# GURUPAD KHANDAPPA MAGDUM

*v.*

# HIRABAI KHANDAPPA MAGDUM AND ORS.

*April* 27, 1978

[Y. V. CHANDRACHUD, C.J., P. N. SHINGHAL & V. D. TULZAPURKAR, JJ.]

*Hindu Succession Act* (*Act* 30 *of* 1956), *Section* 6 *Explanation* 1—*Interpretation of—Widow's share must be ascertained by adding the share to which she is entitled at a notional portion during her husband's life time and the share she would get in her husband's interest upon his death.*

Khandappa Sangappa Magdum died on June 27, 1960 leaving behind, his widow Hirabai, two sons Gurupad and Shivapad and three daughters. On November, 6, 1952 Hirabai filed special civil suit No. 26/53 for partition and separate possession of a 7/24 share in two houses, a land, two shops and movables on the basis that these properties belonged to the joint family consisting of her husband, and their two sons. The case of the plaintiff was that if a partition were to take place during Khandappa's life time between himself and his two sons the plaintiff would have got a ¼th share each on the death of Khandappa. Her further case was that Khandappa's ¼th share could devolve upon his death on six sharers, entitling her to 1/24th share besides. The trial Court found that the suit properties belonged to the joint family and that there was no prior partition. Following the judgment of the Bombay High Court in *Shiramabai Bhimgonda* v. *Kalgonda* [1963] 66 Bom. L.R. 351, limited her share to only 1/24th and refused to add ¼th and 1/24th together. Dismissing the defendant's appeal 524/66 and allowing the cross-objections of the plaintiff, the Bombay High Court, by its judgment dated March 19, 1975 following 68 Bom. L.R. 74 which overruled 66 Bom. L.R. 351, held that the plaintiff was entitled to 7/24th share.

Dismissing the appeal by special leave, the Court.

HELD: 1. (a) What Section 6 of the Hindu Succession Act, 1956 deals with is the devolution of the interest which a male Hindu has in a Mitakshara property at the time of his death. The proviso to Section 6 contains a formula for fixing the share of the claimant, while Explanation 1 contains a formula for deducing the share of the deceased. [765 H, 766 A-B]

(b) Explanation 1 which contains the formula for determining the share of the deceased creates a fiction by providing that 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. Whether a partition had actually taken place between the plaintiff's husband and his sons is beside the point for the purposes of Explanation 1. That Explanation compels the assumption of a fiction that in fact "a partition of the property had taken place", the point of time of the partition being the one immediately before the death of the person in whose property the heirs claim a share. The fiction created by Explanation 1 has to be given its due and full effect. [766 E-F, 767 C-D]

*Commissioner of Income Tax, Delhi* v. *S. Teja Singh,* [1959] Suppl. S.C.R. 39; applied.

*East End Dwellings Co. Ltd.* v. *Finsbury Borough Council,* 1952 AC 109/132, quoted with approval

2. (a) In order to ascertain the share of heirs in the property of a deceased coparcener it is necessary in the very nature of things, and as they very first step to ascertain the share of the deceased in the coparcenary property. For, by dong that alone can one determine the extent of the claimant's share. Explanation 1 to section 6 resorts to the simple expedient, undoubtedly fictional, that

A 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 that property had taken place immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on that assumption and ascertain the share of the heirs without reference to it. The assumption which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's imagination to boggle. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life time of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, *in addition to* the share which he or she received or must be deemed to have received in the notional partition. [768 B-G]

(b) This interpretation furthers the legislative intent in regard to the enlargement of the share of female heirs, qualitatively and quantatively. Even assuming that two interpretations of Explanation I are reasonably possible, Courts must prefer that interpretation which will further the intention of the legislature and remedy the injustice from which the Hindu women have suffered over the years. By restricting the operation of the fiction created by Explanation I in the manner suggested by the appellant, Courts shall be taking a retrograde step, putting back as it were the clock of social reform which has enabled the Hindu women to acquire an equal status with males in matters of property. [768 G, 769 A-B]

*Rangubhai Lalji* v. *Laxman Lalji*, 68 (Bom.) L.R. 74; *Sushilabai Ramachandra Kulkarni* v. *Narayanarao Gopalrao Deshpande and Ors.*, A.I.R. (1975) Bom. 257; *Vidyaben* v. *Jagadishchandra N. Bhatt*, A.I.R. 1974 Guj. 23; *Ananda* v. *Haribandu*, A.I.R. 1967 Orissa 194; approved.

3. In the instant case,

(a) There is no justification for limiting the plaintiff's share to 1/24th by ignoring the ¼th share which she would have obtained had there been a partition during her husband's life time between him and his two sons. In a partition between Khandappa and his two sons, there would be four sharers in the coparcenary property, the fourth being Khandappa's wife, the plaintiff. Khandappa would have therefore got a ¼th share in the coparcenary property on the hypothesis of a partition between himself and his sons. [766 G-H, 767 B-C]

(b) By the application of the normal rule prescribed by Section 6 of the Hindu Succession Act, 1956, Khandappa's interest in the coparcenary property would devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the provisions of the Act. But, since the widow and daughter are amongst the female relatives specified in class I of the Schelule to the Act and Khandappa died leaving behind a widow and daughters, he proviso to section 6 comes into play and the normal rule is excluded. Khandappa's interest in the coparcenary property would therefore devolve, according to the proviso, by intestate succession under the Act and not by survivorship. Testamentary succession is out of question as the deceased had not made a testamentary disposition though, under the explanation to section

30 of the Act, the interest of a male Hindu in Mitakshara coparcenary property is capable of being disposed of by a will or other testamentary disposition. [765 E-G] A

(c) The plaintiff's share as determined by the application of the rules of intestate succession contained in Sections 8, 9 and 10 of the Hindu Succession Act will be 1/6th. The deceased Khandappa died leaving behind him two sons, three daughters and a widow. The son, daughter and widow are mentioned as heirs in class I of the Schedule and therefore, by reason of the provisions of section 8(a) read with the 1st clause of section 9, they take simultaneously and to the exclusion of other heirs. As between them the two sons, the three daughters and the widow will take equally, each having one share in the deceased's property under section 10 read with Rules 1 and 2 of that section. [766-C-D] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1828 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 19th March, 1975 of the Bombay High Court in First Appeal No. 524 of 1966 from original decree. C

*R. B. Datar* for the Appellant.

*V. N. Ganpule* and (*Mrs.*) *V. D. Khanna* for the respondent.

The Judgment of the Court was delivered by D

CHANDRACHUD, C.J. It will be easier, with the help of the following pedigree to understand the point involved in this appeal :

Khandappa Sangappa Magdum
Hirabai (Plaintiff)

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| Gurupad (Deft. 1) | Biyawwa (Deft. 3) | Bhagirathibai (Deft. 4)l | Dhundubai (Deft. 5) | Shivapad (Deft. 2) |
|---|---|---|---|---|

Khandappa died on June 27, 1960 leaving him surviving his wife Hirabai, who is the plaintiff, two sons Gurupad and Shivapad, who are defendants 1 and 2 respectively, and three daughters, defendants 3 to 5. On November 6, 1962 Hirabai filed special civil suit No. 26 of 1963 in the court of the Joint Civil Judge, Senior Division, Sangli for partition and separate possession of a 7/24th share in two houses, a land, two shops and movables on the basis that these properties belonged to the joint family consisting of her husband, herself and their two sons. If a partition were to take place during Khandappa's lifetime between himself and his two sons, the plaintiff would have got a 1/4th share in the joint family properties, the other three getting a 1/4th share each. Khandappa's 1/4th share would devolve upon his death on six sharers, the plaintiff and her five children, each having a 1/24th share therein. Adding 1/4th and 1/24th, the plaintiff claims a 7/24th share in the joint family properties. That, in short, is the plaintiff's case. F G

Defendants 2 to 5 admitted the plaintiff's claim, the suit having been contested by defendant 1, Gurupad, only. He contended that the suit properties did not belong to the joint family, that they were Khandappa's self-requisitions and that, on the date of Khandappa's H

death in 1960 there was no joint family in existence. He alleged that Khandappa had effected a partition of the suit properties between himself and his two sons in December 1952 and December 1954 and that, by a family arrangement dated March 31, 1955 he had given directions for disposal of the share which was reserved by him for himself in the earlier partitions. There was, therefore, no question of a fresh partition. That, in short, is the case of defendant 1.

The trial court by its judgment dated July 13, 1965 rejected defendant 1's case that the properties were Khandappa's self-acquisitions and that he had partitioned them during his lifetime. Upon that finding the plaintiff became indisputably entitled to a share in the joint family properties but, following the judgment of the Bombay High Court in *Shiramabai Bhimgonda v. Kalgonda*(1) the learned trial judge limited that share to 1/24th, refusing to add 1/4th and 1/24th together. As against that decree, defendant 1 filed first appeal No. 524 of 1966 in the Bombay High Court, while the plaintiff filed cross-objections. By a judgment dated March 19, 1975 a Division Bench of the High Court dismissed defendant 1's appeal and allowed the plaintiff's cross-objections by holding that the suit properties belonged to the joint family, that there was no prior partition and that the plaintiff is entitled to a 7/24th share. Defendant 1 has filed this appeal against the High Court's judgment by special leave.

Another Division Bench of the Bombay High Court in *Rangubai Lalji* v. *Laxman Lalji*(2) had already reconsidered and dissented from earlier Division Bench judgment in *Shiramabai Bhimgonda.*(1) In these two cases, the judgment of the Bench was delivered by the same learned Judge, Patel J. On further consideration the learned Judge felt that *Shiramabai*(1) was not fully argued and was incorrectly decided and that on a true view of law, the widow's share must be ascertained by adding the share to which she is entitled at a notional partition during her husband's life time and the share which she would get in her husband's interest upon his death. In the judgment under appeal, the High Court has based itself on the judgment in *Rangubai Lalji*(2) endorsing indirectly the view that *Shiramabai*(1) was incorrectly decided.

Since the view of the High Court that the suit properties belonged to the joint family and that there was no prior partition is well-founded and is not seriously disputed, the decision of this appeal rests on the interpretation of Explanation 1 to section 6 of the Hindu Succession Act, (30 of 1956). That section reads thus :

> "6. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property

(1) (1963) 66 Bom. L.R. 351.
(2) 68 Bom. L.R. 74.

shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act: A

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such a female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship. B

*Explanation* 1.—For the purposes of this 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. C

*Explanation* 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein." D

The Hindu Succession Act came into force on June 17, 1956, Khandappa having died after the commencement of that Act, to wit in 1960, and since he had at the time of his death an interest in Mitakshara coparcenary property, the pre-conditions of section 6 are satisfied and that section is squarely attracted. By the application of E the normal rule prescribed by that section, Khandappa's interest in the coparcenary property would devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the provisions of the Act. But, since the widow and daughter are amongst the female relatives specified in class I of the Schedule to the Act and Khandappa died leaving behind a widow and daughters, the proviso to section 6 comes into play and the normal rule is excluded. F Khandappa's interest in the coparcenary property would therefore devolve, according to the proviso, by intestate succession under the Act and not by survivorshop. Testamentary successive is out of question as the deceased had not made a testamentary disposition though under the explanation to section 30 of the Act, the interest of a male Hindu in Mitakshara coparcenary property is capable of being disposed of by a will or other testamentary disposition. G

There is thus no dispute that the normal rule provided for by section 6 does not apply, that the proviso to that section is attracted and that the decision of the appeal must turn on the meaning to be given to Explanation 1 of section 6. The interpretation of that Explanation is the subject-matter of acute controversy between the parties. H

Before considering the implications of Explanation 1, it is necessary to remember that what section 6 deals with is devolution of the interest which a male Hindu has in a Mitakshare coparcenary property at

the time of his death. Since Explanation 1 is intended to be explanatory of the provisions contained in the section, what the Explanation provides has to be correlated to the subject matter which the section itself deals with. In the instant case the plaintiff's suit, based as it is on the provisions of section 6, is essentially a claim to obtain a share in the interest which her husband had at the time of his death in the coparcenary property. Two things become necessary to determine for the purpose of giving relief to the plaintiff. One, her share in her husband's share and two, her husband's own share in the coparcenary property. The proviso to section 6 contains the formula for fixing the share of the claimant while Explanation 1 contains a formula for deducing the share of the deceased. The plaintiff's share, by the application of the proviso, has to be determined according to the terms of the testamentary instrument, if any, made by the deceased and since there is none in the instant case, by the application of the rules of intestate succession contained in sections 8, 9 and 10 of the Hindu Succession Act. The deceased Khandappa died leaving behind him two sons, three daughters and a widow. The son, daughter and a widow are mentioned as heirs in class I of the Schedule and therefore, by reason of the provisions of section 8(a) read with the 1st clause of section 9, they take simultaneously and to the exclusion of other heirs. As between them the two sons, the three daughters and the widow will take equally, each having one share in the deceased's property under section 10 read with Rules 1 and 2 of that section. Thus, whatever be the share of the deceased in the coparcenary property, since there are six sharers in that property each having an equal share, the plaintiff's share therein will be 1/6th.

The next step, equally important though not equally easy to work out, is to find out the share which the deceased had in the coparcenary property because after all, the plaintiff has a 1/6th interest in that share. Explanation 1 which contains the formula for determining the share of the deceased creates a fiction by providing that 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. One must, therefore, imagine a state of affairs in which a little prior to Khandappa's death, a partition of the coparcenary property was effected between him and other members of the coparcenary. Though the plaintiff, not being a coparcener, was not entitled to demand partition yet, if a partition were to take place between her husband and his two sons, she would be entitled to receive a share equal to that of a son. (see Mulla's Hindu Law, Fourteenth Edition, page 403, para 315). In a partition between Khandappa and his two sons, there would be four sharers in the coparcenary property, the fourth being Khandappa's wife, the plaintiff. Khandappa would have therefore got a 1/4th share in the coparcenary property on the hypothesis of a partition between himself and his sons.

Two things are thus clears : One, that in a partition of the coparcenary property Khandappa would have obtained a 1/4th share and

two, that the share of the plaintiff in the 1/4th share is 1/6th, that is to say, 1/24th. So far there is no difficulty. The question which poses a somewhat difficult problem is whether the plaintiff's share in the coparcenary property is only 1/24th or whether it is 1/4th *plus* 1/24th, that is to say, 7/24th. The learned trial Judge, relying upon the decision in *Shiramabai* which was later overruled by the Bombay High Court, accepted the former contention while the High Court accepted the latter. The question is which of these two views is to be preferred.

We see no justification for limiting the plaintiff's share to 1/24th by ignoring the 1/4th share which she would have obtained had there been a partition during her husband's life time between him and his two sons. We think that in overlooking that 1/4th share, one unwittingly permits one's imagination to boggle under the oppression of the reality that there was *in fact* no partition between the plaintiff's husband and his sons. Whether a partition had actually taken place between the plaintiff's husband and his sons is beside the point for the purposes of Explanation 1. That Explanation compels the assumption of a fiction that in fact "a partition of the property had taken place", the point of time of the partition being the one immediately before the death of the person in whose property the heirs claim a share.

The fiction created by Explanation 1 has to be given its due and full effect as the fiction created by section 18A(9)(b) of the Indian Income-tax Act, 1922, was given by this Court in *Commissioner of Income-tax, Delhi* v. *S. Teja Singh*(1). It was held in that case that the fiction that the failure to send an estimate of tax on income under section 18A(3) is to be deemed to be a failure to send a return, necessarily involves the fiction that a notice had been issued to the assessee under section 22 and that he had failed to comply with it. In an important aspect, the case before us is stronger in the matter of working out the fiction because in *Teja Singh's* case, a missing step had to be supplied which was not provided for by section 18A(9)(b), namely, the issuance of a notice under section 22 and the failure to comply with that notice. Section 18A(9)(b) stopped at creating the fiction that when a person fails to send an estimate of tax on his income under section 18A(3) he shall be deemed to have failed to furnish a return of his income. The section did not provide further that in the circumstances therein stated, a notice under section 22 shall be deemed to have been issued and the notice shall be deemed not to have been complied with. These latter assumptions in regard to the issuance of the notice under section 22 and its non-compliance had to be made for the purpose of giving due and full effect to the fiction created by section 18A(9)(b). In our case it is not necessary, for the purposes of working out the fiction, to assume and supply a missing link which is really what was meant by Lord Asquith in his famous passage in *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council.*(2) He said if you are bidden to treat an imaginary state of affairs as real, you must also imagine as real the consequences and

(1) [1959] Supp. 1 S.C.R. 394
(2) [1952] A.C. 109/132

A incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it; and if the statute says that you must imagine a certain state of affairs, it cannot be interpreted to mean that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

B In order to ascertain the share of heirs in the property of a deceased coparcener it is necessary in the very nature of things, and as the very first step, to ascertain the share of the deceased in the coparcenary property. For, by doing that alone can one determine the extent of the claimant's share. Explanation 1 to section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of a Hindu Mitakshara coparcener "shall be deemed to be" the share in the property C that would have been allotted to him if a partition of that property had taken place immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on D that assumption and ascertain the share of the heirs without reference to it. The assumption which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's E imagination to boggle. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life time of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted F as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, *in addition* to the share which he or she received or must be deemed to have received in the notional partition.

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The interpretation which we are placing upon the provisions of section 6, its proviso and explanation I thereto will further the legislative intent in regard to the enlargement of the share of female heirs, qualitatively and quantitatvely. The Hindu Law of Inheritance (Amendment) Act, 1929 conferred heirship rights on the son's daughter, daughter's daughter and sister in all areas where the Mitakshara H law prevailed. Section 3 of the Hindu Women's Rights to Property Act, 1937, speaking broadly, conferred upon the Hindu widow the right to a share in the joint family property as also a right to demand partition like any male member of the family. The Hindu Succession

Act, 1956 provides by section 14(1) that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as a full owner thereof and not as a limited owner. By restricting the operation of the fiction created by Explanation I in the manner suggested by the appellant, we shall be taking a retrograde step, putting back as it were the clock of social reform which has enabled the Hindu Woman to acquire an equal status with males in matters of property. Even assuming that two interpretations of Explanation I are reasonably possible, we must prefer that interpretation which will further the intention of the legislature and remedy the injustice from which the Hindu women have suffered over the years.

We are happy to find that the view which we have taken above has also been taken by the Bombay High Court in *Rangubai Lalji* v. *Laxman Lalji* (supra) in which Patel, J., very fairly, pronounced his own earlier judgment to the contrary in *Shiramabai Bhimgonda* v. *Kalgonda* (supra) as incorrect. Recently, a Full Bench of that High Court in *Sushilabai Ramachandra Kulkarni* v. *Narayanrao Gopalrao Deshpande &Ors.*,(1) the Gujarat High Court in *Vidyaben* v. *Jagdishchandra N. Bhatt*(2) and the High Court of Orissa in *Ananda* v. *Haribandhu*(3) have taken the same view. The Full Bench of the Bombay High Court in *Sushilabai* (supra) has considered exhaustively the various decisions bearing on the point and we endorse the analysis contained in the judgment of Kantawala C. J., who has spoken for the Bench.

For these reasons we confirm the judgment of the High Court and dismiss the appeal with costs.

S.R. *Appeal dismissed.*

(1) A.I.R. 1975 (Bombay) 257.
(2) A.I.R. 1974 Guj. 23.
(3) A.I.R. 1967 Orissa 194.