A RAMESH VERMA (D) TR. LRS.

v.

LAJESH SAXENA (D) BY LRS & ANR.

(Civil Appeal No. 8665-8668 of 2010)

B NOVEMBER 24, 2016

[R. K. AGRAWAL AND R. BANUMATHI, JJ.]

Hindu Succession Act, 1956:

Applicability of – Suit for partition of property in dispute by
C *respondent no.1-daughter (since deceased) – Trial court held the respondent no.1 entitled to 1/12th share – High Court increased the share of respondent no.1 to 1/3rd – Plea of appellant-son (since deceased) that property left behind by the father was governed by survivorship under the Hindu* Mitakshara *coparcenary law and not*
D *Hindu Succession Act, 1956 – Held: The share received by appellant's father after a notional partition in 1952 was his separate property and no longer a* Mitakshara *property – Thus, after the enactment of Hindu Succession Act, 1956 devolution of such property of appellant's father would be only by succession and not by survivorship – Madhya Bharat Land Code – s.82.*

E *s.6 and its Proviso – Operation of – Appellant's plea that High Court was not right in holding that u/s.6, Hindu Succession Act, 1956 females have right to seek partition and divide the share – Held: s.6 deals with the question of a coparcener dying after coming into operation of the Act, without making any*
F *testamentary disposition of his undivided share in joint family property – The Act does not interfere with special rights of members of Mitakshara property except that it ensures to the female heirs, as specified in Class I of the Schedule, a share in the interest of a coparcener in the event of his death – Proviso to s.6 operates when*
G *the deceased leaves surviving him, a daughter, or any female as specified in Class I of the Schedule – In the case at hand, the deceased father left behind a son and 2 female heirs, namely his wife and daughter-respondent no.1– Therefore, High Court rightly increased the share of the respondent no.1-daughter to 1/3rd.*

s.23 – Dwelling house – "wholly occupied" – Right of female
H

heirs to claim partition thereof – Held: The expression dwelling house "wholly occupied" occurring in s.23 assumes importance – In the present case, it is brought in evidence that the house property was not wholly occupied by the family members and thus High Court was right in holding that the house property was also available for partition and the respondent no.1-daughter was entitled to her share.

Evidence Act, 1872 – s.68 – Will – Proof of – Held: A will like any other document is to be proved in terms of the provisions of s. 68 of Indian Succession Act and the Evidence Act – Indian Succession Act, 1925.

Dismissing the appeals, the Court

HELD: 1. The appellant's father received his share in a notional partition in 1952 after the death of his father (appellant's grand-father). On such partition the share that had fallen to him became his separate property. After the Hindu Succession Act, 1956 devolution of such property is only by succession and not by survivorship. The appellant submitted that Section 6 of the Hindu Succession Act, 1956 is not applicable for the devolution of property of appellant's father and that the High Court was not right in holding that under Section 6 females have right to seek partition and thus dividing the share among female heirs as well. This submission does not impress. Section 6 deals with the question of coparcener in a *Mitakshara* coparcener dying after coming into operation of the Hindu Succession Act, without making any testamentary disposition of his undivided share in the joint family property. The initial part of Section 6 stresses that the Act does not interfere with the special rights of those who are members of *Mitakshara* property except to the extent that it seeks to ensure the female heirs as specified in Class I of the Schedule, a share in the interest of a coparcener in the event of his death, by introducing the concept of a notional partition immediately before his death. Proviso to S. 6 operates where the deceased has left surviving him, a daughter, or any female as specified in Class I of the Schedule. In the case at hand, appellant's father had left the female heirs namely his wife and daughter-respondent no.1 and therefore, the devolution of his property, which he received in a notional partition in 1952 after the death of his father, was governed by the provisions of Hindu Succession

A **Act, 1956 and not by survivorship, as the same became his separate property and no longer a *Mitakshara* property, the High Court rightly increased the share of daughter-respondent no.1. [Paras 11, 12] [215-F-H; 216-A-C]**

2. A Will like any other document is to be proved in terms B **of the provisions of Section 68 of the Indian Succession Act and the Evidence Act. The propounder of the Will is called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect** C **of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution** D **of the document in the written statement. [Para 13] [216-D-E]**

Savithri v. Karthyayani Amma **(2007) 11 SCC 621 : 2007 (11) SCR 404 – relied on.**

3. As rightly submitted by the respondents, the expression dwelling house "wholly occupied" occurring in Section 23 of the E **Hindu Succession Act assumes importance. When it was brought in evidence that the house property was not wholly occupied by the family members, the High Court was right in holding that the house property was also available for partition and the deceased respondent no.1-daughter was entitled to 1/3rd share. The findings** F **recorded by the High Court are based upon facts and evidence and there is no reason to interfere with the conclusion arrived at by the High Court. [Para 19] [218-B-C]**

Case Law Reference

2007(11)SCR 404	**relied on**	**Para 14**

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8665-8662 of 2010.

From the Judgment and Order dated 31.07.1997 of the High Court of Judicature, Jabalpur Bench at Gwalior in FA No. 29 of 1991 & FA No. 30 of 1991 & FA No. 31 of 1991 & dated 07.12.2007 in WA No. 765 H of 2007.

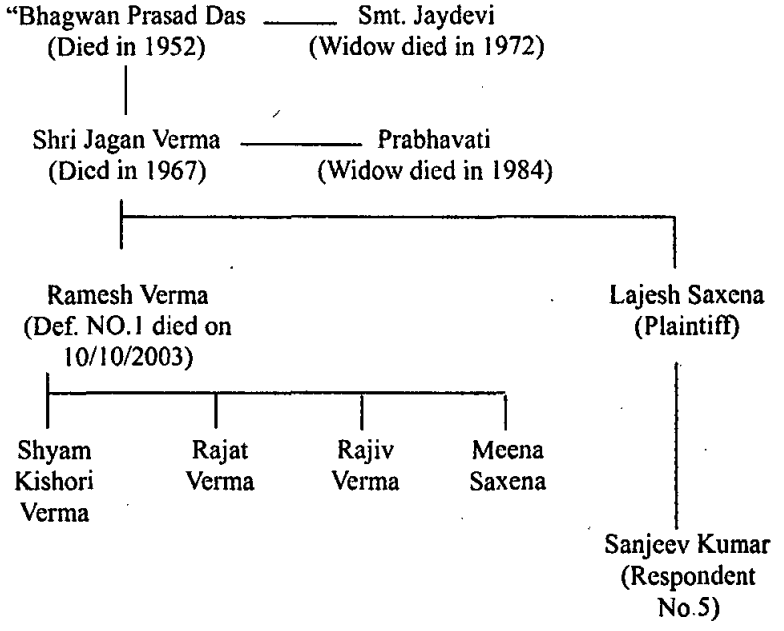
N. K. Mody, Sr. Adv., Rohan Jain, Adarsh Tripathi, Akshay Shrivastava, M. P. Shorawala, Advs. for the Appellants. A

Sushil Kumar Jain, Sr. Adv., Dileep Tandon, Manu Maheshwari, Abhinav Gupta, Ms. Pratibha Jain, Advs. for the Respondents.

The Judgment of the Court was delivered by B

R. BANUMATHI, J. 1. These appeals arise out of the common judgment of the High Court of Madhya Pradesh in First Appeal Nos.29, 30 & 31 of 1991 dated 31.07.1997.

2. The parties are related as under:-



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3. The deceased first respondent herein/plaintiff had filed the suit for partition on 26.02.1970 claiming 1/8th of the share in the family properties. The trial Court by the judgment dated 31.01.1991 passed the preliminary decree for partition being Civil Original Suit No.71A/1984 and held that :- G

"(i) Plaintiff Smt. Lajesh Saxena is entitled to get 1/12th share in the joint Hindu family property;

(ii) Defendant No.1 Ramesh Verma is entitled to get 1/3rd share in the property of Bhagwanprasad and 1/12th share in the property of Jagan Verma totalling 5/12th of the whole; H

A (iii) Defendant No.3 Rajiv Verma and defendant No.4 Rajat Verma are entitled to get jointly 1/12th share in the property of Prabhavati and 1/12th share in the property of Jaydevi i.e. total ½ share in the joint Hindu family property."

4. By holding so, the trial court accepted the execution of the B Wills being Exhibit D/2 dated 07.12.1969 executed by Jaydevi in favour of Rajiv Verma and Rajat Verma and also Exhibit D/1 dated 23.10.1977 executed by Prabhavati in favour of Rajiv Verma and Rajat Verma.

5. Being aggrieved by the judgment and decree of the trial Court, deceased Ramesh Verma preferred an appeal before the High Court of C Madhya Pradesh (FA No.29/1991). Sanjeev Kumar, son of plaintiff Lajesh Saxena as also the plaintiff-Lajesh Saxena filed appeals before the High Court in FA No.30/91 and FA No.31/1991, respectively.

6. After hearing the parties, the High Court vide its judgment dated 31.07.1997, allowed the appeal FA No.31/91 filed by Lajesh Saxena D holding that plaintiff is entitled to 1/3rd share in stead of 1/12th share in the Joint Hindu Property. Consequently, FA No.29/91 and FA No.30/91 filed by Ramesh Verma and Sanjeev, respectively, were disposed of. The High Court held that the execution of the Will Exhibit D/1 (dated 23.10.1977), Exhibit D/2 Will (dated 07.12.1969) and Exhibit D/1/C (dated 22.05.1984 executed by Prabhavati) were not proved in accordance E with Section 68 of the Indian Evidence Act and disbelieved the genuineness of all the three Wills.

7. Being aggrieved, Ramesh Verma (since deceased) through his legal heirs preferred these appeals.

F 8. We have heard learned counsel for the parties at considerable length.

9. Learned Senior Counsel for the appellants submitted that after the death of Jagan Verma 1/3rd share of the property devolved upon Ramesh Verma and the same will be governed by survivorship under G the Hindu *Mitakshara* coparcenary law and the High Court was not right in holding that under Section 6 of the Hindu Succession Act females have right to seek partition and dividing the share in property among Jaydevi, Prabhavati and his son and daughter, namely, Ramesh Verma and Lajesh Saxena. It was further submitted that the High Court has not appreciated the findings recorded by the trial Court in accepting the H genuineness of the Wills Exhibits D/1 and D/2 and the High Court erred

in disbelieving the genuineness of those two Wills. Learned Senior Counsel has taken us at length through Exhibits D/1 and D/2. It was further submitted that, in any event, if a dwelling house is occupied by the members of the family, then the right of any female heir to claim partition is suspended till the time the male heirs choose to divide their respective shares in terms of Section 23 of the Hindu Succession Act and the first respondent being a married daughter of the house is not entitled to claim her share and this aspect was not properly appreciated by the High Court.

10. Per contra, learned Senior Counsel appearing for the respondents has taken us through the judgment of the High Court and submitted that in the light of the contradictory statements of the attestors and scribes to the Will, the High Court rightly held that the Wills Exhibits D/1 and D/2 were not proved in accordance with Section 68 of the Indian Evidence Act. It was further submitted that since Jagan Verma died in the year 1967 i.e. after the enactment of Hindu Succession Act, the succession of Jagan Verma would be governed by Section 6 of the Hindu Succession Act and the High Court has rightly held that plaintiff-Lajesh Saxena would be entitled to 1/3rd share in the house property. Taking us through the relevant portion of the judgment of the High Court, learned Senior Counsel submitted that the High Court has recorded a clear finding that the house property is not "wholly occupied" by the family members and hence rightly held that the house property is also partable and that the respondent-plaintiff is entitled to 1/3rd share in the house property and the judgment of the High Court does not warrant interference.

11. On the death of Bhagwan Das in 1952, a notional partition has taken place and as per Section 82 of Madhya Bharat Land Code, his son Jagan Verma, grandson-Ramesh Verma and wife-Jaydevi are each entitled to get 1/3rd share in the property of Bhagwan Das. On such partition when a share has fallen to Jagan Verma, it became his separate property and no longer a *Mitakshara* property. After the Hindu Succession Act, 1956 devolution of Jagan Verma's property is only by succession and not by survivorship.

12. We are not impressed with the submission that Section 6 of the Hindu Succession Act, 1956 is not applicable for the devolution of property of Jagan Verma. Section 6 deals with the question of coparcener in a *Mitakshara* coparcener dying after coming into operation of the

A Hindu Succession Act, without making any testamentary disposition of his undivided share in the joint family property. The initial part of Section 6 stresses that the Act does not interfere with the special rights of those who are members of *Mitakshara* property except to the extent that it seeks to ensure the female heirs as specified in Class I of the Schedule, a share in the interest of a coparcener in the event of his death, by B introducing the concept of a notional partition immediately before his death. Proviso to Section 6 operates where the deceased has left surviving him, a daughter, or any female as specified in Class I of the Schedule. In the case at hand, Jagan Verma has left the female heirs namely his wife Prabhavati and daughter Lajesh Saxena and, therefore, C the devolution of the property of Jagan Verma was governed by the provisions of Hindu Succession Act and the High Court rightly increased the share of Jagan Verma's daughter Lajesh Saxena.

13. A Will like any other document is to be proved in terms of the provisions of Section 68 of the Indian Succession Act and the Evidence D Act. The propounder of the Will is called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the E purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.

14. In *Savithri v. Karthyayani Amma* reported as (2007) 11 SCC F 621 at page 629, this Court has held as under:-

> *"A Will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the testator must also be* G *established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time* H *he was in sound disposing state of mind and understood the*

nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before it can be accepted as genuine."

15. It is not necessary for us to delve at length to the facts of the matter as also the evidence adduced by the parties before the High Court. Suffice it to note that the execution of the Wills has to be proved in accordance with Section 68 of the Indian Evidence Act.

16. Insofar as the execution of the first Will dated 07.12.1969 is concerned, the witnesses Shyam Mohan Bhatnagar and scribe Mahesh Narayan have stated that the testator Jaydevi executed the Will and witnesses Shyam Mohan and R.P. Johri have signed. Witness Johri was the brother-in-law of Ramesh Verma and thus interested witness. Scribe Mahesh Narayan is known to mother-in-law of Ramesh Verma. After referring to their evidence, High Court held that execution of the Will has not been proved. Further, the High Court in its judgment has pointed out the contradictions in their evidences and recorded the factual finding that the Will could not have been executed in the manner as alleged by the witnesses. We do not find any reason to interfere with the factual findings recorded by the High Court.

17. Likewise, insofar as the findings recorded by the High Court regarding Will Exhibit D/1-Will dated 23.10.1977, the same was said to have been notarized by the neighbour of Ramesh Verma, namely, Bhagwati Prasad Singhal and said to have been attested by Shivaji Rao Tambat. In respect of Will Exhibit D/1 also, after referring to the evidence that Ramesh Verma told that there is a Will and hence witnesses and Prabhavati signed the Will, the High Court has recorded factual finding that Ramesh has manouvred the Will and the execution of Exhibit D/1 Will is not acceptable. We do not find any reason to interfere with the factual findings arrived at by the High Court.

18. Insofar as the submissions of the learned Senior Counsel regarding the dwelling house property are concerned, the High Court in its judgment in paragraphs 17 and 18 has pointed out that a portion of the house property has been let out. After referring to the evidence of Ramesh Verma, it has been pointed out by the High Court that presently

A the bungalow (Kothi) is now let out for marriage purposes and at the time of his giving evidence rent of Rs.400 per day was collected.

19. As rightly submitted by learned Senior Counsel for the respondents the expression dwelling house "wholly occupied" occurring in Section 23 of the Hindu Succession Act assumes importance. When
B it is brought in evidence that the house property is not wholly occupied by the family members and the High Court was right in holding that the house property is also available for partition and the deceased plaintiff Lajesh Saxena is entitled to 1/3rd share. The findings recorded by the High Court are based upon facts and evidence and are unimpeachable and we do not find any reason to interfere with the conclusion arrived at
C by the High Court.

20. Accordingly, the appeals are liable to be dismissed and they are dismissed. Parties are to bear their respective costs.

Divya Pandey

Appeals dismissed.