

10. It was held that when property devolved upon the divided sons and daughters per capita and not per stripes, each one of them was entitled to alienate their shares, particularly when different properties were allotted in their favour and in a case of this nature, joint coparcenary does not survive. It was held that Section 6 of the Hindu Succession Act was not attracted to the facts of the case as partition has taken place and the heirs/successors of the original owner N. Ramchandran became owners to the extent of the properties falling within their shares.

11. It was held that when a divided son or daughter has got the property belonging to their father in a partition, whether it is ancestral or self-acquired property of the father, they became absolute owners of their respective shares and they can deal with the property exclusively excluding their sons. The son of a divided son (grandson) does not get right from his father by birth who is excluded by virtue of Section 8 of the Hindu Succession Act and he cannot become a coparcener in the property in question.

12. The suit property is an ancestral property belonging to N. Ramkrishnan and the divided share in the said property reached the hands of his son who became absolute owner therefore and his grandson, the appellant herein does not get interest in the property.

13. Following the proposition of law laid down by this Court in the judicial pronouncements discussed therein, it was held that as per Class I heirs of the Schedule under Section 8 of the Hindu Succession Act, upon a Hindu dying intestate, the first class heirs namely, the heirs mentioned in Class I (Schedule-I) son, daughter, widow and brother shall take shares equally to the exclusion of the other heirs, including son's son. The High Court has held that the plaintiff/appellant herein did not acquire right by birth in the

property which came in the hands of his father by partition after the death of his grandfather and, hence he is not entitled to seek partition in the property.

14. By placing Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, it was urged by Mr. K. Paari Vendhan, learned Counsel for the appellant herein that in a Joint Hindu Family governed by Mitakshara Law, son of a coparcener shall become a coparcener in his own right by birth, inclusive of the right to claim by survivorship. The submission is that by virtue of Section 29-A inserted in the Hindu Succession Act, 1956 by the Tamil Nadu Amendment Act, 1989, the right of daughter of a coparcener to inherit in a coparcenary property by birth has been recognised, notwithstanding anything contained in Section 6 of the Hindu Succession Act, 1956. The significance of Section 29-A is that in a subsisting Mitakshara coparcenary governed by the Tamil Nadu amendment, a daughter/female member who qualifies the provision holds a coparcenary interest. The statutory protection preserves eligible daughters' coparcenary rights and leaves a son's existing right by birth intact.

15. It was submitted that due to operation of Section 29-A, the compromise decree dated 03.02.1994, as aforesaid, will not turn

the nature of shares of coparcener determined therein into "self-acquired property", as by virtue of Clause (iii) of Section 29-A, the suit property continued to have incidents of "coparcenary" ownership. Accordingly, the appellant's father's share did not become his self-acquired property.

16. The contention is that Section 29-A of the Hindu Succession (Tamil Nadu Amendments) Act, 1989 inserted as Chapter II-A of the Hindu Succession Act, 1956 substituted Section 6 (1) so to provide coparcenary rights to daughters by birth and in the same manner as sons. The amendments passed by Tamil Nadu Legislature in 1989 effectively make daughters equal coparceners from 1989 onwards and this position has been affirmed by the Madras High Court in ***Shanmugha Udayar Vs. Sivanandam and others***[1]**.**

17. The learned counsel for the appellant would submit that the appellant was born on 06.01.1994 and as such became a coparcener in the ancestral property of his grandfather with his birth only. Although the partition suit was instituted in 1993, but the decree came to be passed only on 03.02.1994 (after the appellant's birth) and his father was allotted the subject property.

[1] 1993 SCC OnLine Mad 99

The appellant was not made a party in the partition proceedings despite the suit having been decreed only after his birth and after he acquired coparcenary right in the subject property by birth. Mere fact of partition or separation from other branches does not destroy the coparcenary character as against the first respondent's own son.

18. Reference was made to ***Rohit Chauhan Vs. Surinder Singh and others,***[2] and ***Arshnoor Singh Vs. Harpal Kaur,***[3] to submit that this Court has distinguished partition of ancestral property from succession under Section 8 and recognized son's interest upon birth and that on partition, the ancestral coparcenary property allotted to a coparcener remains a coparcenary property qua the allottee's son.

19. In light of the said legal proposition, the appellant's half share recognised by the trial court must be protected and the High Court has erred in treating the mere allotment under a family partition as conclusive proof of the first respondents being the individual owner without addressing the pleaded ancestral character, the appellant's birth and the statutory scheme applicable in the State of Tamil Nadu.

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[2] (2013) 9 SCC 419
[3] (2020) 14 SCC 436

20. In view of the above, it was contended that the purchasers namely the original defendant nos. 2 and 3 cannot acquire greater right than their vendor namely the first respondent. Their plea of absolute ownership must therefore be tested against the appellant's independent coparcenary claim and the trial Court's finding that the property was ancestral, not controverted by the first respondent (father of the appellant), is to be upheld.

21. It was urged that the first respondent was not competent to transfer the entire suit property without determining/demarcating the share of the appellant coparcener, the property obtained by the first respondent through partition, held by him as *karta* of a coparcenary property. The first respondent remained *ex parte* in the trial court, the High Court and before this Court until his death in the year 2024. The onus of proving the legal necessity for sale of a coparcenary property has not been discharged by the first respondent. In the result, the trial court's preliminary decree for partition of half share of the appellant is liable to be restored and the sale deeds dated 03.04.1997 and 17.04.1997 are to be held as not binding on the share of the appellant by setting aside the judgment and order dated 11.08.2010 of the High Court.

22. Mr. K.K. Mani, learned counsel for the respondent, on the other hand, would submit that the present is a case of a male, i.e., grandson seeking succession in the property of his grandfather which would be governed by Section 8 of the Hindu Succession Act and heirs mentioned in Class I of the Schedule to Section 8 would be attracted. Section 6 of the Hindu Succession Act, 2005 or Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 are not attracted.

23. The consistent view of this Court in the case of succession of a grandson has been that the grandson is clearly excluded from the heirs mentioned in Class I Schedule and the divided son gets absolute right with full power of alienation. Section 8 of the Hindu Succession Act, 1956 lays down the scheme of succession to the property of a Hindu dying intestate. The schedule classifies the heirs on whom such property should devolve as those specified in Class I who took simultaneously to the exclusion of all other heirs. A son's son is not mentioned as an heir under Class I of the Schedule, and, therefore he cannot get any right in the property of his grandfather under the said provision. The suit property which devolve on the first respondent upon the death of his father intestate after coming into force of the Hindu Succession Act, 1956

did not constitute HUF property consisting of his own branch including his sons.

24. Reliance is placed on the decisions of this Court in ***C.W.T. and others Vs. Chander Sen and others***[4]***, Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and others***[5] and ***Radha Bai Vs. Ram Narayan and others***.[6]

25. It was further submitted that the appellant though is aggrieved by the partition/compromise decree but he has not challenged the same so far. The suit property is no more an ancestral property and moreover the appellant's father being alive when suit was filed, the appellant has no right to claim any share in the same. The original defendant nos. 2 and 3 namely respondent no.1 and 2 herein are innocent purchaser of the suit property and the suit filed by the appellant is a collusive suit with his father who had not turned up to contest the proceedings.

26. Section 6 and 8 of Hindu Succession Act, 1956 prior to 2005 amendment, and Section 29-A of the Hindu Succession (Tamil Nadu) Act, 1989 relevant for this case are extracted hereinunder :-

The Hindu Succession Act, '1956'

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[4] (1986) 3 SCC 567
[5] (2008) 3 SCC 87
[6] (2020) 19 SCC 513

"6. *Devolution of interest in coparcenary property.*— 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 this section shall be constructed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim or intestay a share in the interest referred to therein."

8. General rules of succession in the case of males. —

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter: —

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
(b) secondly, if there is not heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
(d) lastly, if there is no agnate, then upon the cognates of the deceased.

Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, as contained in Chapter II-A of the Tamil Nadu Act, inserted after Chapter II of the Hindu Succession Act, 1956:-

29-A. Equal rights to daughter in coparcenary property.- Notwithstanding anything contained in section 6 of this Act,-

(i) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allotable to the pre-deceased child of a predeceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the predeceased son or of the pre-deceased daughter, as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989;

(v) nothing in clause (ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

In ***Commissioner of Wealth Tax, Kanpur and others Vs. Chander Sen and others***[7]**,** the question considered by this Court was **–** whether the income or asset which a son inherits from his father when separated by partition, could be assessed as income of Hindu undivided family of son or his individual income?

27. While answering the said question, it was noted that though under the Hindu Law the moment a son is born he gets a share in the father's property and becomes part of the coparcener. His right accrued 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 Hindu joint family of his son and grandson and other members who form joint Hindu family with him.

28. However, this position is affected by Section 8 of the Hindu Succession Act, 1956. The Hindu Succession Act, 1956 lays down the scheme of succession to the property of a Hindu dying intestate male. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and

[7] (1986) 3 SCC 567

upon the heirs in Class I of the Schedule being relatives mentioned in Class I which 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."

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 son living. The question, thus was, when the son as heir of Class I of the Schedule inherits a property, ("as first respondent in the present case"), does he do so in his individual capacity or does he do so as *karta* of his own undivided family?

29. Having noted the divergent views expressed by different High Courts, it was observed and held in paragraphs 21, 22, 23 and 24 as under :-

> **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.
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> **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 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.

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 page 924-26 as well as Mayne's on *"Hindu Law"*, 12th Edn. pages 918-919.

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 included son of a predeceased son cannot be ignored.

30. In ***Bhanwar Singh Vs. Puran and others***,[8] this Court has dealt with the applicability of Section 8 of the Hindu Succession Act, 1956, the properties in suit therein were partitioned between son and three daughters of the original owner. After partition the properties inherited in the share of son was mortgaged and later sold by him. The fact that the suit property at one point of time was a joint family property was admitted and the question which

[8] (2008) 3 SCC 87

arose for consideration was as to whether the appellant had acquired any interest therein by his birth in the property of his grandfather died prior to his birth.

31. Having regard to Section 8 as also Section 19 of the Hindu Succession Act, 1956, it was held that the property ceased to be joint family property with the partition having taken place amongst the heirs of the grandfather/appellant therein. In such a case, a joint coparcenary did not continue. The interpretation of Section 8 of the Hindu Succession Act which came up for consideration in *C.W.T Vs. Chandrasen* (supra) was noted to further record that the principles evolved therein were reiterated by this Court in ***Yudhisthir Vs. Ashok Kumar***,[9] and ***C.I.T Vs. M. Karthikeyan***.[10]

It was held that Section 6 of the Hindu Succession Act, 1956, was not attracted to the facts of the said case in view of the fact that son and daughters having partitioned their properties became owners to the extent of one-fourth share each and son had the requisite right to transfer the lands falling within his share. Furthermore, in terms of Section 19 of the Act as son and daughters became tenants in common and took the property

[9] (1987) 1 SCC 204
[10] 1994 Supp. (2) SCC 112

devolve upon them as per capita and not per stripes, each one of them was entitled to alienate their share.

32. Recently in ***Radha Bhai Vs. Ram Narayan and others***[11]**,** the question was as to whether the suit land inherited by late Janakram from his father Sukhdeo, the sole owner, became the ancestral property of the plaintiff on the date of death of Sukhdeo in 1965 and on the date of death of Janakram in 1982. According to the plaintiff/appellant therein, the suit property was admittedly ancestral property in the hands of Sukhdeo after coming into force of Hindu Succession Act, 1956 with effect from 17.6.1956. Invoking Section 6 of 1956 Act, the appellant/plaintiff, the great granddaughter of Sukhdeo claimed the entire share of her father being the sole surviving heir of the son of Janakram. It was urged that the sale deed executed by Janakram in the year 1979 was *ex facie* illegal and not binding on the appellant/plaintiff as Janakram had no authority to sell the ancestral property which had settled in the coparceners after the death of Sukhdeo. The respondent/defendant therein on the other hand contended that the ancestral property was succeeded by two surviving sons of Sukhdeo namely Janakram and Pilaram equally when the

[11] (2020) 19 SCC 513

succession had opened after the death of Sukhdeo in 1965. The appellant/plaintiff was not an heir in Class I at the relevant time being the great granddaughter of Sukhdeo, and, as such, she had no claim in the suit property in 1965. The reason being that the father of the appellant could not have succeeded to the property during the lifetime of his father Janakram.

33. After the death 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 as a coparcener on behalf of his family members, he could alienate the same as per his volition to anyone. In such a situation, as per the settled law, the granddaughter of Janakram cannot be treated as an heir of Class I, or a coparcener so as to have a share in the suit property. Section 6 of the 1956 Act as applicable at the relevant time was taken into consideration and the decision in *C.W.T Vs. Chandra Sen and others* was noted in paragraphs 19, 20 and 21 as under:-

> **"19.** In Chander Sen, 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: (SCC pp. 572-73, paras 10-12)
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> *"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 1 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[10] after referring to the relevant authorities and commentators had observed at p. 171 of ITR 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 *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 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."

20. Again in para 15: (Chander Sen case, SCC pp. 573-74)

"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[10, 11] 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[12] the contrary view."

21. After considering the divergent views expressed by the Allahabad High Court[12,13] the Full Bench[14] of the Madras High Court, Madhya Pradesh[14] and Andhra Pradesh High Courts[15] on one side and the Gujarat High Court on the

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[12] *CIT v. Ram Rakshpal, 1966 SCC OnLine All 429 : (1968) 67 ITR 164*

[13] *Khudi Ram Laha v. CIT, 1966 SCC OnLine All 435 : (1968) 67 ITR 364*

[14] *CIT v. Babubhai Mansukhbhai, 1975 SCC OnLine Guj 77 : (1977) 108 ITR 417*

[15] *CWT v. Mukundgirji, 1983 SCC OnLine AP 288 : (1983) 144 ITR 18*

other, it proceeded to opine as follows: (*Chander Sen case,* SCC pp. 577-78, paras 21-24*)*

"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*[12] *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[15] 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-à-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-à-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."

Another decision of this Court in *Yudhisthir* case (supra) wherein Chander Sen was quoted with approval, has also been noted in paragraph 22 as under:-

> **22.** This decision has been quoted with approval in Yudhishter case. In para 10 of the said decision, the Court observed thus: (SCC pp. 110-11)
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> *"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 pp. 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's Hindu Law*, 12th Edn., at pp. 918-19. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court[10, 11], the Madras High Court[13], the Madhya Pradesh High Court[14] and the Andhra Pradesh High Court[15] appeared to be correct and unable to accept the views[12] 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-à-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."

In the facts of the said case, having noticed that Sukhdeo had inherited ancestral property and was alive till 1965, whereas, father of the appellant (son of Janakram) predeceased Sukhdeo (his grandfather) in 1957 and Janakram, son of Sukhdeo had died in 1982, and that during the lifetime of Janakram, in terms of Section 6 of 1956 Act, the father of the appellant could not have succeeded to the property as he could claim only through Janakram who was alive till 1982, it was held that when father of the appellant had no claim in his own rights, hence the question of the appellant (being his daughter), succeeding to the property does not arise. It was thus noted in paragraphs 25 and 26 and held in paragraph 27 that :-

> "**25**. The consistent view of this Court, including of the three-Judge Bench, is that the grandson or granddaughter is clearly excluded from heirs in Class I. Saheblal himself was grandson 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 (Defendants 1 to 3, respectively) *vide* registered sale deed dated 21-7-1979. Neither the stated partition of 1967 nor the registered sale deed in favour of the respondents (Defendants 1 to 3) dated 21-7-1979 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 along with possession. Suffice it to observe that the granddaughter of Janakram (appellant herein) could not have claimed a higher right than the right of her father Saheblal.

26. Reliance placed by the appellant on the decision of this Court in *Gurupad Khandappa Magdum*[2], is inapposite. In that case, the plaintiff, being heir in Class 1, 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 the 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 Raj Rani[8], 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 para 17 of the reported judgment. Even the recent decision of this Court in *Ramesh Verma*[3], does not take the matter any further for the appellant. Inasmuch as, even in that case, the dispute was between the heirs concerned 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 1/3rd 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 para 11 of the reported judgment.

27. A priori, we uphold the view taken by the High Court that after the death d 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 lifetime 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."

34. Reverting to the factual matrix of the present case, it is noticed that the heirs of N. Ramakrishnan inherited his property being Class I Schedule heirs having right of succession under

Section 8 of the Hindu Succession Act, 1956. Section 8 of Hindu Succession Act, 1956 lays down the scheme of succession to the property of a Hindu male dying intestate. The schedule classified the heirs on whom such property should devolve, those specified in Class I took simultaneously to the exclusion of all other heirs. A son's son is not mentioned as an heir under Class I of the Schedule, and, therefore he could not get any right in the property of his grandfather under the provision. In the codified Hindu Law of the Hindu Succession Act, 1956, the right of a son's son in his grandfather's property during the lifetime of his father which existed under the personal Hindu Law as enforced before the Act 1956, was not saved expressly by the legislature while enacting the Hindu Succession Act, 1956. Section 8 of the Hindu Succession Act, 1956 is to be read as a self-contained provision laying down the scheme of devolution of the property of the Hindu male dying intestate.

35. Consequently, upon death of N. Ramakrishnan, the grandfather of the appellant herein, the property devolved on his Class I Schedule heirs as per Section 8 of the Hindu Succession Act, 1956 and did not constitute HUF property of son consisting of his own branch including the grandson. The surviving sons and

daughters of N. Ramakrishnan, the Hindu male dying intestate, shall each take one share being Class I Schedule heirs. The partition among the Class I heirs was opened upon the death of N. Ramakrishnan, (whose date of death has not been disclosed), with the filing of the partition suit in 1993 by one of the coparceners wherein settlement had been arrived between the heirs. Under the compromise decree in terms of the settlement dated 03.02.1994, each of the heir became exclusive owner of the property falling within his/her share. The father of the appellant whose shares are divided in terms of the compromise decree pursuant to the settlement dated 03.02.1994, became exclusive owner of the property falling in his share. With the partition, the property of N. Ramakrishnan the grandfather of the appellant ceased to be joint family property, inasmuch as, all heirs succeeded the same as tenant in common and not as joint tenant, and joint coparcenary did not continue.

36. The succession having been opened with the death of N. Ramakrishnan, evidently before the appellant was born, inasmuch as partition suit was filed in the year 1993, there is no question of devolution of interest in the suit property upon the appellant.

37. From the averments made in the memo of appeal, it seems that parents of the appellant got married on 01.03.1993 and the partition suit namely C.S. No. 1728 of 1993 seeking partition and separate possession of the properties of N. Ramakrishnan, the grandfather of the appellant (father of the first respondent herein) was filed in 1993. The appellant was born on 06.01.1994 and the settlement was arrived on 03.02.1994. The father of the appellant was still alive and was impleaded as a first defendant in the suit filed through the mother in the year 1997 on the premise of the appellant having inherited coparcenary rights in the property of his grandfather by birth.

38. As noted hereinbefore this Court in *C.W.T Vs. Chandrasen* (supra) has considered the interplay between Section 4, 6 and 8 of the Act 1956 including Chapter II and heirs in Class I of the Schedule and has held that as per the codified Hindu law 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, would be impossible. It would be difficult to hold that the property which devolved on a Hindu under Section 8 of

the Hindu Succession Act would be HUF in his hand vis-à-vis his own son as 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-à-vis son and female heirs with respect to whom no such concept could be applied or contemplated. The express words of Section 8 of the Hindu Succession Act, 1956 cannot be ignored and must prevail.

39. To the contention of the appellant that he got share in his grandfather's property and became part of the coparcenary with his birth, it is to be seen that the unamended Section 6, as noted before, as it originally stood prior to 2005, provided for devolution of interest in the Mitakshara coparcenary property, at the time of death of a male Hindu after commencement of 1956 Act, by survivorship, upon the surviving members of the coparcenary. In the instant case, the date of death of N. Ramakrishnan, the grandfather has not been indicated and the suit for partition among Class I heirs was filed in the year 1993, evidently the provisions of Section 6 of the Hindu Succession Act, 1956 or Section 29(A) inserted by the Tamil Nadu Amendment Act, 1989 would have no application in the facts and circumstances of the present case. From this perspective as well, the appellant cannot

become a coparcener as he was not a "surviving coparcener" on the death of N. Ramakrishnan.

40. Much after the partition of the property devolved upon Class I heirs of N. Ramakrishnan when each of the divided shares became exclusive property of the cosharers and sold by father of the appellant, without challenging the partition decree or the sale deeds executed by father of the appellant, during the lifetime of father, the suit for partition has been filed in the year 1997 on behalf of the minor on the premise of inheritance as coparcener by birth.

41. Finally, in view of the general rule of succession in the case of property of a male dying intestate, under the provisions of Chapter II of the Hindu Succession Act, 1956, the property of N. Ramakrishnan (grandfather of the appellant) devolved upon the Class I heirs in the order of succession specified therein, and they shall take the property simultaneously to the exclusion of all other heirs. With the partition decree, the property of N. Ramachandran falling in the share of the father of the appellant became his exclusive property in his individual capacity and cannot be said to be coparcenary. There is no question of devolution of the property once partitioned and became exclusive individual property of the

first respondent upon the appellant herein so as to recognise his right on the premise of attaining coparcenary rights with his birth. For the reasons aforementioned, there is no infirmity in the impugned judgment.

42. The appeal, thus, failed and hence stands dismissed with no order as to costs. All pending applications are also disposed of in the above terms.

.....J.
[AUGUSTINE GEORGE MASIH]

.....J.
[SUNITA AGARWAL]

NEW DELHI,
November 06, 2026