2026:CGHC:5150

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RAHUL JHA
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HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 22-01-2026

Judgment delivered on 30-01-2026

SA No. 26 of 2012

Amrika Bai W/o Ranjit Lodhi Aged About 35 Years D/o Dhanku Lodhi, By Occupation, Agriculturist, R/o Village Ramatola, Tah.- Dongargarh, Distt. Rajnandgaon C.G.

... Appellant

Versus

1 - Bhagwati Bai W/o Dhanku Lodhi Aged About 40 Years Village- Ramatola, Dongargarh, Distt. Rajnandgaon C.G.

2 - Ajay Kumar S/o Dhankulodhi Aged About 15 Years Minor Through Mother Bhagwatibai Age About 40 Years W/o Dhankulodhi R/o Village Ramatola Dongargarh District- Rajnandgaon (C.G.)

3 - Madhav S/o Dhankulodhi Aged About 13 Years Minor Through Mother Bhagwatibai Age About 40 Years W/o Dhankulodhi R/o Village Ramatola Dongargarh District- Rajnandgaon (C.G.)

4 - Cholu S/o Dhankulodhi Aged About 9 Years Minor Through Mother Bhagwatibai Age About 40 Years W/o Dhankulodhi R/o Village Ramatola Dongargarh District- Rajnandgaon (C.G.)

5 - Durga Prasad S/o Dhankulodhi Aged About 6 Years Minor Through Mother Bhagwatibai Age About 40 Years W/o Dhankulodhi R/o Village Ramatola Dongargarh District- Rajnandgaon (C.G.)

6 - State Of Chhattisgarh Through Collector, Rajnandgaon (C.G.)

7 - Gautriha S/o Gangaprasad Aged About 50 Years Caste Lodhi R/o Village Mundgaon Tahsil Dongargarh District- Rajnandgaon (C.G.)

8 - Laxmibai W/o Rewa D/o Gautriha Aged About 25 Years Caste Lodhi R/o Village Mundgaon Tahsil Dongargarh District- Rajnandgaon (C.G.)

9 - Gayatri D/o Gautriha Aged About 20 Years Caste Lodhi R/o Village Mundgaon Tahsil Dongargarh District- Rajnandgaon (C.G.)

10 - Radhika D/o Gautriha Aged About 18 Years Caste Lodhi R/o Village Mundgaon Tahsil Dongargarh District- Rajnandgaon (C.G.)

11 - Khemchand S/o Gautriha Aged About 14 Years Minor Through Gautriha Aged About 50 Years S/o Gangaprasad Caste Lodhi R/o Village Mundgaon Tahsil Dongargarh District- Rajnandgaon (C.G.)

12 - Bhavantin D/o Gautriha Aged About 9 Years Minor Through Gautriha Aged About 50 Years S/o Gangaprasad Caste Lodhi R/o Village Mundgaon Tahsil Dongargarh District- Rajnandgaon (C.G.)

13 - Lilabati D/o Gautriha Aged About 6 Years Minor Through Gautriha Aged About 50 Years S/o Gangaprasad Caste Lodhi R/o Village Mundgaon Tahsil Dongargarh District- Rajnandgaon (C.G.)

...Respondent

(Cause-title taken from Case Information System)

For Appellants	:	Mr. Parag Kotecha, Advocate
For Respondents No.1 to 5	:	Mr. Sanjay Patel, Advocate
For Respondent/State	:	Mr. Lekhram Dhruv, Advocate
For Respondents No.7 to 13	:	None, despite service of notice

Hon'ble Shri Bibhu Datta Guru, J

C A V Judgment

1. By the present appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant/plaintiff has challenged the impugned judgment and decree dated 14.12.2011 passed by the learned Additional District Judge, Circuit Dongargarh, District Rajnandgaon, in Civil Appeal No. 13-A/2008 (Amrika Bai & Ors. v. Bhagwati Bai & Ors.), arising out of the judgment and decree dated 25.11.2008 passed by the learned Civil Judge, Class-I, Dongargarh, District Rajnandgaon (C.G.), in Civil Suit No. 35-A/2006 (Amrika Bai & Ors. v. Dhanuk & Ors.), whereby the learned Additional District Judge dismissed the appeal preferred by the plaintiff/appellant. For the sake of convenience, the parties hereinafter shall be referred to as per their status before the learned trial Court.

2. The instant appeal was admitted by this Court on 21.06.2021 on the following substantial question of law :

> *"Whether both the Courts below were justified in dismissing the suit holding that by virtue of proviso to sub Section (1) of Section 6 of the Hindu Succession Act, 1956, the plaintiff is not entitled to succeed the property of her father, Dhanuk, by recording a finding which is perverse to the record.?"*

3. The plaintiffs preferred a suit for partition of agricultural land for separate possession of land situated at Patwari Halka No. 25 Lalbahadur Nagar, Tahsil Dongargarh, Khasra No. 378 Rakba 0.862 Hectare, Khasra No. 692 Rakba .016 Hectare, Khasra No. 690 Rakba 0.138 hectare, khasra No. 357/1 Rakba 0.142 Hect, Khasra No. 416 Rakba 0.231 Hect., Khasra No. 431 Rakba 0.202 hect, Khasra No. 598 Rakba 0.360 hect. Khasra No. 600 Rabka 0.930 Hect. Khasra No. 610 Rakba 0.150 Hect and Khasra No. 617 Rakba 0.267 Hectare of land, pleading *inter alia* that plaintiff No.1 is the daughter of original defendant No.1 Dhanuk whereas the plaintiff No.2 is the husband of Kachra Bai, who is another daughter of said Dahnuk and the plaintiffs No.3 to 8 are the children of plaintiff No.2. It has been pleaded that the father of original defendant No.1 Dhanuk namely; Dhukhel Lodhi owned 26.00 acres of land. After death of Dhukhel, in the partition of

ancestral property, Dhanuk received 6.30 acres of land. From the income derived from the said ancestral property, Dhanuk purchased 2.50 acres of land from Asharam and others of village Ramatola and thereafter started residing separately from the joint family of his brothers along with his wife Hemkunwar. Out of wedlock of Hemkunwar Bai & Dhanuk, they blessed with two daughters, namely Amrikabai (plaintiff No.1) and Kacharabai (since deceased), who is the wife of plaintiff No.2 and mother of plaintiffs No.3 to 8. Dhanuk used to habitually assault his wife Hemkunwar. After the marriage of both daughters, he began to subjected Hemkunwar Bai to further cruelty and brought Bhagwatibai (defendant No.2) to the house as his wife. Consequently, his first wife Hemkunwar Bai filed an application before the Court seeking maintenance, which was allowed. Upon filing of the maintenance proceedings by Hemkunwar Bai, Dhanuk, under the influence of his second wife Bhagwatibai, got 2.82 hectares, i.e., approximately 5.50 acres of land out of the ancestral property mutated in the names of his sons Ajay Kumar (defendant No.3) and Madhav (defendant No.4), who were born from Bhagwatibai, and retained only 1.016 hectares, i.e., approximately 2.54 acres of land in his separate account. During this period, Hemkunwar Bai passed away. According to the

plaintiffs, when the husband of plaintiff No.1 assaulted her and drove her out of the matrimonial home, plaintiff No.1 requested her father Dhanuk to provide her with land and a house for her livelihood. Thereupon, Dhanuk gave her 1.25 acres of land along with a portion of a house for her maintenance, where she resided and carried out agricultural activities. However, defendant No.1 Dhanuk (since deceased) illegally sold 0.25 acres of the land so given to plaintiff No.1 to one Bilkataram on 09.01.2006 and is also attempting to sell the suit property. Defendant No.1 Dhanuk contracted marriage with Bhagwatibai, during the lifetime of first wife Hemkunwar Bai that too without obtaining a divorce from her.

4. In the said Civil Suit, the defendants submitted their written statement and denied the plaint averments. They submitted that Dhanuk had received approximately 6.00 acres of land in partition. After the partition, he purchased 2.50 acres of land from his own income, which he had already sold about 10 years ago. Dhanuk sold 4.00 acres of land to defendants Nos. 3 and 4, which was purchased in their names as minors for a consideration of Rs. 1,00,000/- through a registered sale deed, out of the money received by their mother Bhagwatibai from her parental home. Due to the obstinate and short-tempered nature of Hemkunwar

Bai, she obtained a divorce from Dhanuk in accordance with caste customs and traditions, and thereafter Dhanuk married Bhagwatibai. Plaintiff No.1 persistently demanded partition from her father Dhanuk, whereupon, about eight years ago, Dhanuk called villagers and allotted her 1.00 acre of land in partition, over which she is in exclusive possession and cultivation. In the said partition, Dhanuk also allotted a portion of the house to plaintiff No.1, in which she is residing. In this regard, a written document was prepared in the village and was signed by the panch witnesses. Thus, the plaintiff is not entitled for any relief and prayed for dismissal of the suit.

5. The learned Trial Court, after framing the issues and upon due consideration of the evidence adduced by both the parties as well as the material available on record, dismissed the suit filed by the plaintiffs holding therein that as per the proviso to sub-section (1) of Section 6 of the Hindu Succession Act, 1956 (for brevity 'the Act, 1956') any disposition or alienation including partition or testamentary disposition, made prior to 20th December, 2004 (*sic* 20 December, 2005*)* shall not be affected or rendered invalid.

6. Against the said judgment and decree, the plaintiffs filed the Civil Appeal before the learned appellate Court, and the learned Appellate Court vide judgment and decree impugned, dismissed

the Civil Appeal by maintaining the judgment and decree passed by the learned trial Court. Thus, this appeal by the appellant/plaintiff No.1.

7. Learned counsel for the appellant/plaintiff would submit that the impugned judgments and decrees suffer from patent illegality and perversity, as the plaintiff, being the daughter of original defendant No.1 Dhanuk, is a Class-I heir under the Act, 1956 and is legally entitled to succeed to the property of her father. The findings recorded in the impugned judgments proceed on an erroneous application of the proviso to sub-section (1) of Section 6 of the Act, 1956, without there being any legally sustainable proof of a valid partition or lawful alienation prior to the statutory cut-off date i.e. 20.12.2004. The conclusion that the plaintiff is not entitled to inherit the property of her father is contrary to the material available on record. Further, the alleged transfer of substantial portions of land in favour of defendants Nos.3 and 4 is unsupported by proof of consideration and appears to be a deliberate attempt to defeat the legitimate inheritance rights of the plaintiff. The plea regarding validity of the second marriage and customary divorce also remained unsubstantiated. Even otherwise, the impugned reasoning reflects non-application of mind on the statutory cut-off date prescribed under Section 6 of the Act, 1956

thereby giving rise to a substantial question of law warranting interference under Section 100 of the Code of Civil Procedure.

8. On the other hand, learned counsel for the respondents/defendants Nos.1 to 5 would submit that the plaintiff had already been allotted land and a portion of the house during the lifetime of her father and is in possession thereof, and that the properties stood partitioned and alienated prior to the cut-off date protected under the proviso to Section 6(1) of the Act, 1956. It is further contended that the lands in favour of defendants Nos.3 and 4 were purchased from the separate funds of defendant No.2 and that no substantial question of law arises, warranting dismissal of the appeal. According to the defendants, the marriage between the parents of the plaintiff namely Dhanuk and Hemkunwar Bai was dissolved as per the custom of their society.

9. Despite service of notice upon the respondents No. 7 to 13/plaintiff No. 2 to 8 on 17.07.2021 & 22.07.2021, they chose to remain absent.

10. I have heard learned counsel for the parties, perused the material available on record.

11. In the present case, according to the plaintiff, the suit land is ancestral property. Under the provisions of the Act, 1956,

daughters are also deemed to be coparceners in ancestral property with the same rights as sons.

12. At this juncture, it would be relevant to quote the provisions of Section 6 (1) of the Hindu Succession Act, 1956, which reads thus :

> "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 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.*

13. The Supreme Court in the judgment rendered in the matter of ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717*** has held at para 126 & 129 as under:-

> *"126. The protection of rights of daughters as coparcener is envisaged in the substituted Section 6 of the Act of 1956 recognizes the partition brought about by a decree of a Court of effected by a registered instrument. The partition so effected before 20.12.2004 is saved.*
>
> *XXX XXX XXX XXX*
>
> *129. Resultantly, we answer the reference as under:*
>
> *(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.*
>
> *(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.*
>
> *(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.*
>
> *(iv) 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 dis a ruption of coparcenary. The fiction was only for the purpose of ascertaining share of de f ceased coparcener when he was survived e 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.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

14. From a plain reading of Section 6(1) of the Act, 1956, as amended by Act No.39 of 2005 on 09.09.2005, it is evident that a daughter

of a coparcener becomes a coparcener by birth in the same manner as a son and is entitled to the same rights and liabilities in the coparcenary property. The object of the amendment is to remove gender-based discrimination and to confer equal coparcenary rights upon daughters.

15. The proviso to Section 6(1) saves only such disposition or alienation, including partition or testamentary disposition, which had taken place prior to 20.12.2004. However, as authoritatively held by the Supreme Court in ***Vineeta Sharma (supra)***, the protection of the proviso extends only to a partition effected by a decree of a competent Court or by a registered instrument. An oral partition or an unregistered family arrangement, even if pleaded, does not qualify as a legally recognised partition for the purpose of the proviso.

16. In the present case, the partition pleaded by the respondents is admittedly oral in nature. No registered partition deed has been produced, nor is there any decree of partition passed by a competent Court prior to the cut-off date. The alleged partition, relied upon by the respondents, is neither registered nor proved in accordance with law and, therefore, cannot be treated as partition in consonance with the provisions of sub-Section (1) of Section 6 of the Act, 1956.

17. The allotment of land and a portion of the residential house to the plaintiff during the lifetime of her father, even if accepted, appears to be only an arrangement for maintenance and residence of the plaintiff No. 1 and cannot, by any stretch of reasoning, be construed as a complete and final partition of coparcenary property so as to extinguish the statutory rights conferred upon the plaintiff No.1 under Section 6 of the Act, 1956.

18. The impugned reasoning proceeds on an erroneous understanding that an oral partition prior to the cut-off date is sufficient to deny the claim of the daughter. Such an approach is clearly inconsistent with the law laid down in ***Vineeta Sharma (supra)***, which mandates that only a partition effected by a registered instrument or by a decree of a Court prior to 20.12.2004 is saved.

19. In the absence of proof of a legally recognised partition, the plaintiff No.1 continues to be a coparcener in the ancestral property and is entitled to seek partition and separate possession. The denial of such right on the basis of an unproved oral partition gives rise to a substantial question of law warranting interference under Section 100 of the Code of Civil Procedure.

20. So far as the contention of the defendants that the marriage between Dhanuk and Hemkunwar Bai, who are the parents of the plaintiff has dissolved by following the customary rituals, is

concerned, it is the trite law that the burden is on the party asserting such custom to specifically plead and strictly prove that the custom permits dissolution of marriage. In the present case, no such evidence has been placed on record.

21. Accordingly, the substantial question of law framed by this Court is answered in favour of the appellant/plaintiff No.1. The impugned judgments and decrees are set aside.

22. Resultantly, the Second Appeal is **allowed**. The plaintiff No.1, appellant herein, shall be entitled to her lawful share in the suit property in accordance with law.

23. A decree be drawn accordingly.

Sd/-
(Bibhu Datta Guru)
Judge

Amardeep/Rahul

HEAD NOTE

- The rights under the amended Section 6 of the Hindu Succession Act, 1956 can be claimed even by a daughter born prior to 09.09.2005, subject to the saving clause contained in Section 6(1), namely that any disposition or alienation, partition, or testamentary disposition which had taken place before 20th December, 2004 shall not be affected.

- A daughter of a coparcener becomes a coparcener by birth in the same manner as a son. The plea of oral partition cannot be accepted, as the statute recognises partition, only when it is effected either by a deed of partition duly registered under the provisions of the Registration Act, 1908, or by a decree of a competent court.