



2025:CGHC:50803

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 178 of 2014

Judgment Reserved on 15.07.2025

Judgment Delivered on 13 .10.2025

Smt. Ragmania Died Through Lrs Kariman Das S/o Sunder Das Aged About 32 Years R/o Puhputra, P.S. And Tah. Lakhanpur, Distt. Surguja C.G., Chhattisgarh

... Appellant (s)

versus

1. Jagmet S/o Baigadas Aged About 39 Years R/o Puhputra, P.S. and Tah. Lakhanpur, Distt. Surguja C.G., Chhattisgarh
2. Budhiyaro W/o Baigadas Aged About 64 Years R/o Puhputra, P.S. And Tah. Lakhanpur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh
3. State of Chhattisgarh W/o Thru- Collector, Surguja, Ambikapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

... Respondent(s)

For Appellant(s)	: Mr. Rahul Kumar Mishra, Advocate
For Respondent(s) No. 1 and 2	: Mr. Divyanand Patel, Advocate
For the State	: Mr. Tarkeshwar Nande, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgment

1. This Second Appeal under Section 100 of Civil Procedure Code, has been filed by the plaintiff against the judgment and decree dated 23.01.2014

passed by 2nd Additional District Judge, Surguja, Ambikapur in Civil Appeal No. 15-A/2011 affirming the judgment and decree dated 26.12.2008 passed by Civil Judge Class-II, Surguja in Civil Suit No. 181-A /2005.

2. For the sake of convenience, parties hereinafter will be referred to as per their status shown in the Civil suit No. 181-A /2005 before the trial Court.

3. This appeal was admitted by this Court on the following substantial question of law on 02.04.2025;-

“(1) Whether the finding recorded by both the Courts below that the plaintiff is not entitled to inherent ancestral property ignoring the provisions of Hindu Succession Act amended in the year 2005 is justified or not?

“(2) Whether the finding recorded by both the Courts below that the plaintiff and the defendant are not governed by Hindu Succession Act, 1956 is justified or not?

4. On 15.07.2025 additional substantial question of law was also framed by this Court which is as under:-

“Whether the plaintiff is entitled to inherit the suit property by way of succession if the partition has been taken place prior to 1956?

5. The necessary facts for disposal of the present appeal, in short are that the plaintiff had instituted a civil suit on 06.10.2005 for declaration of title and partition in respect of suit land described in Schedule-A of the plaint mainly contending that:-

(a) The plaintiff and father of defendant No.1 namely Baigadas were real brother and sister and they are being governed by Hindu Law. The genealogy of the family was also mentioned in the plaint. It is the case of the plaintiff that the lands situated at village Putputara, after merger of Surguja State were recorded in the name of grandfather of plaintiff namely Sudhin and his brother Budhau (hereinafter referred to as “suit property”.) and they were jointly cultivating the land.

b) It is the case of the plaintiff that defendant No.1 father during his life time has moved an application before Nayab Tahsildar Tahsil Ambikapur for partition of the property in favour of her daughter Jagmat. As soon as the plaintiff got information about filing of application through paper publication in the village, she has appeared before Tahsildar and raised objection in Revenue Case No. 13-A-27/2002-03 and has prayed for recording her name. It is also case of the plaintiff, that father of defendant No.1 has admitted that the plaintiff is his sister but has contended that she has no right to claim share on the suit property after her marriage. The Tahsildar considering the submission has rejected the application of the plaintiff for mutating her name also on 23.08.2003 which has necessitated the plaintiff to file a suit.

6. Defendant No.1 filed his written statement denying the allegation made in the plaint contending that a *patta* of khasra No. 13, area 6.85 acres was received by the plaintiff's father and his brother Budhau during Sarguja Survey Settlement. It is also contended that the plaintiff has never been in possession of any part of the suit land and after death of Sudhinram, the plaintiff did not have any title or right over the suit lands, as such name of the plaintiff was not recorded in the revenue records. It is also contended that Baigadas inherited property in succession as Sudhinram died in the year 1950-51 and remained in the possession of the suit land, therefore, plaintiff has no right and share in the suit land. It is also pleaded that since Sudhinram died in the year 1950-51, therefore, the appellant and the defendants with regard to succession are governed by old Hindu Law and has prayed for dismissal of the suit.
7. On the pleading of the parties, learned trial Court has framed as many as 7 issues which are relevant therefore, they are extracted below:-

1. क्या वादिनी स्व. सुदीन के उत्तराधिकारी हैं?
 2. क्या वादी वादभूमि पर 'अ' 1/2 भाग विभाजन कराकर पाने के अधिकारिणी हैं?
 3. क्या वादिनी का वाद परिसीमा काल से बाधित है?
 - 4- क्या वादिनी ने वाद का उचित मूल्यांकन कर उचित न्याय शुल्क चस्था की है?
 5. क्या वादिनी का वाद वर्तमान स्वरूप में पोषणीय है?
 6. क्या प्रति.क्र.-1 वादिनी से दो हजार रु. क्षतिपूर्ति पाने के अधिकारी है?
 7. सहायता एवं व्यय?
8. The plaintiff to substantiate his case has examined herself (PW-1), Shivprashad (PW-2), Ramsundar (PW-3) and exhibited documents order dated 23.08.2003 (Ex.P-1), objection of plaintiff (Ex.P-2), reply (Ex.P-3), Kistbandi Khatuni (Ex.P-4). Defendants to substantiate his claim has examined Budhiyaro (DW-1) and exhibited document copy of Surguja Settlement (Ex.D-1), record of rights (Ex.D-2).
9. The plaintiff (PW-1) in her examination-in-chief by way of affidavit as provided under Order 18 Rule 4 CPC has reiterated the stand taken by her in the plaint. This witness has stated that the land situated at village Puhputra was recorded in the joint name of plaintiff and Baigadas as per Surguja Survey Settlement. She has further stated that after death of her father, his brother Baigadas got mutated his name in the revenue record. She has further stated that Baigadas filed an application for mutation of her daughter's name in some of the property and this information was received by her from the newspaper thereafter she appeared and filed an application before Tahsildar for mutation of her name in the property and claiming her share. But the Tahsildar has dismissed her application and passed mutation order against her favour and mutated the name of defendant No.1 in the property. This witness has further stated that Baigadas was 4-5 years younger than her and her marriage was done by her brother Baigadas after death of her father Sudhinram. She further stated that name of Baigadas alongwith her name were recorded in the revenue record but later on, her name was deleted by

Baigadas from the revenue record and at that time Baigadas was alive and he used to earn the entire disputed land and her daughter-in-law threw her out of the house during life time of his brother.

10. (PW-2) Shivprashad and Ramsundar (PW-3) have reiterated the stand taken by the plaintiff in the plaint. PW-3 in his cross examination has admitted that Sudhin expired 60 years ago from the date of recording of the evidence i.e. on 17.10.2008.
11. The defendant (DW-1) in her examination-in-chief by way of an affidavit as provided under Order 18 Rule 4 CPC and has reiterated the stand taken by her in written statement. This witness has stated that khasra No. 11, area 6.85 acres of land was received by her grandfather Sudin and uncle Budau from Surguja Survey Settlement and after the death of Sudhin and Budau, khasra No. 12, area 4.83 acres of land was recorded in the name of Baigadas. Late Baigadas was the sole occupant of the land, in which he was doing agriculture till his last breath. The plaintiff has never occupied any part of the disputed land. Defendant No.1 has stated that after death of Sudhin, married daughter has no right to receive any property. She has further stated that during his lifetime, Baiga Das had submitted an application for mutating of name of her daughter in some of the land where plaintiff raised an objection stating that she should be given land in the partition as co-sharer. The objection of Rangmania was rejected by the Tehsildar on the ground that she was not a co-sharer in the said land.
12. Learned trial Court after appreciating the evidence, material on record has dismissed the suit vide its judgment and decree dated 26.12.2008 by recording its finding that since the plaintiff's father late Sudhin died in the year 1950-51 before commencement of Hindu Succession Act, 1956, as such

provisions of the Act would not be applicable to consider the claim of the plaintiff for grant of share in the suit property, as such the plaintiff is not entitled to inherit the property of late Sudhin. Being aggrieved with judgment and decree, the plaintiff has preferred first Appeal before 2nd Additional District Judge, Surguja Ambikapur who has rejected the appeal filed by the appellant. Being aggrieved by the judgment and decree passed by the first Appellate court on 23.01.2014, the plaintiff has filed Second Appeal under Section 100 CPC which has been admitted by this Court on the above stated substantial question of law.

13. Learned Counsel for the appellant would submit that the findings recorded by trial Court affirmed by the Appellate Court are perverse and contrary to the record. He would further submit that both the Court below have ignored the settled principle of law regarding applicability of Hindu Law of 1956 particularly when the plaintiff and defendants are in joint possession of suit property till dispute arose between the parties i.e. in the year 2003 and applying provisions of old Hindu Law before commencement of Act 1956 is illegal. He would further submit that the both the courts below have wrongly come to conclusion that the plaintiff has no share in the property as per old Hindu Law whereas at the time of death of her father, the plaintiff was 10 years old and she got share in the property of her father by birth, as such it is perversity and on the perverse finding the judgment and decree has been passed, therefore, the appeal may be allowed.
14. On the other hand learned counsel for the respondent No. 1 and 2 would submit that during lifetime of father of original plaintiff and grandfather of defendant No.1 neither original plaintiff was in possession of any part of suit property nor her name was recorded in the revenue records. He would

further submit that after death of Sudhin, his wife was in possession of the suit property, even in the entire record; name of Sudhin wife is not mentioned. He would further submit that there is no documentary or oral evidence on record to show that wife of Sudhin has expired after the commencement of Hindu Succession Act, 1956. He would further submit that Section 3 of the Hindu Women's and Proprietary Rights, 1937 provide that after the death of husband, the widow would have limited interest in the property of her husband and after commencement of the Hindu Succession Act, 1956 if she was in continuous possession of the property then as per Section 14 of the Hindu Succession Act, 1956 limited right/interest over the property of the widow would be converted into full right as Bhumiswami. He would further submit that from perusal of evidence of original plaintiff and her witnesses, it is clear that Baigadas, brother of original plaintiff was in possession of the suit property and thereafter the defendant No.1 and 2 are in possession of the suit property. He would further submit that the plaintiff has to prove this fact that her mother was in possession of the suit property or succeeded or acquired the same, after death of Sudhin but in the present case there is no evidence on record. He would further submit that plaintiff has expired and his legal heir namely Kariman Das was substituted on the basis of Will dated 17.05.2005. In the Will deed, entire property has been bequeathed by the plaintiff in favour of the present appellant which is excess to her share and she can only execute $\frac{1}{2}$ of the share in the property and would pray for dismissal of the appeal.

15. I have heard learned counsel for the parties and perused record of the Courts below with utmost satisfaction.

16. Since all the three substantial questions of law are interconnected and dependable upon each other and to avoid repetition of facts and law all the three substantial questions of law framed by this Court are decided by commonly analyzing submission, law and facts of the case.
17. The plaintiff to claim that she is entitled to inherit the suit property in view as per Section 6 as amended in the year 2005 should first plead and prove that the parties are governed by Hindu Succession Act, 1956. From bare perusal of the pleadings made in the plaint, it is quite vivid that the plaintiff has nowhere pleaded that when Sudhin expired to establish that partition is open to get benefits of Hindu Succession Act, 1956 whereas the defendant No.1 in her written statement has taken specific plea that the plaintiff's father expired in the year 1950-51, as such the father of defendant No.1 is entitled to inherit the entire suit property. The plaintiff despite specific averment made by the defendant to exclude the applicability of Hindu Succession Act, 1956 has not taken any stand by amending its pleading. Plaintiff (PW-1) has stated in her examination in chief that they are governed by Hindu Succession Act but no evidence was led by her to demonstrate that the plaintiff and defendants are governed by Hindu Succession Act, 1956. Even the plaintiff witnesses No.3 Ramsundar who is aged about 70 years as on the date of recording of the evidence before the trial Court on 17.10.2008 has admitted in the cross examination that Sudhin expired 60 years ago and at that time he was 10 years old. He has also admitted that he knew plaintiff Ragmaniya who is 10-12 years elder than him.
18. Budhiyaro (DW-1) has stated in her examination in chief by way of affidavit that at the time of death of Sudhin, the married daughter has no right over the property owned by the father. The witness was cross examined by the

plaintiff and in para-11 she has admitted that they followed the Hindu religion but she is not aware whether the daughter is entitled to claim any right over the property owned by her father.

19. From the above stated evidence particularly undisputed fact that the plaintiff's father Sudhin expired in the year 1950-51 much prior to enactment of Hindu Succession Act, as such the succession is opened under the Old Hindu Law and the parties will be governed by Mitakshara Law as held by Hon'ble Supreme Court in the case of **Arshnoor Singh Vs. Harpal Kaur and Others reported in 2020 (14) SCC 436** wherein the Hon'ble Supreme Court has held as under:-

7.1. Mulla in his commentary on Hindu Law (22nd Edition) has stated the position with respect to succession under Mitakshara law as follows:

Page 129;-

A son, a grandson whose father is dead, and a greatgrandson whose father and grandfather are both dead, succeed simultaneously as single heir to the separate or selfacquired property of the deceased with rights of survivorship."

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"All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and greatgrandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth. A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property.

7.2 In *Shyam Narayan Prasad v. Krishna Prasad & Ors.*,² this Court has recently held that :

12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship." (emphasis supplied)

7.3 Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property.

7.4. In *Yudhishter v. Ashok Kumar*,³ this Court held that :

“10. This question has been considered by this Court in *Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors.* [1986] 161 ITR 370 (SC) where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or 3 (1987) 1 SCC 204 from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Kar of his own undivided family but takes it in his individual capacity.”(emphasis supplied).

7.5 After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post – 1956, if a person inherits a selfacquired property from his paternal ancestors, the said property becomes his self acquired property, and does not remain coparcenary property.

7.6 If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in add it is quite vivid that the plaintiff and the defendant are following the Hindu Religion therefore, they are governed by Hindu law. His hands vis à vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.

20. Thus it is quite vivid that in the present case Sudhin expired before 1956 as such partition is opened and will govern by Mitakshara Law.
21. Now to appreciate the substantial question of law framed by this Court this Court has to see whether the parties of the suit are governed by Hindu Succession Act 1956 or Mitakshara Law. From the evidence of PW-3 only it is quite vivid that the plaintiff father Sudhin expired 60 years ago at the time recording of the evidence i.e. on 17.10.2008 it means some time 1948-49 which is supported from the pleading made by the defendant in the written

statement filed by defendants wherein they have taken specific plea that Sudhin expired in the year 1950-51 which has not been rebutted by amending the pleading or by leading evidence to rebut the same. Thus, both the courts below have right recorded finding of fact that Sudhin expired in the year 1950-51 prior to enactment of Hindu Succession Act, 1956 as such Hindu Succession Act, 1956 is not applicable.

22. Since Sudhin was expired 1950-51, therefore, inheritance of Hindu's property will be governed by Mitakshara Law and Hindu Law of Inheritance (Amendment) Act, 1929 will not change the right of inheritance of male member of Hindu family. To examine this legal position it is expedient for this Court to go through with the provisions of this Act, the Section 1 of the Act, deals with the short title and extent of the statute and it further states that the said Act applies to such persons in respect only of the property of males not held in coparcenary and not disposed by will.

23. Section 2 is the operative provision, whereas Section 3 acts as a saving provision. Sections 2 and 3 read thus:

“Section 2: A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother:

Provided that a sister's son shall not include a son adopted after the sister's death.

Section 3: Nothing in this Act shall-

- (a) affect any special family or local custom having the force of law, or
- (b) vest in a son's daughter, daughter's daughter or sister an estate larger than, or different in kind from, that possessed by a female in property inherited by her from a male according to the school of Mitakshara law by which the male was governed, or
- (c) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir.”

24. A conjoint reading of Sections 1 and 2 with Section 3(b) and (c) makes it evident that the statute intended only to rank certain heirs in the order of succession immediately after the father's father, and not to limit any superior rights of other heirs. Section 2 further presupposes an existing line of descendants and a father's father and a father's brother were already ranked in that line. The Act contains nothing regarding a daughter's rights or about conferring on her the same status as a son. As held by the Hon'ble Supreme Court in the case **Arunchala Gounder(Dead) By Lrs vs. Ponnusamy and Others reported in 2022(11) SCC 520** wherein the Hon'ble Supreme has held in paragraph 50 and 51 are as under:-

"50. The Hindu Law of Inheritance (Amendment) Act, 1929 was the earliest Statutory legislation which brought the Hindu females into the scheme of inheritance. The 1929 Act introduced certain female statutory heirs which were already recognized by the Madras School, i.e., the son's daughter, daughter's daughter, sister and sister's son in the order so specified, without making any modifications in the fundamental concepts underlying the textual Hindu Law relating to inheritance; only difference being that while before the Act, they succeeded as bandhus, under the Act, they inherited as 'gotra sapindas'

51. The Mitakshara law also recognises inheritance by succession but only to the property separately owned by an individual, male or female. Females are included as heirs to this kind of property by Mitakshara law. Before the Hindu Law of Inheritance (Amendment) Act 1929, the Bengal, Benares and Mithila sub-schools of Mitakshara recognised only five female relations as being entitled to inherit namely - widow, daughter, mother paternal grandmother and paternal great-grand mother. The Madras sub- school recognized the heritable capacity of a larger number of females heirs that is of the son's daughter, daughter's daughter and the sister, as heirs who are expressly named as heirs in Hindu Law of Inheritance (Amendment) Act, 1929. The son's daughter and the daughter's daughter ranked as bandhus in Bombay and Madras. The

Bombay school which is most liberal to women, recognized a number of other female heirs, including a half -sister, father's sister and women married into the family such as stepmother, son's widow, brother's widow and also many other females classified as bandhus. From the above discussions, it is abundantly clear that a daughter was in fact capable of inheriting the father's separate estate.

25. Thus, it is evident that the purpose of the statute Act of 1929 was not to modify the fundamental concepts of Shastric Hindu law relating to inheritance. The only difference it introduced was that the chance of inheritance of a son's daughter, daughter's daughter, sister, etc., was recognized in a different capacity from that which prevailed earlier.
26. Now this Court has to examine how the property of a person governed by the Mitakshara law of inheritance would devolve prior to the commencement of the Act, 1956. It is well settled legal position of law that as per Mitakshara Law, the daughter is not entitled to inherit the property of her father before the enactment of the Act, 1956. The succession to the property of Hindus whether ancestral or self-acquired was governed by the pristine principles of Hindu law, as embodied in the Shastric texts and Smritis. Under the Mitakshara law, even the self-acquired property of a male devolved exclusively upon his male issue, and only in the absence of such male issue did it pass to other heirs and as per Law of inheritance the self acquired estate of a male would descend to his male issue and only in default of such issue would it descend to others.
27. From the law laid down by the Hon'ble Supreme Court in the case of **Arunachala Gounder's** case (supra), it is quite vivid, that Mitakshara Law of inheritance applicable to a person who died before 1956 and who was governed by the pristine Mitakshara law, the wife or daughter of a male would inherit his separate property only if he died without a male child.

28. The Full Bench of the Allahabad High Court in the case of **Ghurpatari & Ors.**

v. Sampati & Ors. Reported in AIR 1976 All 195 has also occasion to consider the question whether a custom under which daughters are excluded from inheriting the property from their father can by implication exclude the daughter's issue both male and female, also from such inheritance, made the following observations in respect of Right of Inheritance of a widow or a daughter of a male Hindu dying intestate. Para-17 of the judgment is reproduced below;

17. The rules relating to inheritance by widow and daughter were enunciated in the ancient past by various sages and were ultimately elaborated by Vijnyaneshwara in Mitakshara. We may quote from Colebrooke's translation." Katyayan said "let the widow succeed to her husband's wealth, provided she be chaste; and in default of her let the daughter inherit if married." Brihaspati Said, "the wife is pronounced successor to the wealth of her husband; and in her default the daughter; as a son so does the daughter of a man proceed from his several limbs, how then shall any other person take the father's wealth"? Vishnu laid down, "if a man leaves neither son, nor son's son, nor wife, nor female issue, the daughter's son shall take his wealth, for in regard to the obsequies of ancestors, daughter's son is considered as son's son." Manu likewise declared that "by a male child, who were daughter whether formally appointed or not, shall produce from a husband of an equal class the maternal grandfather becomes the grand sire of son's son, let that son give the funeral oblation and possess the inheritance". The right of daughter and daughter's son to succeed to the property was thus well recognized in the Mitakshara Law. The daughter ranks fifth in the order of succession and the daughter's son ranked sixth."

29. Thus from the above stated discussion and considering the legal position, it is quite vivid that when a Hindu governed by Mitakshara law died before 1956, his separate property would completely devolve upon his son. A female child could claim a right in such property only in the absence of a male child. The Hindu Law of Inheritance (Amendment) Act, 1929 did not affect the son's

absolute right to inherit his father's property. It merely enlarged the circle of heirs who could succeed in default of male issue, by introducing certain female heirs and the sister's son.

30. In view of the above facts and considering the law and evidence brought on record, admittedly the parties are governed by Hindu Mitakshara Law as Sudhin expired before 1956. On his death, his self-acquired property would devolve entirely upon Baigadas. Baigadas has rightly conveyed his rights over the plaint scheduled property to the contesting defendants, as such, there is no illegality in mutating the suit property in the defendant No.1 and 2. In the said circumstances, I find no reason to interfere with the impugned judgment, wherein it was rightly held that the property is not partible.
31. Consequently, substantial questions of law framed by this Court are deserves to be answered against the plaintiff and in favour of the defendants. According, the appeal is dismissed.
32. No order as to costs. Decree be drawn.

Sd/-
(Narendra Kumar Vyas)
Judge