

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PRANAY VERMA**

SECOND APPEAL No. 2822 of 2022

BETWEEN:-

**JAGDISH CHANDRA S/O CHHAGANLAL SATYA,
AGED ABOUT 64 YEARS, OCCUPATION: BUSINESS
R/O: VILLAGE GOGAWA, TEHSIL GOGAWA,
DISTRICT: KHARGONE (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI AVINASH YADAV - ADVOCATE)

AND

- 1. CHANDRAKANT S/O CHHAGANLAL SATYA,
AGED ABOUT 52 YEARS, OCCUPATION:
SERVICE, R/O VILL. GUJRI CHOUK, TEHSIL
GOGAWA, DISTRICT: KHARGONE
(MADHYA PRADESH)**
- 2. BHARAT S/O CHHAGANLAL SATYA, AGED
ABOUT 47 YEARS, OCCUPATION: SERVICE,
R/O: MUKTANAND PARISAR, FIRST GALL,
DHAMNOD TEHSIL DHARAMPURI
DISTRICT DHAR (MADHYA PRADESH)**
- 3. SMT. LALITA BAI W/O VISHWANATH
SATYA, AGED ABOUT 47 YEARS,
OCCUPATION: HOUSEWIFE, R/O: VILLAGE
GUJRI CHOUK GOGAWA TEHSIL GOGAWA
DISTRICT KHARGONE (MADHYA
PRADESH)**
- 4. AJAY S/O VISHWANATH SATYA, AGED
ABOUT 42 YEARS, OCCUPATION: MEDICAL
STORE, R/O: VILLAGE GUJRI CHOUK
GOGAWA TEHSIL GOGAWA DISTRICT
KHARGONE (MADHYA PRADESH)**
- 5. NEERAJ S/O VISHWANATH SATYA, AGED
ABOUT 37 YEARS, OCCUPATION: SERVICE
R/O: VILLAGE GUJRI CHOUK GOGAWA**

**TEHSIL GOGAWA DISTRICT KHARGONE
(MADHYA PRADESH)**

6. **DHEERAJ S/O VISHWANATH SATYA, AGED ABOUT 32 YEARS, OCCUPATION: BUSINESS R/O; VILLAGE GUJRI CHOUK GOGAWA TEHSIL GOGAWA DISTRICT KHARGONE (MADHYA PRADESH)**
7. **SMT. SHEELA D/O CHHAGANLAL SATYA W/O JAGDISHCHANDRA SAAH, AGED ABOUT 59 YEARS, OCCUPATION: HOUSEWIFE, R/O: VILLAGE PALSUD DISTRICT BARWANI (MADHYA PRADESH)**
8. **SMT. SUDHA D/O CHHAGANLAL SATYA W/O SHRIKRISHNA GUPTA, AGED ABOUT 42 YEARS, OCCUPATION: HOUSEWIFE, R/O - KUKSHI, TEHSIL KUKSHI DISTRICT DHAR (MADHYA PRADESH)**
9. **STATE OF M.P. THR. COLLECTOR OFFICE OF COLLECTORATE DISTRICT KHARGONE (MADHYA PRADESH)**

.....RESPONDENTS

Reserved on :- 22.08.2023

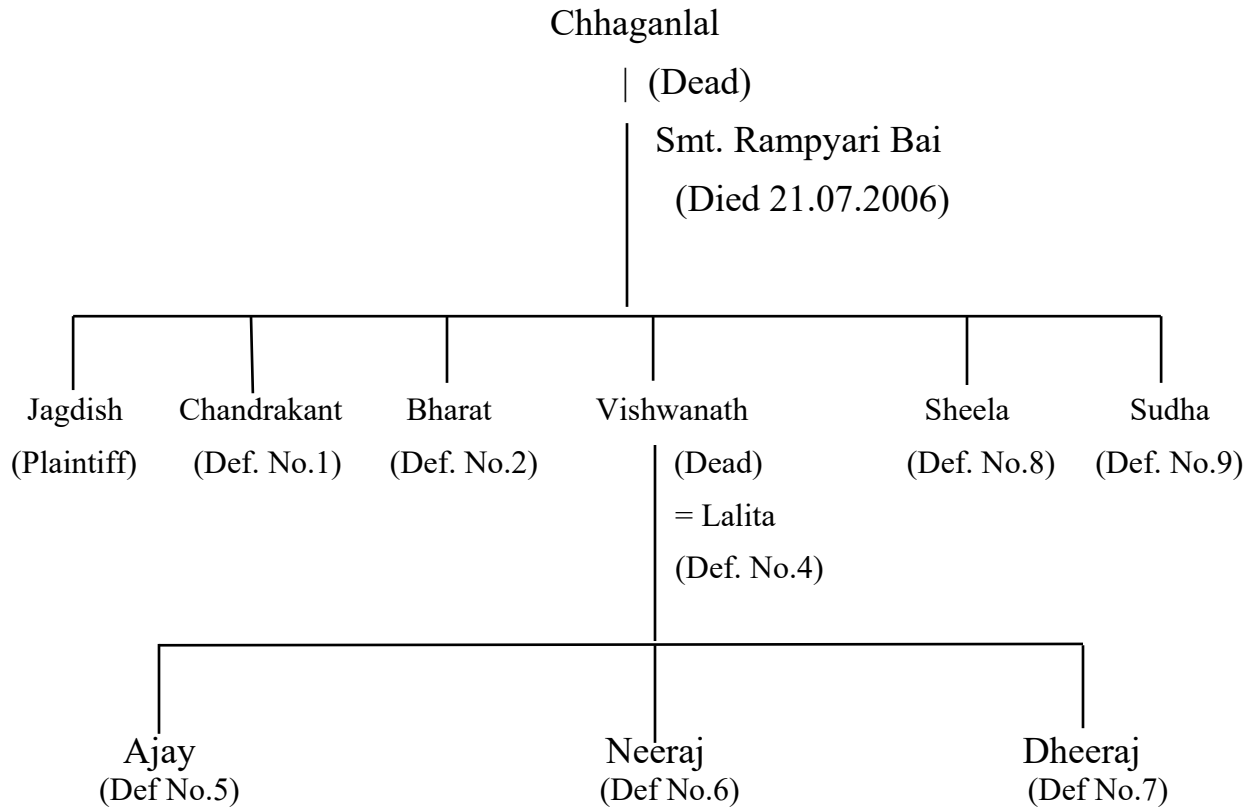
Pronounced on :- 04.10.2023

This appeal having been heard and reserved for orders coming on for pronouncement this day, the Court passed the following:

ORDER

This appeal under Section 100 of the CPC has been preferred by the plaintiff being aggrieved by the judgment and decree dated 07.09.2022 passed in Civil Appeal No.48/2019 by the Ist District Judge, Khargone, District Mandleshwar arising out of the judgment and decree dated 21.10.2019 passed in Civil Suit No.26-A/2017 by the IIIrd Civil Judge, Class-I, Khargone (East Nimar).

2. The following genealogical tree shows relationship between the parties:-



3. As per the plaintiff, the joint family of the parties held considerable joint family property situated at various villages. On 15.05.1996, an oral partition of the same was effected between them in which they were allotted different properties by way of their share. On 30-05-1996 a partition deed in terms of the oral partition was also executed between the parties. In the deed, it had been stipulated that the properties being allotted to Smt. Rampyari Bai would devolve upon the person who shall look after her during her lifetime. The plaintiff did so and also performed her last rites hence succeeded to the property allotted to her share. Upon death of Smt. Rampyari Bai, plaintiff and defendants are jointly recorded over her property in the revenue records but recording of defendants over the same is without any right or authority and he deserves to be recorded over the same exclusively. He

requested the defendants for the same but defendant No.1 has denied his title to the said property.

4. Contending aforesaid, the plaintiff instituted an action for declaration of his title to the suit lands bearing Khasra No.56/1 Ka and 57/2 area 1.131 hectare, Gram Shahpura, Tehsil Gongawa, District Khargone, for possession of the same, for damages and mesne profits contending that the same are a part of the property allotted to Smt. Rampyaribai.

5. Defendant No.1 contesting the plaintiff's claim by filing his written statement submitting that he is the sole owner of the suit lands. The plaintiff never took care of Smt. Rampyari Bai and instead tortured her. It is he who looked after her hence upon her death, the suit lands have been inherited by him exclusively and he is in possession thereof.

6. The Trial Court held that on 30.05.1996, a partition of the joint family property was effected between the parties in which the suit lands had been allotted to the share of Smt. Rampyari Bai. As per the partition deed upon her death the same were to devolve upon the person who would take care of her during her lifetime. The plaintiff did the same hence upon her death has become the owner of the suit lands. In consequence, plaintiff's claim for declaration of title and possession was decreed.

7. In appeal by defendant No.1, the lower appellate Court has held that as per the partition deed 30.05.1996 all the members of the family were allotted shares in the joint family property. The property which was allotted to Smt. Rampyari Bai was by way of a limited estate and the manner in which the same would devolve upon her death had been stipulated therein. However, in view of Section 14(2) of the Hindu Succession Act, 1956, ('the Act, 1956') the property

became her absolute property and she was its sole owner. Upon her death, the same would devolve as per Section 15 and 16 of the Act, 1956. Thus, plaintiff, defendants No.1, 2, 3, 7 and 8 and heirs of Vishwanath jointly inherited 1/6th share each therein. In consequence, the judgment and decree passed by the trial Court has been set aside. It has however been held that the decree shall not effect rights of plaintiff for seeking partition in respect of his 1/6th share in property of Smt. Rampyari Bai.

8. Learned counsel for the appellant has submitted that the lower appellate Court has grossly erred in setting aside the judgment and decree passed by the Trial Court. The conditions imposed upon the parties in the partition deed dated 30.05.1996 (Exhibit P-5) have been failed to be given due effect to which were binding upon them. It was provided therein that the property falling to Smt. Rampyari Bai would be held by her during her lifetime and upon her death would devolve upon the person who would take care of her during her lifetime. The plaintiff has proved that he did so hence upon her death became the sole owner of the suit lands. The finding of the trial Court to that effect has not even been set aside. The lower appellate Court has passed a decree for partition whereas none of the parties had claimed such a relief hence the decree is beyond the reliefs claimed for. It is hence submitted that the judgment and decree passed by the lower appellate Court be set aside.

9. I have considered the submissions of learned counsel for the appellant.

10. It is not in dispute that an oral partition of the joint family properties was effected between the parties on 15.05.1996 and subsequently a partition deed in terms thereof was also executed between them on 30.05.1996. Thereunder, the

parties were allotted different properties by way of their respective shares. The property allotted to Smt. Rampyari Bai with stipulations was as under:-

"रामप्यारीबाई बेबा छगनलाल के हिस्से की सम्पत्ति:-

1. गुजरी चौक, धर्मशाला के सामने वाला मकान, रामप्यारी बाई के जीवित रहने तक उनके उपभोग में रहेगा, मृत्यु के पश्चात् सदर मकान भाई जगदीश को हिस्से में रहेगा।

2. रामप्यारीबाई को कुल 4-00 ए. जमीन हिस्से में रहेगी, इसमें तीन ए. जमीन उनकी मृत्यु उपरान्त उनकी सेवा करने वाले को मिलेगी तथा एक ए. जमीन भाई भरत को मिलेगी।

3. भामकुओं वाली जमीन जो लगभग 4-65 ए. है तथा बाहर वाली 6-50 ए. है लक्ष्मीनारायण सत्ये के पास में स्थित है जितेजी पूर्ण रूप से रामप्यारीबाई के उपभोग हेतु रहेगी तथा इसी खेत की आमदनी से उसका निर्वाह खर्च चलायेगी। रामप्यारी बाई की मृत्यु के पश्चात ये जमीन का स्वत्व निम्नानुसार रहेगा :-

भाई जगदीश को 3-00 ए. भामकुओं की।

भाई चन्द्रकान्त को 4-00 ए. बाहर वाली पाटी लक्ष्मीनारायण काकाजी के पास की।

बची हुई 4-00 ए. में से 3-00 ए. रामप्यारी बाई की सेवा करने वाले को, तथा एक ए. भाई भरत को मिलेगी।

विश्वनाथ व जगदीश, बाजार भाव से आधे ए; जमीन के पैसे भाई भरत को देवेगे।

सनाबद रोड़, थाने के सामने, पक्की दुकान में से एक चश्मा दुकान रामप्यारी बाई की रहेगी एवं इनकी मृत्यु के उपरान्त भाई जगदीश को उसपर पूरा हक्क रहेगा।"

11. Smt. Rampyari Bai though was allotted the aforesaid property but the same was only by way of a restricted estate and full ownership was not conferred upon her. It was provided that upon her death the property would devolve in the

manner as detailed therein meaning thereby that during her lifetime she was to be the limited owner and could enjoy the property but had no power of disposition etc. over the same. This condition would however be governed by the provisions of Section 14(1)(2) of the Act, 1956 which are as under:-

“14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

12. The aforesaid provisions have been exhaustively explained by the Supreme Court in **Veddeboyina Tulsamma and Others Vs. Vaddeboyina Sesha Reddi (dead) through Lrs**, AIR 1977 Supreme Court 1944 as under:-

“3.It will, therefore, be seen that sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property.

4.The language of Sub-Section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property.....

..... Sub-Section (2) must, therefore, be read in the context of Sub-Section(1) so as to leave as large a scope for operation as possible to Sub-Section (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property.....

.....the legislative intendment was that Sub-Section (2) should be applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right - a kind of acquisition akin to one under gift or will. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Sub-Section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.”

13. Thus, when property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of pre-existing right and such an acquisition would not be within the scope and ambit of Sub-Section (2) of Section 14 of the Act, 1956 even if the instrument allotting the property prescribes a restricted estate in the property. She would be deemed to have become the full owner thereof notwithstanding that the instrument under which the same was given to her prescribed a limited estate for her. She would have a restricted estate only when property is acquired by her for the first time without any pre-existing right under an instrument the terms of which prescribe a limited estate for her in the property.

14. In the present case, Smt. Rampyari Bai was allotted certain joint family property by way of her share in the partition effected in the family. She had a pre-existing right/share in the property and by way of partition, a specific part of the same was allotted to her. Since she had a pre-existing right in the joint family property which was crystallized by way of allotment of her share therein in the partition, she acquired her property not by way of a restricted estate but by way of

absolute ownership. Upon her death, the same would not devolve as per the condition stipulated in the partition deed but would devolve by way of succession as per Section 15 and 16 of the Act, 1956 since no will or any other testamentary instrument was executed by her during her lifetime. The lower appellate Court has hence rightly held to the said effect.

15. In the decree passed by the lower appellate Court it has only been observed that it shall not effect rights of plaintiff for seeking partition in respect of his 1/6th share in property of Smt. Rampyari Bai. Under the decree, no partition has been directed as has been contended by learned counsel for the appellant. In any case, no decree whatsoever as regards partition has been passed in favour of the defendants.

16. In view of the above, I do not find that the lower appellate Court has committed any error of law in passing the impugned judgment and decree. The same are based upon a true and correct appreciation of the facts of the case and application of relevant legal principles applicable thereto. No fault can be found with the findings or the reasonings of the lower appellate Court. The appeal is found to be devoid of merits and is accordingly dismissed in limini.

(PRANAY VERMA)
JUDGE

Shilpa