AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 191 of 2013

1. Gannu @ Gaanu Ram, S/o Late Ramai Satnami, Aged About 34 Years

2. Deni Bai D/o Late Ramai Satnami Aged About 36 Years

Both R/o village Gomachi, P.O. Tendua, Tah. And Distt. Raipur C.G.

---- Appellants

Versus

1. Dhanmat Bai D/o Late Ramai Satnami Aged About 58 Years R/o village Jora, P.O. Krishak Nagar, Tah. And Distt. Raipur C.G.

2. Vijay

3. Kamal

2 & 3 are S/o Dayalal Chabra R/o village Gomachi, P.O. Tendua, Tah. And Distt. Raipur C.G.

4. State Of Chhattisgarh Thru- Collector, Raipur C.G.

---- Respondent

For Appellants	Shri Raja Sharma, Advoate
For Respondent No.1	Shri Ravindra Sharma, Advocate
For Respondents No.2 & 3	None, despite service of notice
For Respondent/State	Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board
By
Prashant Kumar Mishra, J.

17/01/2019

1. Short issue arising for consideration in this first appeal is -

> Whether daughter of a pre deceased karta/ coparcener is entitled to have equal share in the ancestral property after the amendment in Section 6 of the Hindu Succession Act, 1956 (*for short 'the Act'*) w.e.f. 9.9.2005 ?

2. The Trial Court has allowed the plaintiff's suit for partition granting 1/3rd share each to plaintiff/respondent No.1 Dhanmat Bai, appellant No.1/defendant No. 1 Gannu @ Gaanu Ram & appellant No.2/defendant No. 2 Deni Bai.

3. Indisputably, the property at the hands of the common ancestor deceased Ramai was ancestral property. Ramai died about 8 years back from 14.02.2011 (as stated by plaintiff Dhanmat Bai when she was examined before the Trial Court on 14.02.2011). The exact date of death of Ramai is not available on record, but in any case his death has taken place prior to 9.9.2005 i.e. the date on which Section 6 of the Act suffered amendment.

4. For ready reference and convenience the amended Section 6 of the Act is quoted below :

> **6. Devolution of interest in coparcenary property.**—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) 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 in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the

partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this sub-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.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. —For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

> Explanation. —For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.
>
> (Emphasis supplied)

5. According to Shri Raja Sharma, learned Counsel for the appellants, during the life time of Ramai, the co-parcenary consisted of Ramai and Gannu@ Gaanu Ram, therefore, applying the ratio of decision rendered by the Supreme Court rendered in **Prakash and others v Phulavati and others**[1] the appellant No.1 would be the owner of the half of the property during the lifetime of Ramai. To award this share of appellant No.1 there has to be a notional partition as on the date of death of Ramai and thereafter by virtue of the amended Section 6 of the Act the property devolved on the legal heirs of deceased Ramai would be divided equally to the extent of half share of Ramai. Thus, appellant No.1 Gannu @ Gaanu Ram would receive 4/6th share whereas appellant No.2 Deni Bai and respondent No.1 Dhanmat Bai would receive 1/6th share each in the suit property.

6. Shri Ravindra Sharma, learned counsel appearing for the respondent No.1/plaintiff would refer to a subsequent decision of the Supreme Court rendered in **Danamma Alias**

1 (2016) 2 SCC 36

Suman Surpur and another v Amar and others[2]**,** and draw attention of the Court to para 23 of the said judgment.

7. In **Prakash** (supra) the Supreme Court held that rights under the amendment (Section 6 of the Act) are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.

8. In **Danamma Alias Suman Surpur** (supra) the Supreme Court approved its earlier decision rendered in Prakash(supra) but, thereafter observed thus in para 23 :

> 23. Section 6, as amended, stipulates that on and from the commencement of the amended Act, 2005, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. It is apparent that the status conferred upon sons under the old section and the old Hindu Law was to treat them as coparceners since birth. The amended provision now statutorily recognizes the rights of coparceners of daughters as well since birth. The section uses the words in the same manner as the son. It should therefore be apparent that both the sons and the daughters of a coparcener have been conferred the right of becoming coparceners by birth. It is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by virtue of birth. Devolution of coparcenary property

2 (2018) 3 SCC 343

> is the later stage of and a consequence of death of a coparcener. The first stage of a coparcenary is obviously its creation as explained above, and as is well recognized. One of the incidents of coparcenary is the right of a coparcener to seek a severance of status. Hence, the rights of coparceners emanate and flow from birth (now including daughters) as is evident from sub-sections (1)(a) and (b).

9. These two decisions have now been considered by the Supreme Court in its latest decision in the matter of **Mangammal @ Thulasi and Anr. v T.B. Raju and Ors.**[3] Distinguishing the issue fallen for consideration in the matter of **Danamma Alias Suman Surpur** (supra) and approving **Prakash** (supra) the Supreme reiterated the law propounded in **Prakash** (supra) in the following words at paras 11 and 12 :

> 11. It is pertinent to note here that recently, this Court in **Danamma @ Suman Surpur Vs. Amar**, 2018 (1) Scale 657 dealt, inter-alia, with the dispute of daughter's right in the ancestral property. In the above case, father of the daughter died in 2001, yet court permitted the daughter to claim the right in ancestral property in view of the amendment in 2005. <u>On a perusal of the judgment and after having regard to the peculiar facts of the Danamma (supra), it is evident that the Division Bench of this Court primarily did not deal with the issue of death of the father rather it was mainly related to the question of law whether daughter who born prior to 2005 amendment would be entitled to claim a share in ancestral property or not? In such circumstances, in our view, Prakash (supra), would still hold precedent on the issue of death of coparcener for the purpose of right of daughter in ancestral property. Shortly put, only living daughters of living coparceners would be entitled to claim a share in the ancestral property</u>.

3 2018 SCC OnLine Sc 422

> 12. Hence, without touching any other aspect in the present case, we are of the view that the appellants were not the coparceners in the Hindu Joint Family Property in view of the 1989 amendment, hence, they had not been entitled to claim partition and separate possession at the very first instance. At the most, they could claim maintenance and marriage expenses if situation warranted.
>
> (Emphasis supplied)

10. The plaintiff in the present case preferred a suit on 6.1.2008. Even if the amended Section 6 would enure to her benefit entitling to claim share in the property, but the fact remains that as on the date of commencement of the Amendment in Section 6 of the Act, the ancestral co-parcener (father) was already dead. On the date of death of Ramai prior to 9.09.2005 the co-parcenary consisted of Ramai and his son Gannu@ Gaanu Ram. For passing an effective decree of partition in favour of daughter Dhanmat Bai the trial Court was first required to affect a notional partition between Ramai & Gannu @ Gaanu Ram allotting them half share each in the coparcenary property. Thereafter, a further partition is required to be affected in respect of half share of Ramai which would devolve equally on plaintiff Dhanmat Bai, defendant No.1 Gannu @ Gaanu Ram and the defendant No.2 Deni Bai (second daughter). Thus, three persons would receive 1/3rd share each in the half share received by Ramai in the notional partition. In totality, Dhanmat Bai & Deni Bai

would receive 1/6th share each in the entire property and Gannu @ Gaanu Ram shall receive 4/6th share in the property. The trial Court though rightly held that Dhanmat Bai was entitled to share in the ancestral property, but while allowing shares it did not affect the notional partition between Ramai & Gannu @ Gaanu Ram, therefore, on effecting such partition and dividing the share of Ramai further in the manner indicated above, the share allotted by the trial Court is required to be modified.

11. The appeal is, therefore, allowed in part, while maintaining the decree for partition the share allotted to each of two daughters Dhanmat Bai & Deni Bai will be 1/6th share each and Gannu @ Gaanu Ram would get 4/6th share.

12. In the result, the first appeal is allowed to the extent indicated above.

13. A decree be drawn in terms of paragraph 11 above.

Sd/- Sd/-

Judge
Prashant Kumar Mishra

Judge
Vimla Singh Kapoor

Gowri