IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No. 04 of 2024

AFR

Smt. Sandhya Rani Sahoo @ Mohanty	....	***Appellant***
		Mr. B. Baug, Senior Advocate
	-versus-	
Smt. Anusaya Mohanty	....	***Opposite Parties***
		Mr. Bibekananda Bhuyan, Senior Advocate Mr. S.S. Bhuyan, Advocate

CORAM:
THE HON'BLE MR. JUSTICE B. P. ROUTRAY
THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 02.04.2025

Chittaranjan Dash, J.:

1. By means of this appeal, the Appellant has challenged the judgment dated 12.12.2023 passed by the Learned Judge, Family Court, Bhubaneswar, in C.P. No. 576/2017, declaring the Respondent as the legally wedded wife of Late Kailash Chandra Mohanty and his legal heir, thereby entitling her to inherit his ancestral and self-acquired property.

2. The background facts of the case are that the Respondent, Anusaya Mohanty, initiated C.P. No. 576 of 2017 before the Family Court, Bhubaneswar, seeking a declaration that she is the legally

wedded wife of Late Kailash Chandra Mohanty and his rightful legal heir. The Respondent claimed that their marriage took place on 05.06.1966 as per Hindu rites and customs, and they lived together, raising two sons. She further alleged that the Appellant, Sandhya Rani Sahoo @ Mohanty, was merely a nurse who worked with the deceased and had no legitimate marital relationship with him. The Family Court decreed the suit on 29.10.2021, declaring the Respondent as the legally wedded wife and legal heir of Late Kailash Chandra Mohanty, entitling her to inherit his ancestral and self-acquired property. Aggrieved by the judgment, the Appellant filed MATA No. 96 of 2021 before this Court, challenging the decision on the grounds that she was not given a fair opportunity to present her case. The Appellant contended that her lawyer had passed away during the proceedings, and due to the disruptions caused by the COVID-19 pandemic, she was unaware of the developments, leading to the case being decided in her absence. This Court, in its order dated 13.07.2023, observed that there was reasonable cause for the Appellant's non-appearance and held that the Family Court's judgment was passed without affording the Appellant proper opportunity to contest the matter.

Consequently, this Court set aside the judgment dated 29.10.2021 and remitted the matter back to the Family Court, Bhubaneswar, for fresh adjudication. Additionally, this Court issued an interim arrangement concerning the disputed property. Considering the advanced age of both parties with the Respondent approaching 80 years and the Appellant around 70 years, this Court directed that, until the final outcome of the case, the usufructs arising from the property would be shared in a 60:40 ratio, with

60% in favour of the Respondent, Anusaya Mohanty, and 40% in favour of the Appellant, Sandhya Rani Sahoo @ Mohanty. Following the remission, the Family Court reheard the matter and passed a fresh judgment on 12.12.2023, once again declaring the Respondent as the legally wedded wife of Late Kailash Chandra Mohanty and his legal heir, thereby reaffirming her right to inherit his ancestral and self-acquired property. As a result of the Family Court's decision, the Appellant has preferred the present Matrimonial Appeal, challenging the judgment dated 12.12.2023.

3. Mr. B. Baug, learned Senior Counsel appearing on behalf of the Appellant, contends that the Family Court lacked jurisdiction to entertain the suit, arguing that the Respondent's prayer for a declaration of marital status should have been brought before the Civil Court under Section 34 of the Specific Relief Act, rather than under Section 7 of the Family Courts Act, 1984. He further asserts that the suit is barred by limitation, as it was filed more than three years after the death of Late Kailash Chandra Mohanty, making it time-barred under Article 58 of the Limitation Act, 1963. Additionally, Mr. Baug challenges the Family Court's finding that the Respondent is the sole legal heir of the deceased, contending that the children born from the Appellant's relationship with Late Kailash Chandra Mohanty are legitimate under Section 16 of the Hindu Marriage Act, 1955, and are entitled to inherit their father's self-acquired property as Class-I heirs under the Hindu Succession Act, 1956. Mr. Baug asserts that the Family Court erred by failing to explicitly recognize this right in its final order. Consequently, he prays for the setting aside of the impugned judgment and proper consideration of her claims and those of her children as legal heirs

of Late Kailash Chandra Mohanty. Mr. Baug has placed his reliance on the following decisions – ***Samar Kumar Roy vs. Jharna Bera*** reported in **(2008) 1 SCC 1**; ***Harmohan Senapati vs. Smt. Kamala Kumari Senapati and Anr.*** Reported in **AIR 1979 ORISSA 51; *Renubala Moharana and anr vs. Mina Mohanty and ors*** reported in **AIR 2004 SC 3500; *Hanamanthappa and Anr vs. Chandrashekharappa and Ors*** reported in **(1997) 9 SCC 688; *Sri Amar Chand Inani vs. The Union of India*** reported in **(1973) 1 SCC 115; *State of Punjab vs. K.R. Erry and Sobhag Rai Mehta And State of Punjab vs. Shri Khaushal Singh, P.A.S.*** reported in **(1973) 1 SCC 120; *Oil and Natural Gas Corp. Ltd. Vs. Modern Construction and Company*** reported in **(2014) 1 SCC 648.**

4. Mr. S. S. Bhuyan, the learned counsel appearing on behalf of the Respondent, contends that the Family Court rightly exercised its jurisdiction under Section 7(1)(b) of the Family Courts Act, 1984, as the suit sought a declaration of her marital status, which falls squarely within the Family Court's purview. He further argues that the suit is not barred by limitation, as the period spent pursuing the matter before the Civil Court, which returned the plaint for lack of jurisdiction, should be excluded under Section 14(2) of the Limitation Act, 1963. Additionally, Mr. Bhuyan asserts that the Family Court correctly declared the Respondent as the legally wedded wife and legal heir of Late Kailash Chandra Mohanty, based on ample oral and documentary evidence. While acknowledging that the Appellant's children are legitimate under Section 16 of the Hindu Marriage Act, Mr. Bhuyan argues that this does not affect the Respondent's status as the lawful wife or her right to inherit the ancestral property. He prays for the dismissal of

the present appeal, asserting that the Family Court's findings are just and proper. Mr. Bhuyan has placed his reliance on the following decisions – ***Balram Yadav vs. Fulmaniya Yadav*** reported in **AIR 2016 SC 2161; *Hasina Bano vs. Mohd. Ehsan*** reported in **2024 SCC OnLine AI 5194; *Jitendra Kumar Choudhary vs. Banku Sahoo*** reported in **FAO No. 27 of 2013.**

5. The Family Court, in its findings, held that the Respondent is the legally wedded wife of Late Kailash Chandra Mohanty and his rightful legal heir. The Court found that the Respondent established her marriage with the deceased through credible oral and documentary evidence, including voter identity cards, service records, and letters exchanged between them. It ruled that the suit was not barred by limitation, applying Section 14 of the Indian Limitation Act, 1963, to exclude the time spent pursuing the matter in the wrong forum. On the issue of jurisdiction, the Court concluded that the matter fell within the purview of Section 7(1)(b) of the Family Courts Act, 1984, as it concerned the declaration of marital status. Furthermore, the Court determined that the Appellant's alleged marriage to the deceased was invalid under the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA") as the Respondent's marriage was still subsisting at the time. However, it acknowledged that the Appellant's children would be considered legitimate and would have inheritance rights. Consequently, the Court declared the Respondent as the legally wedded wife and lawful heir, entitled to inherit both the ancestral and self-acquired properties of Late Kailash Chandra Mohanty.

6. In course of final hearing, this Court, as per the order dated 17.03.2025, found it appropriate to outline the Appeal in the following three issues: -

(i) Whether the Respondent's prayer for declaration of her marital status is maintainable before the learned Judge, Family Court under Section 7 of the Family Courts Act, or whether she was required to approach the Civil Court under Section 34 of the Specific Relief Act?

(ii) Whether the suit filed by the Respondent before the learned Judge, Family Court is barred by limitation, having been filed more than three years after the death of Late Kailash Chandra Mohanty?

(iii) Whether the direction of the learned Judge, Family Court, depriving the issues born from the Appellant (Second Wife) from the properties of Late Kailash Chandra Mohanty, is violative of Section 16 of the Hindu Marriage Act?

Both the parties have submitted their replies addressing these issues in the meantime, and it is now incumbent upon this Court to scrutinise the matter independently and render its findings accordingly.

Issue (i) - Whether the Respondent's prayer for declaration of her marital status is maintainable before the learned Judge, Family Court under Section 7 of the Family Courts Act, or whether she was required to approach the Civil Court under Section 34 of the Specific Relief Act?

7. The Appellant contends that the relief sought by the Respondent, a declaration of her status as the legally wedded wife of Late Kailash Chandra Mohanty does not fall within the jurisdiction of the Family Court. According to the Appellant, the proper recourse for such a declaration lies under Section 34 of the Specific Relief Act, 1963, which governs suits for declaratory relief. The Appellant argues that the Family Court, being a creature of statute, derives its jurisdiction strictly from the Family Courts Act, 1984, and any matter outside its express mandate must be brought before a Civil Court of competent jurisdiction. The Appellant relies on the principle that jurisdiction cannot be inferred but must be expressly conferred, and since the Respondent's suit primarily seeks a declaration of marital status, it should have been adjudicated by a Civil Court.

Conversely, the Respondent asserts that the Family Court had the necessary jurisdiction under Section 7(1)(b) of the Family Courts Act, 1984. Section 7(1)(b) empowers Family Courts to decide suits or proceedings for "a declaration as to the validity of a marriage or as to the matrimonial status of any person." The Respondent contends that her prayer to be declared the legally wedded wife of Late Kailash Chandra Mohanty squarely falls within this provision. Moreover, the Respondent points out that the Appellant never raised the issue of jurisdiction in the initial stages before the Family Court or even during the earlier MATA No. 96 of 2021, and is therefore estopped from raising it at this stage. The Respondent further submits that the matter was initially filed before the Civil Court but was returned under Order VII Rule 10 of the

CPC for want of jurisdiction, reinforcing the argument that the Family Court is the appropriate forum.

8. This Court, after carefully considering the rival submissions and examining the statutory provisions, finds that Section 7(1)(b) of the Family Courts Act, 1984, is broad enough to encompass the relief sought by the Respondent. The provisions reads as follows:

> "**7. Jurisdiction**.—(1) Subject to the other provisions of this Act, a Family Court shall—
>
> (a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and
>
> (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.
>
> *Explanation*.— The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—
>
> (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
>
> (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

Additionally, Section 8 of the Family Courts Act reinforces the exclusivity of the Family Court's jurisdiction by expressly barring the jurisdiction of Civil Courts in matters covered under Section 7. The provision reads as:

> **8. Exclusion of jurisdiction and pending proceedings.—**Where a Family Court has been established for any area,—
>
> (a) no district Court or any subordinate civil Court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;
>
> (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);
>
> (c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),—
>
> (i) which is pending immediately before the establishment of such Family Court before any district Court or subordinate Court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and
>
> (ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.

Finally, **Section 20 of the Family Courts Act** provides that the Act has an overriding effect over any other law that may be inconsistent with it:

> **20. Act to have overriding effect**.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

9. The Hon'ble Supreme Court, in ***Balram Yadav vs. Fulmaniya Yadav*** reported in **AIR 2016 SC 2161**, has categorically held the following –

> *"Under Section 7(1) Explanation (b), a Suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court,*
> *since under* ***Section 8****, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status.*
> *Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws."*

10. The language of the above-mentioned provisions leaves no room for ambiguity. A suit seeking a declaration of marital status whether it affirms or denies the existence of a valid marriage squarely falls within the ambit of the Family Court's jurisdiction. Once the Family Court jurisdiction is established over a matter, any attempt to bypass it would undermine the very purpose of establishing Family Courts, which is to provide a specialised forum for resolving family disputes efficiently. In the present case, the core of the matter is a declaration of marital status, which aligns squarely with Section 7(1)(b) of the Family Courts Act. The Family Court had the proper jurisdiction under Section 7(1)(b) of the Act to entertain the Respondent's prayer for a declaration of her marital status. The provision clearly vests the Family Court with the

authority to decide matters relating to the validity of a marriage and the matrimonial status of any person.

11. The Appellant's argument that the Respondent ought to have approached the Civil Court under Section 34 of the Specific Relief Act is misplaced, as the Family Courts Act is a special law enacted to deal with disputes of a matrimonial nature, including the determination of marital status. The principle of *lex specialis derogat legi generali* i.e. meaning special law prevails over general law applies in this context, giving precedence to the Family Courts Act over the general provisions of the Specific Relief Act. Furthermore, the Family Court's jurisdiction is not merely concurrent but exclusive for matters enumerated under Section 7, thereby precluding the jurisdiction of Civil Courts in such cases.

Moreover, the fact that the Respondent initially approached the Civil Court and the plaint was returned under Order VII Rule 10 CPC further reinforces the conclusion that the Family Court was the correct forum. The Appellant's failure to challenge the jurisdiction in the earlier proceedings further weakens her case, as jurisdictional objections must be raised at the earliest stage of litigation.

12. Therefore, this Court finds no merit in the Appellant's contention regarding lack of jurisdiction. The Family Court validly exercised its jurisdiction under Section 7(1)(b) of the Family Courts Act, and the Appellant's objection regarding maintainability is, accordingly, untenable and stands rejected.

Issue (ii) - Whether the suit filed by the Respondent before the learned Judge, Family Court is barred by limitation, having been

filed more than three years after the death of Late Kailash Chandra Mohanty?

13. The Appellant contends that the Respondent's suit is barred under the Limitation Act, 1963. According to the Appellant, Article 58 of the Limitation Act prescribes a three-year limitation period for suits seeking a declaration, starting from the date when the right to sue first accrues. The Appellant argues that the cause of action arose on 12.07.2012, the date of Late Kailash Chandra Mohanty's death. Therefore, the Respondent's suit, filed on 24.07.2017, is time-barred, as it was filed more than five years after the cause of action arose. The Appellant further submits that the Respondent failed to seek condonation of delay under Section 5 of the Limitation Act and did not provide any explanation for the delay, making the suit liable for dismissal on this ground alone.

Conversely, the Respondent asserts that the suit is not barred by limitation, relying on the principle that time spent prosecuting a case in the wrong forum should be excluded from the calculation of the limitation period. The Respondent initially filed C.S. No. 1998 of 2013 before the Civil Judge (Senior Division), Bhubaneswar, seeking a declaration of her marital status and legal heirship. However, the Civil Court returned the plaint on 13.01.2016, citing lack of jurisdiction. The Respondent subsequently challenged this order by filing CMP No. 278 of 2016, which was dismissed on 10.05.2017. Thereafter, the Respondent filed the present suit before the Family Court on 24.07.2017. The Respondent contends that the period from the institution of C.S. No. 1998 of 2013 until the dismissal of CMP No. 278 of 2016 should be

excluded under Section 14(2) of the Limitation Act, which allows for the exclusion of time spent in bona fide pursuit of a claim before a Court that lacked jurisdiction. The Respondent further submits that, as per settled law, there is no prescribed period of limitation for seeking a declaration of marital status before the Family Court.

14. Upon careful consideration of the rival submissions, it is imperative to analyse the interplay between the Limitation Act, 1963, and the Family Courts Act, 1984, in the context of suits seeking a declaration of marital status.

Article 58 of the Limitation Act prescribes a three-year limitation period for suits seeking a declaration, starting from the date when the right to sue first accrues. In the present case, the Appellant asserts that the cause of action arose on 12.07.2012, the date of Late Kailash Chandra Mohanty's death, and therefore, the suit filed on 24.07.2017 is barred by time. However, this Court finds that such a rigid application of Article 58 overlooks certain critical legal principles.

15. Firstly, Section 14(2) of the Limitation Act provides relief in cases where a party has pursued a matter in good faith before a Court that ultimately lacked jurisdiction. It reads as:

> "In computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant, shall be excluded where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

In the present case, the Respondent initially filed C.S. No. 1998 of 2013 before the Civil Judge (Senior Division), Bhubaneswar, seeking a declaration of her marital status and legal heirship. However, the Civil Court returned the plaint on 13.01.2016, holding that it lacked jurisdiction to entertain the matter. The Respondent subsequently filed CMP No. 278 of 2016, challenging the order of the Civil Court, which was dismissed on 10.05.2017. Only thereafter did the Respondent file the present suit before the Family Court on 24.07.2017. Therefore, the period spent in prosecuting the earlier suit and the subsequent challenge before the Civil Court ought to be excluded under Section 14(2) of the Limitation Act. This principle has been consistently upheld by the Hon'ble Supreme Court, which recognises that parties should not be penalised for diligently pursuing their claims before a forum that ultimately lacks jurisdiction.

Secondly, a conjoint reading of Section 7 of the Family Courts Act and Section 29(3) of the Limitation Act lends support to the view that proceedings before the Family Court are not subject to a strict limitation period. Section 7(1)(b) of the Family Courts Act expressly empowers the Family Court to decide suits or proceedings for "a declaration as to the validity of a marriage or as to the matrimonial status of any person." Importantly, the Family Courts Act does not prescribe any limitation period for such proceedings. Section 29(3) of the Limitation Act clarifies that where a special law provides for a different limitation period or excludes the application of the Limitation Act, the special law will prevail. In the absence of a specific limitation period under the

Family Courts Act, the general principles of delay and laches apply, rather than the rigid timelines under the Limitation Act.

16. A party seeking to establish or refute marital status cannot be barred from seeking such a declaration merely because a certain period has elapsed, particularly when the dispute has long-standing consequences for inheritance, legitimacy, and personal law rights. The concept of "continuing cause of action" applies in cases involving marital status. The Respondent's right to assert her status as the legally wedded wife of Late Kailash Chandra Mohanty is not a right that extinguishes over time, as it forms the foundation of her claims over his property and other legal entitlements. As long as the Respondent's status remained contested by the Appellant, the cause of action continued. Therefore, even assuming that no statutory exclusion under Section 14(2) applies, the continuing nature of the dispute sustains the Respondent's right to seek a declaration.

17. In light of these considerations, this Court finds that the Respondent's suit before the Family Court is not barred by limitation. The time spent in prosecuting the matter before the Civil Court and the subsequent challenge before the High Court must be excluded under Section 14(2) of the Limitation Act. Moreover, given the absence of any specific limitation period under the Family Courts Act and the continuing nature of the dispute, the Respondent's claim remains legally tenable. Accordingly, the Appellant's objection regarding limitation lacks merit and stands rejected.

Issue (iii) - Whether the direction of the learned Judge, Family Court, depriving the issues born from the Appellant (the Second

Wife) from the properties of Late Kailash Chandra Mohanty, is violative of Section 16 of the Hindu Marriage Act, 1955?

18. In view of this issue, the Appellant's concern is that in the final order section of the Family Court's judgment, it is only declared that the Respondent is the legal heir of late Kailash Chandra Mohanty and entitled to inherit his ancestral and self-acquired property. However, despite discussion in the judgment, the Family Court has not clarified in the final order that the children born from the Appellant have a right over both ancestral and self-acquired property of the deceased.

19. In this regard, it is pertinent to examine the right of inheritance of such children under the Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956 (hereinafter referred to as "HSA"). Section 16 of the HMA confers legitimacy on children born from void and voidable marriages, ensuring that they are entitled to inherit their parents' property. Under the HSA, legitimate children including those legitimised under Section 16 of the HMA, fall under the category of Class-I heirs, giving them an undisputed right to inherit the self-acquired property of their parents.

20. To better understand, we may refer to the case in the matter of ***Revanasiddappa & Anr. versus Mallikarjun & Ors***., reported in **2023 LiveLaw (SC) 737**, wherein the Hon'ble Supreme Court has dealt with the issue as to whether the children born from void or voidable marriages, though conferred legitimacy under Section 16(1) and (2) of the HMA, could claim rights in ancestral property or as coparceners under the HSA. Held as under: -

"54. We now formulate our conclusions in the following terms:

(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or after the commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

(ii) In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child 'begotten or conceived' before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

(iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in subsection (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

(iv) While construing the provisions of Section 3(1)(j) of the HSA 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA 1956. In other words, a child who is legitimate under sub-section (1) or subsection (2) of Section 16 of the HMA would, for the purposes of Section 3(1)(j) of the HSA 1956, fall within the ambit of the explanation 'related by legitimate kinship' and cannot be regarded as an 'illegitimate child' for the purposes of the proviso;

(v) Section 6 of the HSA 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the

acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;

(vi) Section 6 of the HSA 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9 September 2005 by the Amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 as amended, on a Hindu dying after the commencement of the Amending Act of 2005 his interest in the property of a Joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by Mitakshara law has been made the norm;

(vii) Section 8 of the HSA 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

(viii) While providing for the devolution of the interest of a Hindu in the property of a Joint Hindu family

governed by Mitakshara law, dying after the commencement of the Amending Act of 2005 by testamentary or intestate succession, Section 6 (3) lays down a legal fiction namely that 'the coparcenary property shall be deemed to have been divided as if a partition had taken place'. According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

(ix) For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

(x) The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above."

21. The Hon'ble Supreme Court held that Section 16(3) of the HMA restricts the property rights of such children to only the

property that comes in the share of the parents out of the joint family property besides self-acquired property. To be more specific, the judgment further clarifies that where the parent was a Hindu Mitakshara coparcener, the explanation to Section 6(3) of the HSA comes into play, that reads as –

> **6. Devolution of interest in coparcenary property.**
> (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 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.

This means that before the devolution of the parent's property, a notional partition must be presumed to have occurred immediately before the parent's death, thereby determining the parent's share in the coparcenary property. Once the share of the

deceased parent is ascertained through this notional partition, the legal heirs including children born from void or voidable marriages are entitled to their rightful share in such property.

22. Accordingly, we find merit in the Appellant's concern and deem it necessary to modify the Family Court's order by incorporating a specific clarification. This Court holds that the children born from the Appellant and Late Kailash Chandra Mohanty are obviously entitled to inherit his self-acquired property. Additionally, where the deceased parent was a Mitakshara coparcener, such children shall also inherit their share in the ancestral property, limited to the portion that would have been allotted to their parent upon a notional partition before their death. The Family Court's order shall be modified to reflect this clarification.

23. In view of the above discussions, this Court finds no merit in the Appellant's other contentions. As a necessary corollary, the jurisdiction exercised by the learned Judge, Family Court under Section 7(1)(b) of the Family Courts Act, is just and proper. Further, in view of our discussion as above, on the issue of limitation, the suit is also not barred by limitation. Furthermore, the Family Court has correctly declared the Respondent as the legally wedded wife of Late Kailash Chandra Mohanty and his legal heir, entitled to inherit his ancestral and self-acquired property. As already discussed, the judgment dated 12.12.2023 by the Judge, Family Court, Bhubaneswar, is modified to the extent that the Appellant's children have the right to inherit the self-acquired property of Late Kailash Chandra Mohanty, as well as their rightful share in his ancestral property, subject to the portion that would

have been allotted to him upon a notional partition before his death, as per section 6(3) of the HSA.

24. Accordingly, the Appeal is dismissed on merit, and the impugned judgment is upheld with the aforementioned modification.

(Chittaranjan Dash)
Judge

B.P. Routray, J. I agree.

(B. P. Routray)
Judge

A.K.Pradhan/Bijay