UTTAM v SAUBHAG SINGH & ORS.

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ABSTRACT

In this case, we shall explore a number of questions with regard to Mitakshara law. We shall explore the meaning of Hindu Joint Family, its basic characteristics, functions and tendencies. This paper will focus on property as seen in family law among Hindus in India as well as the rights, nature, attributes and traits of a coparcener as in the Hindu Succession Act of 1956.

The case explored has been long-drawn and has discussed at length the issues in question. By doing this, Uttam v. Saubhag Singh & Ors. has paved the way for many other judicial decisions henceforth.

The case has clarified the position of a son in the property of his father. It has also provided a clearer picture of the property rights of a grandson over his grandfather's property. Under Mitakshara law, a Hindu gains rights in the family property by birth; however, rules of inheritance may differ depending on the evolution of law. This has been highlighted in the case of Uttam v Saubhag Singh & Ors.

The case was first tried at a lower level and ended up reaching the Madhya Pradesh High Court. After various hearings, the court came to a decision; however, an appeal was filed. The final decision came from the apex court, The Supreme Court of India wherein the example was set for various Indian Hindu Mitakshara cases followed the example of this and based their arguments and even, decisions on the final word in this case.

Keywords**:** Mitakshara; Hindu Joint Family; Hindu Succession Act, 1956; Supreme Court of India; Coparcenery Property.

FACTS OF THE CASE

The **Uttam vs Saubhag Singh & Ors** is a case based on partition in Hindu Law. For this case, the relevant sections are – section 6, section 8, section 19 and section 30 of the **Hindu Succession Act, 1956**. The final decision of the case came on March 2, 2016.

Suit No.5A of 1999 was filed on the 28th December, 1998 before the Second Civil Judge, Class II Devas, Madhya Pradesh. The appellant sued his uncles, defendants 1, 2 and 4 as well as his father, defendant 3.

The appellant, Uttam claimed 1/8th share in the property in question on the basis that it was ancestral property and that under Mitakshara law, he was a coparcener having right over the suit property by birth. The grandfather of Uttam, Jagannath Singh was the one who had acquired the property. In 1973, he passed away leaving behind his wife, Mainabai and his 4 children, the appellant's 3 uncles and 1 father.

The four brothers – defendants 1, 2, 3 & 4 filed a joint statement in written claiming that the property was not an ancestral one and that a partition that had taken place earlier had caused the father of the plaintiff to have become separate, having his own separate share.

By the order that was dated 20th December, 2000, the trial court decreed that it had been admitted by Mangilal (witness) that no partition had taken place earlier in contrast to the defendants' claims.

The judgment that was dated January 12, 2005 by the first appellate court confirmed that the property was in fact ancestral and that no partition had taken place between the brothers. It was held by the court that upon the death of Jagannath Singh in 1973 and his widow, Mainabai being alive at the time of his death, the property of the deceased should have to be distributed in accordance with **Section 8, Hindu Succession Act, 1956** as the case would have been had he died intestate as the property dividing the property by intestacy, not by survivorship.

In light of this, the court ruled that if the property is divided by the rules as in **Section 8, Hindu Succession Act, 1956**, then in such a case no Joint Hindu Property would be left remaining for division in the condition that it was brought in at the time of the suit. Further, it was noted that

Uttam's father, son of Jagannath Singh, was a class I heir of the deceased; therefore, while his father was alive, Uttam had no right in this property.

A second appeal was filed in the Madhya Pradesh High Court. The MP High Court held that "In the present case, it is undisputed that Jagannath had died in the year 1973, leaving behind respondents No. 1 to 4 i.e. his four sons covered by Class I heirs of the Schedule therefore, the properties had devolved upon them when succession had opened on the death of Jagannath. It has also been found proved that no partition had taken place between respondents No. 1 to 4. The appellant who is the grandson of Jagannath is not entitled to claim partition during the lifetime of his father Mohan Singh in the properties left behind by Jagannath since the appellant has no birth right in the suit properties."[i]

ISSUES

1. Did the property retain its character as a Joint Hindu Property?
2. Did the appellant hold right over the suit property as a coparcener?
3. Did the appellant have a right to sue for partition while his father, a class I heir was alive?

CONTENTIONS

Since the widow of the deceased was alive at the time of the death of her husband, according to **section 6, Hindu Succession Act**, the property would devolve to the Class I heirs of the person who died intestate under **section 8, Hindu Succession Act** and not by survivorship.

It was also argued that it was well within the right of the appellant to sue for partition, despite his father being alive as the deceased's interests in the coparcenary property would be devolved by intestate succession and that the joint Hindu family property would not otherwise have any effect whatsoever. The coparcener's status and right of partition in the joint family property continued to subsist even after the death of his grandfather, indicating that his right to sue for partition remained intact.

From the appellant's side, it was further argued by the learned Senior Advocate, Shri Sushil Kumar Jain that such a suit could not be barred because **Section 8** of the Act would be applicable at the time of Jagannath Singh's death, hence the status of joint family property which is recognized under **Section 6** cannot be said to be taken away upon the application of **Section 8** .

It was also argued that the **Hindu Succession Act, 1956** abrogated only those provisions to the extent that had been indicated and that **section 6** and **section 8** be read in harmony. Therefore, the status of joint family property as indicated in section 6 may not be taken away if section 8 is being applied on Jagannath Singh's death.[ii]

Learned counsel appearing on behalf of the respondents, Shri Niraj Sharma countered the submissions made by the other party. The main argument was that once **section 8** of the **Hindu Succession Act, 1956** is applied, the property ceases to be joint family property by reason of the proviso to **Section 6** being applied.

The respondent(s) referred to the cases of ***Commissioner of Wealth Tax, Kanpur and Ors. v Chander Sen and Ors.*** and ***Bhanwar Singh v Puran***. The principles noted in these cases asserted that once **section 8** is applied to the facts of these cases, the property ceases to be considered joint family property implying that no family member can exercise the right to partition a property which is no longer a joint family property.[iii]

OBSERVATIONS – RATIO DECIDENDI

The Supreme Court referred to some cases before the 2005 amendment with proviso of **section 6** wherein **section 8** had been applied. Pursuant to the cases – ***Gurupad Khandappa Magdum v Hirabhai Khandappa Magdum*** and ***Shyama Devi (Smt) and Ors. v Manju Shukla (Mrs) and Anr.***, the court ruled that to determine the joint family property share of the deceased, under proviso to **section 6**, Hindu Succession Act, it is necessary to carry out a fictional partition before the demise of the deceased. Therefore, property of the defendant was devolved not by survivorship, but by intestate succession.[iv]

It was also stated by the Supreme Court of India that all the consequences that flow from the real partition should be worked out logically, indicating that the share an heir must be ascertained on the basis that they had separated from each other had received a share in the partition which had taken place during the lifetime of the deceased.[v] The Supreme Court also stated that the membership of a female, who inherits a share of the joint family property on the death of her husband, will not be affected after partition takes place.[vi]

It was also observed that, "Also, his case in the suit filed by him is not that he is entitled to this share but that he is entitled to a 1/8th share on dividing the joint family property between 8 co-sharers in 1998. What has therefore to be seen is whether the application of **Section 8**, in 1973, on the death of Jagannath Singh would make the joint family property in the hands of the father, uncles and the plaintiff no longer joint family property after the devolution of Jagannath Singh's share, by application of **Section 8**, among his Class I heirs."[vii]

For this matter, the court referring to ***Commissioner of Wealth Tax, Kanpur and Ors. v Chander Sen and Ors.*** and ***Yudhishter v Ashok Kumar*** held that the preamble of the Act clearly envisages that the Act is to amend and codify the laws relating to intestate succession. It was noted that Schedule 1 did not include a son's son but included a predeceased son's son.

It was also held by the court that pursuant to **section 19**, Hindu Succession Act, 1956 and taking into account ***Bhanwar Singh v Puran***, that when two or more heirs are to succeed, the property shall be divided between them per capita and not per stripes as also tenants-in-common and not as joint tenants. Accordingly, it was concluded that they did not continue to be joint coparcener.

JUDGMENT

The Court went on to say that a Hindu male under Mitakshara law who is a coparcener in a property dies after the **1956 Act** has been commenced, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary by virtue of **section 6, HAS, 1956**.

The interest of a Hindu male under Mitakshara law in a coparcenary property is when the property can be disposed of by him by the execution of a will or a testamentary disposition.

This is an explanation to **section 30** of the **HSA, 1956**. In this case, the same exception is provided for in the proviso to **Section 6**.

On reading, **sections 4, 8 and 19** of the Act comprehensively, it can be concluded that after the dissolution of JHF property according **Section 8**, the various persons who have succeeded to it hold the property as tenants in common and not as joint tenants.

It was conclusively held that the property in question was ancestral property. On the death of Jagannath Singh, the property ceased to be joint family property. Also, the widow and 4 sons were then tenants in common and not joint tenants of the property. The suit was held to be not maintainable and was dismissed with no order as to costs.

CONCLUSION

In this case, it was categorically lined out that the four defendants, who were the sons of deceased, were tenants as Jagannath Singh's widow was a class I heir. Clarity was provided on the issue that inheritance in such a case is possible only to the lined-out Class I heirs and not by survivorship pursuant to **Section 8, Hindu Succession Act** in harmony with **Section 6, Hindu Succession Act**.

The appellant did not hold any right over the suit as a coparcener as the property in question ceased to be Joint Hindu Property on the occasion of the death of Uttam's grandfather, Jagannath Singh in 1973. Though the property was ancestral, the fact that it ceased to function as joint property, the suit was not maintainable.

We can gather from this case that **section 8** cannot apply to devolution of coparcenary property that remains after the extraction of the share of the deceased which has converted into self-acquired by reason of one of the exceptions to the normal rule of **Section 6**.

It is therefore, evident that the case of ***Uttam v Saubhag Singh*** **(2016) 4 SCC 68209** made the position of heirs clear on Join Hindu Property in the case of an intestate death. It also cleared the doubts that may have existed on the position of Class I and Class II heirs, for instance here, the appellant, Uttam and his father.

ENDNOTES

[i] (2016) 4 SCC 68209
[ii] ibid
[iii] ibid
[iv] Gurupad Khandappa Magdum v Hirabhai Khandappa Magdum (1978) 3 SCC 383.
[v] Shyama Devi (Smt) and Ors. v Manju Shukla (Mrs) and Anr. 1994 6 SCC 342.
[vi] State of Maharashtra v Narayan Rao Sham Rao Deshmukh and Ors. 1985 3 SCR 358.
[vii] Uttam v Saubhag Singh (2016) 4 SCC 68209