2025:CGHC:61970

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for Judgment on : 13.10.2025

Judgment Delivered on : 23/12/2025

Judgment Uploaded on : 23/12/2025

SA No. 139 of 2006

1 - Jagmohan (Died) Through Lrs. As Per Honble Court Order Dated 16-09-2019.

1.(A). Ramnarayan S/o Late Jagmohan Aged About 38 Years

1.(B). Dhankunwar Wd/o Late Jagmohan Aged About 75 Years
Both are R/o Village Pipara, Tahsil Baikunthpur, District Koriya Chhattisgarh.,

2 - Gedibai (Dead) Through Lrs., As Per Court Order Dt. 16-12-2019.

2. (A) Basant (Died And Deleted) As Per Honble Court Order Dated 07-11-2024.

2.(B) Santosh S/o Bandhu Ram Aged About 53 Years

2.-(C) Shankar Lal S/o Bandhu Ram Aged About 55 Years
All are R/o Village Karji, Post Office Patna, Police Station And Tahsil Patna, District - Koriya Chhattisgarh.

3 - Nirasobai D/o Arjun Aged About 47 Years Caste Rajwar, R/o Village Cher, Tahsil Baikunthpur District Koriya Chhattisgarh.

4 - Kismatiya Bai D/o Arjun Aged About 42 Years Caste Rajwar, Occupation House Wife R/o Village Kharwat, Tahsil Baikunthpur, District Koriya Chhattisgarh. .

--- **Appellants/Plaintiffs**

versus

BALRAM PRASAD DEWANGAN
Digitally signed by BALRAM PRASAD DEWANGAN
Date: 2025.12.23 13:59:11 +0530

1 - Indra Kanwar (Dead) Though Lrs., As Per Court Order Dt. 29-07-2019.

1.(A) Jugeshwar S/o Sundarsay Aged About 25 Years Occupation - Cultivator, Caste - Rajwar, R/o Village Kudhari , Police Station And Tahsil -

Bhaiyathan, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

2 - State Of Chhattisgarh Through The Collector, Koriay Chhattisgarh.

--- **Respondents/Defendants**

(Cause title is taken from CIS)

For Appellant	:	Mr. Ashok Kumar Shukla, Advocate
For Respondent No.1 (A)	:	None present
For Respondent No.2/State	:	Mr. Ajay Kumrahi, P.L.

Hon'ble Shri Justice Parth Prateem Sahu

CAV Judgment

1. This is second call of the case, first in pre-lunch session and second in post lunch session. There is no representation on behalf of private respondent. Order sheet of the appeal would show that earlier Mr. Pushpendra Kumar Patel, Advocate is causing appearance on behalf of respondent No.1(A). He filed Vakalatnama on 25.10.2024 for respondent No.1(A). On 15.09.2025 Mr. Utkarsh Patel, Advocate appeared on behalf of Mr. Pushpendra Kumar Patel and prays for time and case was adjourned for its listing in the month of October. On 06.10.2025, there was no representation on behalf of respondent No.1 A, however, the case was adjourned on the request of the learned counsel for appellant. Today also there is no representation on behalf of respondent No.1(A).

2. This appeal is received in remand from Hon’ble Supreme Court vide its order dated 05.09.2023 with a direction to dispose of this second appeal expeditiously preferably within a period of six months. In the aforementioned facts of the case, this appeal is heard in absence of the counsel for respondent No.1(A).

3. This second appeal U/s.100 of C.P.C. is filed by appellant/plaintiffs No.1 questioning legality and sustainability of the impugned judgment and decree dated 17.01.2006, passed in Civil Appeal No.5-A/2004, whereby, learned Additional District Judge, Baikunthpur, District-Koriya (C.G.) arising out of the judgment and decree dated 23.10.2003, in Civil Suit No.6-A/1995, whereby learned Civil Judge Class-1, Baikunthpur, District – Koriya dismissed the suit filed by the plaintiffs.

4. For the sake of convenience, parties will be referred to as per their respective status before the trial Court.

5. Facts relevant for disposal of this appeal are that appellants/plaintiffs filed a civil suit for declaration of title and perpetual injunction against the respondents/defendants with regard to the suit land and property mentioned in Schedule ‘A’ of the plaint. It was pleaded that the suit property was originally held by one Arjun, he had two sons i.e. plaintiff No.1 Jagmohan and Baban Ram. Widow of Baban Ram is defendant No.1. Plaintiff No.2 was the widow of Arjun (who died during pendency of suit) and plaintiff No. 3, 4 & 5 are three daughters of Arjun. It was pleaded that the suit property to be the exclusive property of them holding that defendant No.1 has no right over the suit property stating inter alia that though the suit property is a joint property of them along with Baban Ram, but he wanted to relinquish his share in favour of the plaintiffs and further the defendant No.1 being widow of Baban Ram as per custom prevalent in Rajwar caste to which they belong, has no right/title over the suit property and therefore, she is not entitled for

any partition in the suit property and alternatively pleaded that they be declared title holders of their share.

6. Defendant No. 1 has filed her written statement refuting the allegations made in the plaint. It is pleaded that the parties belong to the Rajwar caste, which falls under the general category, therefore, the provisions of the Hindu Succession Act, 1956, are applicable to their property. Defendant No. 1 lived with late Baban Ram as his legally weded wife throughout his lifetime. Father, Arjun, died about one year prior to death of Baban Ram. During lifetime of Baban Ram, entire family property was partitioned into three parts, and the plaintiffs were in possession of their respective shares. After two years of death of Baban Ram, Defendant No. 1 vacated the house due to harassment by the plaintiffs. After Baban Ram's death, her name was duly recorded in the revenue records. It is pleaded that during his lifetime, Arjun arranged the marriages of plaintiffs 3, 4, and 5 and separated them from his family. Defendant No. 1 has never relinquished her rights to the suit land, nor has she acknowledged the plaintiffs as its owners. The suit filed by the plaintiffs is alleged to be malicious and instituted solely to harass and trouble Defendant No. 1, by depriving her right to property of her husband.

7. Learned trial Court based on the pleadings made by respective parties formulated 8 issues for consideration. Parties led their evidence and upon appreciation of the documentary and oral evidence brought on record by respective parties, the learned Trial Court dismissed the suit filed by the plaintiffs holding it to be abated as legal representative of plaintiff No.2-Fuleshwari was not brought on record. The judgment and

decree passed by learned trial Court is put to challenge in an appeal before learned First Appellate Court and learned First Appellate Court by impugned judgment and decree set-aside judgment and decree of trial Court, allowed the appeal preferred by plaintiffs and held that plaintiff No.1 is entitled for 1/4 + 1/14 + 1/16, plaintiff No.3 and 4 each one of them would be entitled for 1/24 + 1/16 and defendant No.1 would be entitled for 1/4 + 1/24. Appellants have filed this appeal against erroneous distribution of the share of the ancestral property between the parties to the suit.

8. Learned counsel for appellant/defendant would submit that though earlier the appeal filed by the appellant was dismissed by this Court vide judgment dated 14.01.2020, however, appellant/plaintiff has preferred SLP before Hon'ble Supreme Court bearing SLP(C) No.8281/2020 and Civil Appeal No.5634 of 2023.. The SLP filed by the appellant was disposed of in terms of order passed in Civil Appeal No. 5633/2023 arising out of SLP (C) No.32601/2018. He contended that Hon'ble Supreme Court has disposed of appeal remanding the matter to this Court for reconsideration and appropriate disposal in tune of law laid down by Hon'ble Supreme Court in case of **Vineeta Sharma Vs. Rakesh Sharma & Ors.,** reported in **(2020) 9 SCC 1**. He also contended that the grievance of appellants against judgment and decree passed by this Court vide order dated 14.01.2020 is on the ground of distribution of share not in accordance with law, therefore, this Court has to consider with regard to rights and share of parties to the suit also keeping in mind the amended provisions under Section 6 of the Hindu Succession Act, 1956 (In short 'the Act of 1956'). He

contended that the First Appellate Court in the impugned judgment and decree has erroneously apportioned the share between the parties to the extent of 1/4 share between Arjun, who died intestate, his widow Fuleshwari and two sons i.e. Jagmohan and deceased Babanram. It is contention of learned counsel for appellants that even if the property is to be considered to have been partitioned notionally then also there cannot be two share one of the deceased, who died intestate and another for his widow. There will be only one share which may be received by the widow with her two sons. He further contended that there is no dispute with regard to the amended provisions under Section 6 of the Act, 1956 wherein the daughters have also been made coparcener from their birth and in that circumstances, the daughters of Arjun who died intestate will also get equal share to that of sons. This appeal is filed only against the erroneous distribution of the share of the ancestral property between the parties to the suit.

9. None present on behalf of respondent No.1(A).

10. I have heard learned counsel for parties and perused the documents placed on record.

11. This second appeal is admitted for hearing on the following substantial question of law :-

> "Whether the Courts below have wrongly applied the principles of notional partition, as the daughters are to be given equal share in coparcenary property in view of Section 6 of the Hindu Succession Act, 1956 and the law laid down in the matter of **Vineeta Sharma** (Supra)"?"

12. According to the pleadings made in the plaint and undisputed facts, Arjun is having ancestral property as mentioned in Schedule -A of the plaint, situated at village Pipara, P.C. No.29, Tahsil – Bakunthpur, District Surguja (C.G.) recorded in his name in the revenue records. Plaintiff No.1 Jagmohan, plaintiff No.3 – Gendi Bai, plainiff No.4 Niraso Bai, plaintiff No.6 Kismatiya Bai and Baban Ram (husband of Indrakunwar/defendant No.1), are children of late Arjun. Plaintiff No.2 Fuleshwari was widow of late Arjun, who died during pendency of the suit. Relationship is not disputed between the parties. Arjun's one son, three daughters and widow of Arjun filed civil suit against defendant No.1, widow of another son of late Arjun for declaration of title and permanent injunction and prayed for following relief (s) :-

> "(i) It be declared that plaintiffs are only owners of the property, subject matter of the suit and to declare that defendant No.1 is not having any title over the suit property and the entry made in the revenue records of the name of defendant No.1 is illegal and in alternate it is also prayed that if the defendant No.1 is having some right over the property in dispute, then they be declared title holder of the land to the extent of their rights.
>
> (ii) Permanent injunction be issued against defendant No.1 that she may not be proceeded with revenue case pending in the Court of Tahsildar, Baikunthpur.

13. Defendant No.1 opposed the pleadings and stated that property, subject matter of the suit is coparcenary property, in which, her husband, Baban Ram, S/o. Arjun was also having right and share. During lifetime of Baban Ram, she resided as his wife. After death of Baban Ram, her husband, plaintiffs have made several attempts and

tried to harass her and to save her life, she left her matrimonial home. In proceedings before the Tahsildar also plaintiffs submitted reply on 05.01.1994 that defendant No.1 left her matrimonial home, after death of her husband.

14. Learned trial Court dismissed the suit on the ground that after death of plaintiff No.2 (widow of Arjun), in absence of substitution of legal representatives, suit is abated.

15. Learned First Appellate Court, in an appeal filed by plaintiffs, had set-aside the judgment and decree passed by learned trial Court and further held that as legal representatives of deceased (plaintiff No.2) are already on record, therefore, there is no requirement of bringing legal representative on record under the Order 22 Rule 3 of C.P.C. and has placed reliance upon the decision in case of *Raj Mohan Singh Vs. Ram Vishal*, reported in *1979, J.L.J. 453 MP* and in case of *Mahavir Prasad Vs. Jogeshwar*, reported in *AIR 1971 SC 742*. Learned First Appellate Court, thereafter proceeded to consider the rights as claimed by the plaintiffs and held that there was no partition of coparcenary property as mentioned in Schedule-A of the plaint. It is jointly recorded in the name of Jagmohan, son of Arjun, Fuleshwari, widow of Arjun and defendant No.1, widow of Baban Ram/daughter-in-law of late Arjun. Learned First Appellate Court also held that in the facts of the case, to ascertain the right and title of the daughters of late Arjun (appellant No.2, 3 and 4), according to provisions under Section 6 of the Act of 1956, notional partition is to be made of property recorded in the name of Arjun (mentioned in Schedule-A) and further declared their share. The judgment and decree passe by learned First

Appellate Court was put to challenge by plaintiffs/appellants before the Hon'ble Supreme Court and the Hon'ble Supreme Court disposed of the civil appeal vide order dated 05.09.2023 in terms of the order passed in Civil Appeal No.5633 of 2023 and remanded back the case for fresh decision in light of the decision in case of **Vineeta Sharma (supra)**.

16. During pendency of first appeal, filed by plaintiffs/appellants, provisions Section 6 of the Act of 1956 came to be amended w.e.f. 09.09.2005, which reads as under :-

> **"Section 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 coparcenery property as she would have had if she had been a son;
>
> (c) be subject to the same liabilities in respect of the said coparcenery 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, 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 coparcenery 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.]

17. By way of amendment incorporated under Section -6, daughters in joint Hindu family governed by the Mitakshara law, coparceners were given equal right as of son by birth. Plaintiff No.1, Jagmohan, son of Arjun and brother of Baban Ram, in para-2 of his evidence stated that property in dispute is situated at village – Pipara. It is the ancestral property of his father – Arjun. Property is not partitioned till lifetime of his brother, Baban Ram. They were cultivating the land jointly and after death of Baban Ram, he is in possession and cultivating the land. Defendant No.1, widow of Baban Ram was never in possession, daughter of Baban Ram died earlier. In property, subject matter of suit, defendant No.1 has got her name recorded in the revenue records.

18. From the aforementioned evidence of the Jagmohan (P.W.-1), it is clear that property mentioned in the Schedule-A is a coparcenary property of which partition has not taken place.

19. In the case at hand, along two sons, late Arjun was having three daughters i.e. plaintiffs No.3, 4 & 5/appellants No.2 to 4. Learned First Appellate Court in its judgment and decree dated 17.01.2006 have declared the right and title of the appellants and defendant No.1 in accordance with Section 8 of the Act of 1956, which talks of general

rules of succession in the case of males by way of notional partition. On the date of passing of the judgment and decree by learned trial Court, persons claiming right over the property are children of late Arjun and her daughter in law, through his son Baban Ram, therefore, there were five successors of late Arjun.

20. Hon'ble Supreme Court in case of **Vinita Sharma (supra),** has observed thus :-

> "68. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of section 6(1)(a) and 6(1) (b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in section 6(1), it is not necessary that there should be a living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment, i.e., 9.9.2005 with saving of past transactions as provided in the proviso to section 6(1) read with section 6(5).

> 69. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted section 6(3).”

21. Hon’ble Supreme Court in para 137.1 has further observed that provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confers status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities. It is also observed that rights can be claimed by the daughter born earlier with effect from 09.09.2005 with savings as provided in Section 6 (1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004. In para 137.3 of the said judgment, it is clarified that since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 09.09.2005.

22. Hon’ble Supreme Court in clear terms has observed that substituted Section 6 of the Act of 1956 are required to be given full effect, which reads as under :-

> “137.4 The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.”

23. In the aforementioned facts of the case and the decision of Hon’ble Supreme Court, in the opinion of this Court, learned First Appellate Court while considering the right and title of parties to the suit on 17.01.2006 erred in applying notional partition for determining rights and share of the properties, when on the date of judgment of trial Court children of the land owner were only party, therefore, the judgment and decree of learned Court below to that extent is not sustainable and the judgment and decree to the extent deciding the share of the parties is set-aside.

24. In the aforementioned facts of the case, the amended provisions under Section 6 of the Act of 1956, the decision in case of **Veenita Sharma (supra)** further considering that on the date of passing of judgment and decree by learned trial Court, they were only 4 coparcener + widow of fifth coparcener i.e. two sons and three daughters of late Arjun, the original land owners, therefore, they all will have their right and title for share to the extent of 1/5 i.e. plaintiff No.1, 1/5 share,

plaintiff No.3, 1/5 share, plaintiff No.4, 1/5 share, plaintiff No.5, 1/5 share and defendant No.1, 1/5 share.

25. As in this appeal, appellant No.1 Jagmohan son of Arjun died and he is substituted by his son and widow, therefor, appellant No.1A and AB are held entitle of the share of Jagmohan of 1/5 share of suit property. Appellant No.2 Gendi Bai, daughter of Arjun died, therefore, her legal representative i.e. appellant No.2B and 2C are entitled for her 1/5 share. Appellant No.3 and 4 are entitled for 1/5 – 1/5 share of the suit property and respondent No.1A, legal representative of defendant No.1, is entitled for 1/5 share of suit property.

26. For the foregoing discussions made here-in-above, the appeal is allowed in part to the extent indicated here-in-above.

27. Decree be drawn accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Balram