

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIALTEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*



## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# CASE REVIEW OF MAKHAN SINGH V. KULWANT SINGH (2007) 10 SCC 602

AUTHORED BY - RAMISETTY VENKATA RUCHITA

UID: - UGB23-65

Maharashtra National Law University, Nagpur

## INTRODUCTION

*Hinduism* is considered to be one of the oldest religions due to its roots preserved in the Vedas, along with the Shrutis and smritis. One of the most novel and distinguishing aspects of Hindu law was the '*Joint Hindu family*' or the '*Hindu Undivided family*'. Jointness is considered a usual or general condition of Hindu society, and a Hindu family is ordinarily presumed to be joint not only in the property, which is '*united in possession*' but also in food and worship.<sup>1 2</sup>

*Hindu Joint Family* can be, simply, defined as a family arrangement consisting of all the lineal male descendants from a common ancestor including the wives and unmarried daughters of such descendants.<sup>34</sup>

A *coparcener* is an individual who shares equally with others in inheriting the estate of a common ancestor. They hold an equal portion in the inheritance, collectively forming a single heir. When two or more individuals jointly inherit property, they are referred to as *parceners* or *coparceners*, holding the estate jointly as an entire entity. A *coparcenary* consists of a male member of a joint Hindu family and his sons, grandsons, and great-grandsons, forming a lineage of three unbroken generations. This structure is a creature of law and cannot be created by the act of parties, although a stranger may be introduced into the coparcenary through adoption.

A Hindu coparcenary is narrower than a joint family unit. Only males who acquire an interest in the joint or coparcenary property by birth could traditionally be members. Before the *Hindu*

---

<sup>1</sup> Difference between Joint Hindu Family and Coparcenary, June 28, 2020, <https://blog.ipleaders.in/difference-between-joint-hindu-family-and-coparcenary/>, (last visited, 24<sup>th</sup> January, 2025).

<sup>2</sup> Commissioner of Wealth-Tax vs. Chander Sen (1986), July 15, 2024, <https://blog.ipleaders.in/commissioner-of-wealth-tax-vs-chander-sen-1986/>, (last visited, 24<sup>th</sup> January, 2025).

<sup>3</sup> *Introduction, Hindu Joint Family: An Analysis*, Abhishek Srivastava, GEHU LAW REVIEW, VOL 2, ISSUE 2, <https://gehulawreview.com/wp-content/uploads/2022/08/8.pdf>, (last visited, 24<sup>th</sup> January, 2025).

<sup>4</sup> Gur Narain Dass v. Gur Tahal Das, AIR 1952 S.C. 225.

*Succession (Amendment) Act, 2005*<sup>5</sup>, females were not recognized as coparceners. Traditionally, a coparcener was also someone capable of performing rituals, such as offering a funeral cake to an ancestor within three generations. The old law defined a coparcenary as comprising a father and three male lineal descendants. Coparceners share a community of interest in the property, making its alienation impossible without the consent of all members. Each coparcener has a legal right to demand partition, converting their undivided interest into a defined share.<sup>6</sup>

The case of *Makhan Singh v. Kulwant Singh*<sup>7</sup> sheds light on the *Mitakshara coparcenary* system under Hindu law, emphasizing its unique nature as an institution not created by statute or agreement but derived from status acquired through birth or adoption.<sup>8</sup> Membership traditionally included males and, post-2005, females, serving as a social security umbrella for the family.<sup>9</sup> *Ancestral property*, defined as *property inherited from a father, grandfather, or great-grandfather, forms the foundation of this system*. Male descendants, including sons, grandsons, and great-grandsons, acquire an interest in such property by birth, becoming coparceners.

A significant feature of Mitakshara coparcenary is the community of interest and unity of possession, where no individual member has exclusive rights to a defined portion of the property while the coparcenary remains undivided. In the event of a coparcener's death, the property devolves upon the remaining members by survivorship.<sup>10</sup> The *karta*, or head of the family, plays a crucial role in managing coparcenary property but is subject to limitations. The *karta* can alienate property only for specific purposes, such as meeting family needs, addressing emergencies, or fulfilling religious obligations. However, personal use or alienation is restricted unless justified by the principle of pious obligation or prior debts.<sup>11</sup>

<sup>5</sup> The Hindu Succession (Amendment) Act, 2005, No. 39 of 2005.

<sup>6</sup> Family Law II Notes for Law Students: BA LLB (Hons.), By Justice Mirror Staff, March 30, 2019, <https://justicemirror.com/family-law-ii-notes/#module-i-hindu-joint-family-and-coparcenary>, (last visited, 24<sup>th</sup> January, 2025).

<sup>7</sup> *Makhan Singh v. Kulwant Singh*, (2007) 10 SCC 602.

<sup>8</sup> Although Mitakshara and Dayabhaga Schools of Hindu law differ on birthright of coparceners and the rules of inheritance, yet they bear similar import so far as the constitution and functioning of joint or undivided family is concerned.

<sup>9</sup> See, for instance, *Satrughan Isser v. Sabujpari*, AIR 1967 SC 272 and *Surjit Lal Chhabda v. CIT*, (1976) 3 SCC 142; AIR 1976 SC 109.

<sup>10</sup> Mulla on *Principles of Hindu Law* 340 (21st ed, 2010) citing *Mitakshara*, ch. I, s. 1, para 27.

<sup>11</sup> For the exposition of incidents of Mitakshara coparcenary, see *SBI v. Ghamandi Ram*, (1969) 2 SCC 33; AIR 1969 SC 1330 at 1333.

The *Hindu Succession (Amendment) Act, 2005*<sup>12</sup>, brought a transformative change to the coparcenary system by granting daughters the same rights as sons in ancestral property, ensuring gender equality in property rights. Coparcenary property primarily includes ancestral property but can also encompass self-acquired property that is expressly or implicitly pooled into the joint family assets.<sup>13</sup> This collective structure aims to preserve property for the welfare of the family.<sup>14</sup>

*Mitakshara coparcenary* also serves an essential social and functional purpose by promoting interdependence among family members and ensuring their well-being. The principle of property devolution *per stripes* ensures equitable distribution across the family lineage, rather than concentrating benefits on specific individuals. Historically, acquisitions made using coparcenary resources were considered part of the coparcenary<sup>15</sup>. Over time, this principle has evolved to recognize individual contributions within the family framework.<sup>16,17</sup>

The Supreme Court judgement in *Makhan Singh (Dead) by LRs. V. Kulwant Singh*<sup>18</sup> serves as a seminal precedent in the intricate interplay of *Hindu Law, Property rights* and the *procedural framework governing civil appeals in India*. This case underscores pivotal legal principles surrounding the determination of difference between joint family property & self-acquired property, the shifting of onus of proof, and the scope of appellate interference under Section 100 of the Civil Procedure Code, 1908.

<sup>12</sup> Hindu Succession (Amendment) Act, 2005 (39 of 2005).

<sup>13</sup> *D.S. Lakshmaiah v. L. Balasubramanyam*, (2003) 10 SCC 310; AIR 2003 SC 3800. For elaborate exposition on this count, see *Mayne's Hindu Law and Usage*, 364-65 (11<sup>th</sup> ed).

<sup>14</sup> *Radhakant Lal v. Nazima Begum*, AIR 1917 PC 128. In this case, the property inherited from brother bore the character of separate property and when it was thrown into the common pool became the property of the joint family.

<sup>15</sup> *Gokal Chand v. Hukum Chand Nath Mal*, AIR 1921 PC 35. In this case, since the person, while preparing for the premier service - Indian Civil Service (ICS) - was supported by the joint family resources, the income earned by him also belonged to the joint family.

<sup>16</sup> Notes and Comments: Judicial Re-Scripting of Legislation Governing Devolution of Coparcenary Property and Succession Under Hindu Law, by Poonam Pradhan Saxena, 58 JILI (2016) 337.

<sup>17</sup> *Crucifying the Concept of Mitakshara Coparcenary at the Altar of Income-Tax Law*, 53 JILI (2011) 413, This paper is substantially based on interactive sessions that the author had at Chandigarh Judicial Academy with Additional District and Sessions Judges drawn from the States of Punjab and Haryana and Union Territory of Chandigarh during the session 2010-2011 on the subject of "Devolution of interest in Mitakshara coparcenary." The views expressed in this article are, however, solely of the author and not necessarily of the Chandigarh Judicial Academy where he holds the position of the Director (Academics), L.M., S.J.D. (Toronto, Canada), Director (Academics), Chandigarh Judicial Academy, Chandigarh (Former Professor & Chairman, Department of Laws, Dean, Faculty of Law, Fellow, Panjab University, Chandigarh, & UGC Emeritus Fellow in Law).

<sup>18</sup> *Makhan Singh v. Kulwant Singh*, (2007) 10 SCC 602.

## DETAILS OF THE CASE

**Citation-** (2007) 10 SCC 602

**Court-** Supreme Court of India

**Date of Judgement-** March 30, 2007

**Bench-** Division Bench

**Judges-** B.P. Singh and H.S. Bedi, JJ.

**Nature of the case-** Civil Appeal

**Appeal Numbers-** Civil Appeals No. 4446 of 2005 with No. 4455 of 2005

**Parties-**

- Appellant: Makhan Singh (Dead) by Legal Representatives
- Respondent: Kulwant Singh

## RESEARCH DESIGN

(a) **Research Aim:** To critically analyse this Supreme Court judgement, focussing on the legal principles concerning joint family property, self-acquired property, burden of proof and the scope of appellate interference under Section 100 of the Civil Procedure Code, 1908.

(b) **Research Objectives:** The research objectives are derived from the legal issues examined in the judgement:

1. Whether the defendant executed agreements to sell building and machinery as referred of the plaint?
2. Whether the plaintiff has been and continues to be ready and willing to in perform his part of the agreement?
3. Whether the defendant has committed breach of the agreement of sale?
4. Whether agreement regarding sale of building is not specifically enforceable?
  - 4-A. Whether the suit property is ancestral and/or joint Hindu family property?
  - 4-B. Whether the agreement to sell is void or unenforceable for the reasons of additional please raised in the amended written statement?
  - 4-C. Whether the suit for specific performance is not competent so far as it relates to agreement for sale of machinery?
  - 4-D. Whether the suit property has been properly described?

(c) **Research Methodology:** The research adopts a *doctrinal methodology*, focusing on a thorough analysis of primary and secondary legal sources. The methodology involves an in-depth study of the Supreme Court's judgment in *Makhan Singh v. Kulwant Singh*<sup>19</sup>, emphasizing the legal reasoning and principles applied. It includes an examination of cited precedents and related case laws to gain a broader understanding of judicial interpretations.

Statutory interpretation is also a key component, involving an analysis of relevant provisions of Hindu law pertaining to ancestral and self-acquired property, as well as procedural provisions under Section 100 of the Civil Procedure Code, 1908. Additionally, the research incorporates a literature review of scholarly articles and journals, to contextualize the evolution of coparcenary principles and procedural aspects. Digital legal resources are analysed to explore contemporary perspectives on the case and its implications.

## FACTS OF THE CASE AND PROCEDURAL HISTORY

The dispute arose between the plaintiff-respondent, Kulwant Singh, and the defendant-appellant, Makhan Singh (now deceased, represented by his legal representatives). The two were brothers, part of a family of four siblings. Each brother allegedly owned a 1/4th share in a parcel of land measuring approximately 40.2/3 marlas, a building housing an ice factory constructed on that land, and a 1/8th share in the machinery installed in the ice factory.

The primary issue revolved around two agreements entered into by the defendant, Makhan Singh, with the plaintiff on May 3, 1982. These agreements pertained to the sale of his share in the aforementioned properties. The first agreement concerned the sale of his 1/4th share in the land and building for a consideration of ₹10,000, out of which ₹5,000 was paid as earnest money. The second agreement pertained to the sale of his 1/8th share in the machinery installed in the ice factory for ₹16,000, with ₹5,000 paid upfront as earnest money. As per the terms, the sale deeds were to be executed on or before a specific date.

The plaintiff alleged that the defendant had failed to execute the sale deeds as agreed. Despite serving a notice on December 19, 1983, reminding the defendant of his obligations under the agreements, no action was forthcoming. Subsequently, on January 17, 1984, the plaintiff filed a suit for specific performance of both agreements.

---

<sup>19</sup> *Id.*

In his written statement, the defendant contested the suit on several grounds. Firstly, he denied the execution of the agreements and the receipts for the earnest money. He asserted that the land, building, and machinery were not individual properties but rather ancestral and joint Hindu family properties. Consequently, he argued that as one of the four coparceners, he lacked the legal authority to sell his share in the joint family property, rendering the agreements unenforceable. Furthermore, the defendant contended that the agreement concerning the machinery could not be enforced through specific performance and that the plaintiff could, at best, seek a refund of the earnest money along with damages, if applicable.

Later, the defendant admitted to executing the agreements but maintained his position that the properties were joint Hindu family assets and could not be alienated unilaterally by any individual coparcener.

The trial court framed several issues to address the contentious points.

The trial court found that the plaintiff successfully proved the execution of the agreements (marked as Ext. P-1 and Ext. P-2) and the receipt of earnest money by the defendant. It also held that the defendant had not been ready and willing to fulfil his obligations under the agreements, whereas the plaintiff consistently demonstrated readiness and willingness to perform his part. However, the trial court ruled that the agreement to sell the 1/8th share in the machinery was unenforceable, as machinery is movable property, and specific performance could not be claimed for its sale. Additionally, the court determined that 11 marlas of the 40 marlas (0.25 acre) of land were self-acquired property of the father, purchased from his personal income as a railway employee. The remaining 30 marlas were purchased in the names of the four brothers through separate sale deeds, using income derived from the father's 11 marlas and an ice factory. Consequently, the entire property was characterized as joint Hindu family property. As one of the coparceners, the defendant could not unilaterally enter into the agreements for sale, rendering them unenforceable.

On appeal by the plaintiff, the first appellate court upheld the trial court's findings. It reaffirmed that the burden of proof rested on the plaintiff to establish that the property was not joint family property, a burden that the plaintiff failed to discharge. The appellate court, therefore, affirmed the trial court's dismissal of the suit.

In the second appeal before the Punjab and Haryana High Court, the Single Judge partially

reversed the findings of the lower courts. The High Court decreed the suit for specific performance concerning the defendant's 1/4th share in the 30 marlas of land. However, it dismissed the plaintiff's claims regarding the remaining 11 marlas of land, the building, and the machinery, holding that they constituted joint family property. The High Court observed that the lower courts had erred in their application of the principle of burden of proof. It emphasized that the existence of a joint Hindu family does not, by itself, lead to a presumption that the property is joint family property.

When the matter reached the Supreme Court, appeals were filed by both the defendant and the plaintiff. The Court observed that property inherited by a son under Section 8 of the Hindu Succession Act, 1956<sup>20</sup>, is held in his individual capacity and not as a karta of a Hindu Undivided Family (HUF). It clarified that property purchased by the father using his personal income could not be considered joint family property merely because it later devolved upon the sons. The Court held that the High Court's interference in the second appeal was justified, as it corrected the misapplication of the burden of proof by the lower courts. It noted that while reappraisal of evidence is generally not permissible in second appeals, the High Court had acted to rectify a significant legal error. Accordingly, the Supreme Court dismissed the defendant's appeal and allowed the plaintiff's appeal, upholding the High Court's decree for specific performance concerning the defendant's 1/4th share in the 30 marlas of land.

### ISSUES RAISED

The trial court framed several issues to address the contentious points, including:

1. Whether the defendant executed agreements to sell building and machinery as referred of the plaint?
2. Whether the plaintiff has been and continues to be ready and willing to in perform his part of the agreement?
3. Whether the defendant has committed breach of the agreement of sale?
4. Whether agreement regarding sale of building is not specifically enforceable?
  - 4-A. Whether the suit property is ancestral and/or joint Hindu family property?
  - 4-B. Whether the agreement to sell is void or unenforceable for the reasons of additional please raised in the amended written statement?
  - 4-C. Whether the suit for specific performance is not competent so far as it relates

---

<sup>20</sup> Section 8, Hindu Succession Act, 1956.

to agreement for sale of machinery?

4-D. Whether the suit property has been properly described? <sup>21</sup>

## ARGUMENTS OF THE PARTIES

### *Plaintiff-Respondent's Arguments*

The plaintiff argued that two agreements for sale were validly executed between the parties. The first agreement pertained to the sale of the defendant's 1/4th share in the suit land, measuring about 40 marlas, along with the building on it for a consideration of ₹10,000, of which ₹5,000 was paid as earnest money. The second agreement involved the sale of the defendant's 1/8th share in the machinery installed in the ice factory for ₹16,000, with ₹5,000 paid as earnest money.

The plaintiff contended that the defendant failed to fulfil his obligations under these agreements despite being served with a notice on December 19, 1983. This led to the filing of a suit for specific performance on February 17, 1984.

Further, the plaintiff claimed that 11 marlas of land were self-acquired property of the father, purchased using his income as a railway employee. The remaining 30 marlas of land, purchased under four sale deeds in the names of the four brothers, were asserted to be individual properties inherited through succession under Section 8 of the Hindu Succession Act, 1956<sup>22</sup>. Additionally, the plaintiff denied that the properties were joint Hindu family property, instead asserting that they were inherited individually by the sons in their personal capacity.

### *Defendant-Appellant's Arguments*

The defendant initially denied the execution of the agreements and the receipts for the earnest money. However, during the trial, he admitted to executing the agreements but argued that they were unenforceable.

He claimed that the suit land, building, and machinery were joint Hindu family property and, as a coparcener, he could not unilaterally sell his share in the property. Regarding the agreement for the sale of the 1/8th share in the ice factory machinery, the defendant argued that it was unenforceable because machinery cannot be sold independently in this context. He maintained

---

<sup>21</sup> *Id.*

<sup>22</sup> Section 8, Hindu Succession Act, 1956.

that the plaintiff's appropriate remedy was a refund of the earnest money along with damages, if any.

The defendant also contended that the plaintiff had failed to discharge the burden of proof to establish that the property was not joint Hindu family property. Furthermore, he introduced the plea of joint Hindu family property at a later stage through an amendment in his written statement, asserting that the property belonged collectively to the family and not to him individually.

These arguments highlighted intricate issues involving facts, procedural complexities, and legal principles, which were subsequently scrutinized by the trial court, appellate court, and the Supreme Court.

## LEGAL CONCEPTS INVOLVED IN THE CASE

### (a) Specific Performance of Contract:

Performance of contract means where both parties are legally bound to fulfil their obligation or duties created under the contract terms. The parties are bound to fulfil their reciprocal promises in the contract. When either of the parties does not fulfil its obligations as per the terms of the contract then the party to whom the breach is so caused shall sue for specific performance of a contract. It is an equitable relief given by the court in the form of an award for the completion of the performance of a contract.<sup>23</sup>

The *Specific Relief Act, 1963* was enacted to provide remedies to individuals whose civil or contractual rights have been violated. One of the key remedies provided under the Act is *specific performance*, which compels a party to fulfil their contractual obligations rather than compensating the injured party with monetary damages. Specific performance is an *equitable relief*, rooted in the principle of fairness, and is granted when damages are inadequate to address the harm caused by non-performance. This inadequacy is presumed in cases involving contracts for the transfer of *immovable property*, as such assets are considered unique and irreplaceable.<sup>24</sup> Prior to the 2018 Amendment to the Specific Relief Act, specific performance was a

---

<sup>23</sup> *Introduction, Specific performance under Contract Law*, July 22, 2023, <https://blog.iplayers.in/specific-performance-under-contract-law/>, (last visited, 25<sup>th</sup> January, 2025).

<sup>24</sup> *Introduction, Specific Performance of contracts, Specific Performance of Contracts*, 13<sup>th</sup> October, 2023, <https://www.drishtijudiciary.com/to-the-point/ttp-specific-relief-act/specific-performance-of-contracts-1>, (last visited, 25<sup>th</sup> January, 2025).

*discretionary remedy*, meaning courts could deny it based on the equities of the case. However, the 2018 Amendment brought a significant change by making it a *mandatory remedy*, requiring courts to enforce specific performance unless specific exceptions under the Act apply. The provisions relating to specific performance are detailed in *Sections 10 to 14A and Section 16 of the Act*<sup>25</sup>. In this case, the plaintiff relied on the principle of specific performance to enforce two agreements for sale: the defendant's 1/4th share in the suit land and building, and the defendant's 1/8th share in the machinery of the ice factory. The plaintiff emphasized the *unique nature of the property and machinery*, arguing that monetary damages were inadequate. Conversely, the defendant contested the enforceability of the agreements, particularly the machinery sale, claiming it was impractical to sell the machinery separately in the context of the ice factory.

The court was tasked with evaluating whether the contracts satisfied the criteria under Section 10 of the Specific Relief Act, specifically whether damages were an insufficient remedy and whether the agreements were enforceable under the law. Additionally, the court considered whether exceptions under Sections 14 and 16, such as impracticality or bad faith, applied to bar the remedy of specific performance. This legal concept underscores the importance of balancing equitable principles with statutory mandates to protect contractual rights, especially in transactions involving unique and irreplaceable assets.

(b) Section 8 of the Hindu Succession Act, 1956:

This section provides the general rules for intestate succession in the case of a male Hindu who died intestate. His estate would first devolve upon the class 1 heirs provided in the schedule, in the absence of heirs in class one, then to the heirs mentioned in class two of the schedule. In case there is no heir provided in any of the two classes, then upon the 'agnates' (related to the deceased by blood or adoption via male line of descent) of the deceased and in the absence of agnates, upon the 'cognates' (related to the deceased by blood or adoption not wholly via line of male descendants) of the deceased, and if there is a failure of heirs, it would devolve upon the government by the 'doctrine of escheat' provided under Section 29 of the Hindu Succession Act, 1956.<sup>2627</sup>

<sup>25</sup> Specific Relief Act, 1963, August 7, 2023, <https://blog.ipleaders.in/introduction-to-the-specific-relief-act-1963/>, (last visited, 25<sup>th</sup> January, 2025).

<sup>26</sup> *The Hindu Succession Act*, November 19, 2022, <https://blog.ipleaders.in/the-hindu-succession-act-1956/>, (last visited, 25<sup>th</sup> January, 2025).

<sup>27</sup> *Section 8 of the HAS, 1956. Commissioner of Wealth-Tax vs. Chander Sen (1986)*, July 15, 2024, <https://blog.ipleaders.in/commissioner-of-wealth-tax-vs-chander-sen-1986/>, (last visited, 25<sup>th</sup> January, 2025).

(c) *Joint Family Property and Self-acquired property:*

The **Joint Hindu Family** concept includes all lineal descendants of a common ancestor, along with their wives and unmarried daughters. The key aspect of a Joint Hindu Family is that membership is based on relationship rather than property ownership. In contrast, **coparcenary** refers to a more specific group of male members in a family who acquire rights in the family property by birth. Traditionally, only males were considered coparceners, but after the **Hindu Succession (Amendment) Act, 2005**<sup>28</sup>, women also gained coparcenary rights, making them equal to male members in matters of property.<sup>29</sup>

**Coparcenary property** can originate from several sources. **Ancestral property**, inherited from male ancestors, becomes part of the coparcenary and is subject to partition. The **Doctrine of Blending** allows a person to merge self-acquired property into the joint family pool, thus transforming it into coparcenary property. The **Doctrine of Accretion** means that any income derived from joint family property, such as rents or profits, becomes part of the coparcenary. A key consideration in the **Kulwant and Makhan Singh** case is whether the property in dispute was **self-acquired, blended, or ancestral**, as the rules governing each type of property being, whether for partition, alienation, or devolution, are different.<sup>30</sup>

On the other hand, **self-acquired property** is that which an individual earns or acquires independently, through personal effort or inheritance. It does not automatically become joint family property unless voluntarily blended into it. In cases like **Commission of Wealth Tax v. Chander Sen**, courts have held that *inherited property remains separate and does not automatically become joint family property*. This distinction is especially significant in the current case, where the determination of whether the property is **self-acquired** or part of the **joint family** will affect how it is distributed.<sup>31</sup>

Several judicial interpretations provide insight into how these principles should be applied. **Mitakshara law** emphasizes that coparceners have a community ownership of property, but

<sup>28</sup> Hindu Succession (Amendment) Act, 2005 (39 of 2005).

<sup>29</sup> *Hindu Joint Family: An Analysis*, Abhishek Srivastava, Research Scholar, GEHU LAW REVIEW, VOL 2, ISSUE 2, <https://gehulawreview.com/wp-content/uploads/2022/08/8.pdf>, (last visited, 25<sup>th</sup> January, 2025).

<sup>30</sup> *Family Law II Notes for Law Students: BA LLB (Hons.)*, By Justice Mirror Staff, March 30, 2019, <https://justicemirror.com/family-law-ii-notes/#module-i-hindu-joint-family-and-coparcenary>, (last visited, 25<sup>th</sup> January, 2025).

<sup>31</sup> *Difference Between Joint Hindu Family Property and Self – Acquired Property*, Uploaded by Deepanshu Singhal, <https://www.scribd.com/document/376104817/Family-Law>, (last visited, 25<sup>th</sup> January, 2025).

their *shares fluctuate with births and deaths in the family until a partition occurs*. By contrast, under the *Dayabhaga law*, coparceners have defined *shares in property, and these shares do not change with family events like births or deaths*. The *Sushil Kumar v. Ram Prakash* case emphasized that the *Joint Hindu Family is based more on relationship than property ownership*, while the *Pushpa Devi v. CIT* case clarified that *women can blend their self-acquired property into the joint family but cannot claim partition rights unless they were coparceners*.<sup>32</sup>

The classification of the property is critical for determining its devolution in the current case. If the property is **self-acquired**, it will not pass through *survivorship* but will follow the rules of *intestate succession* under the *Hindu Succession Act*. However, if the property is *coparcenary or ancestral*, it would be subject to *partition and survivorship*. Furthermore, *post-2005*, when women were granted coparcenary rights, the court will need to examine whether the property was *blended or ancestral*, which would involve determining whether female heirs have equal shares in the property.<sup>333435</sup>

(d) Presumption of Jointness & onus to prove on the coparcener:

The *presumption of jointness* is a legal concept in Hindu law that operates under the assumption that every Hindu family is joint in food, worship, and estate. This means that the law assumes that the members of a Hindu family live together as a joint family unless there is clear evidence of partition or division. However, this presumption is not absolute and can be rebutted by providing direct evidence of a prior partition or by showing that the family is living separately, either in terms of food, worship, or estate.

The presumption works on the basis that in the absence of proof to the contrary, the family should be treated as joint. It also suggests that property acquired by any member of the joint family is presumed to be acquired from the joint family funds unless it is proven otherwise. For

---

<sup>32</sup> *Understanding Self-Acquired Property under Hindu Law: Rights, Protection, and Disposal*, By Marg ERP Ltd, May 11, 2023, <https://margcompusoft.com/m/self-acquired-property-under-hindu-law/?srsId=AfmBOopNsR9ZhmtQjcMQ6lAIMvWDRYsv6BoSF35dfQbAuTbYjabLj7IP>, (last visited, 25<sup>th</sup> January, 2025).

<sup>33</sup> See John D. Mayne, *Treatise on Hindu Law and Usage* 333 (11th ed. 1950).

<sup>34</sup> *Ancestral Property After Hindu Succession Act, 1945- Joint Family Property or Separate Property? A Muddle Under Tax Cases, Ancestral Property After Hindu Succession Act, 1956-Joint Family Property or Separate Property? A Muddle Under Tax Cases*, 25 *JILI* (1983), by Paras Diwan, LL.M., Ph. D., Professor of Law, Panjab University, Chandigarh.

<sup>35</sup> *Types of Self-Acquired or Separate Properties, Separate Property*, 21 Dec 2023, <https://www.drishtijudiciary.com/to-the-point/tp-hindu-law/separate-property>, (last visited, 25<sup>th</sup> January, 2025).

instance, when one member acquires property, and there is no evidence to suggest they used separate funds, it is presumed to be joint family property. However, the onus to prove that property was indeed purchased from joint family funds rests with the party asserting it.

It's also important to note that this presumption weakens with each subsequent generation of descendants. As the generations progress, the presumption becomes weaker, and the evidence required to establish the jointness becomes more substantial. In other words, the closer the parties are to the first generation, the stronger the presumption, and the further they are, the weaker the presumption.

The *onus of proof* refers to the responsibility placed on a party to provide evidence supporting their claim. In the context of Hindu joint family property, the burden of proving that a particular property is joint family property lies with the person asserting it to be so. This principle applies primarily to the *coparceners*, who are individuals entitled to share in the joint family property under Hindu law.

For a coparcener to claim that property is part of the joint family, they must provide sufficient evidence that the family is undivided and that the property in question is indeed joint. The concept of *nucleus* plays a crucial role in this; if the family has a "*nucleus*" of joint family property (i.e., a certain property or income), it can be presumed that any subsequent acquisitions made by a coparcener came from these funds and are, therefore, joint family property.

However, the burden of proving that a property is not joint family property shifts once a party shows that the joint family has no sufficient nucleus to acquire such property. If the individual who acquired the property can demonstrate that they did so using their separate funds, the burden of proof then shifts to the person who is asserting the property as joint family property. In situations where there is a dispute over whether property is joint or self-acquired, the coparcener who claims the property to be joint must establish the existence of the joint family and its nucleus. Once the existence of a nucleus is established, the burden shifts to the other party to prove that the property was not acquired with joint family funds.

In the current case, the *presumption of jointness* and the *onus to prove on the coparcener* were key elements in the Supreme Court's judgment. The case revolved around the question of

whether property acquired by a father, who was an employee of the Railways, could be considered joint family property. The Supreme Court held that there was **no presumption** that property owned by members of a joint Hindu family is automatically joint family property. The property in question was shown to have been acquired from the father's personal income as a Railway employee, which made it **self-acquired property**, and not joint family property.

In this case, the **burden of proof** fell on the plaintiff (the party claiming the property as joint family property) to demonstrate that the property was part of the joint family estate and had been acquired from the nucleus of the family's property. However, the plaintiff failed to establish the existence of such a nucleus. Without this evidence, the presumption of jointness could not apply, and the property could not be deemed joint family property.

Thus, the application of these two concepts, **presumption of jointness and onus to prove**, played a pivotal role in the outcome of the case. The presumption of jointness was rebutted by evidence that the property was self-acquired, and the plaintiff did not meet the burden of proving the existence of a joint family nucleus to justify the claim of joint family property.<sup>36</sup>

(e) S.100 CPC – Second Appeal:

**Section 100 of the Civil Procedure Code (CPC), 1908**, plays a crucial role in governing **second** appeals in India by restricting them to cases involving substantial questions of law, rather than issues of fact.<sup>37</sup> This provision ensures that the scope of second appeals is limited to legal issues of significant importance, not the re-examination of facts or evidence. According to Section 100, a second appeal to the High Court is permissible only if the case involves a substantial question of law.<sup>38</sup>

The appellant must specify the substantial question(s) of law in the appeal, and the High Court is required to formulate these questions once it is satisfied that they exist. The court is also allowed to address additional legal questions if necessary, during the appeal process.<sup>39</sup> The jurisdiction of the High Court under Section 100 is significantly limited, as it is barred from re-

<sup>36</sup> *Mayne's Treatise on Hindu Law & Usage*, 18<sup>th</sup> edn., BHARAT LAW HOUSE, New Delhi, pp.966-972.

<sup>37</sup> *Section 100 of CPC: Section 100: Second appeal. The Code of Civil Procedure, 1908*, <https://kanoongpt.in/bare-acts/the-code-of-civil-procedure-1908/arrangement-of-sections-part-vii-appeals-from-appellate-decrees-section-100-b4bdc460a178b99e>, (last visited, 25<sup>th</sup> January, 2025).

<sup>38</sup> *Scope of High Court's Jurisdiction Under Section 100 of the Civil Procedure Code, 1908* by Dr R. Prakash, (2003) 5 SCC (Jour) 27.

<sup>39</sup> *Part VII- Appeals*, [https://devgan.in/cpc/chapter\\_07.php](https://devgan.in/cpc/chapter_07.php), (last visited, 25<sup>th</sup> January, 2025).

assessing factual disputes or evidence, focusing instead on legal issues.<sup>40</sup>

A *substantial question of law* refers to a legal issue of broad importance, often involving unsettled legal principles or interpretations requiring judicial clarification. This provision has been particularly important after the 1976 amendment to the CPC, which curtailed the High Court's ability to entertain second appeals based on factual disputes.<sup>41</sup>

The *first appellate court* is responsible for resolving factual matters, and its findings on these issues are generally final. The High Court, when dealing with a second appeal, should not re-examine the facts but rather review the legal correctness of the decisions made by the first appellate court. The Supreme Court has emphasized this in several rulings, affirming that the second appeal is not intended to be a fresh assessment of facts. Section 100(3) also requires that the appellant clearly identify the substantial question(s) of law in their appeal; if this requirement is not met, the High Court is not obliged to entertain the appeal. Furthermore, the High Court has the discretion to address other legal issues arising during the appeal process, if deemed necessary.<sup>42</sup>

In the context of the case *Makhan Singh v. Kulwant Singh*, the Punjab and Haryana High Court applied Section 100 by focusing on whether the appeal raised a substantial question of law or was merely an attempt to challenge factual findings. The court observed that the appellant's issues were primarily factual, relating to claims of ownership and possession, which could not be reviewed in a second appeal.

The judgment emphasized that second appeals must focus on legal issues with broader implications, rather than disputing factual conclusions. Another critical aspect of the judgment was the improper formulation of the substantial question of law, which is a key procedural requirement under Section 100. As a result, the appeal was dismissed.

The key takeaways from this case include the strict limitation of the High Court's jurisdiction

---

<sup>40</sup> *Second Appeal under CPC*, January 6, 2019, <https://blog.ipleaders.in/second-appeal-under-cpc/>, (last visited, 25<sup>th</sup> January, 2025).

<sup>41</sup> *Section 100 CPC Description*, <https://lawrato.com/indian-kanoon/cpc/section-100>, (last visited, 25<sup>th</sup> January, 2025).

<sup>42</sup> *Substantial Questions of Law in Second Appeal*, Aug 24, 2023, <https://www.drishtijudiciary.com/current-affairs/substantial-questions-of-law-in-second-appeal>, (last visited, 25<sup>th</sup> January, 2025).

to substantial questions of law, the necessity of framing legal questions that have significant public or legal consequences, and the High Court's role in reviewing the legal correctness of lower courts' decisions, not their factual findings. Failure to properly frame substantial questions of law can result in the dismissal of the appeal, as demonstrated in the current case. This judgment highlights the critical importance of Section 100 of the CPC, which restricts second appeals to substantial legal issues and reinforces the principle that second appeals are not a forum for factual re-evaluation.<sup>43</sup>

## SECTION 8 OF THE HINDU SUCCESSION ACT

Section 8 deals with the *General Rules of Succession in case of a male Hindu*. Before the *Hindu Succession Act, 1956*, the property rights were completely based of survivorship. The doctrine of survivorship would apply only to the coparceners, which included the last holder of property plus first three degrees.<sup>44</sup>The coparcenary consisted of only males.<sup>45</sup>

### **“8. Distribution of property among heirs in Class I of the Schedule. —**

*The property of an intestate shall be divided among the heirs in Class I of the Schedule in accordance with the following rules: —*

*Rule 1. —The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.*

*Rule 2. —The surviving sons and daughters and the mother of the intestate shall each take one share.*

*Rule 3. —The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.*

*Rule 4.—The distribution of the share referred to in Rule 3—*

- (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the 648 HINDU SUCCESSION ACT, 1956 surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;*

---

<sup>43</sup> *High Court Cannot Admit Regular Second Appeal Without Substantial Question Of Law: Supreme Court*, Gyanvi Khanna, 24 Aug 2023, 9:00 AM, <https://www.livelaw.in/supreme-court/high-court-cannot-admit-regular-second-appeal-without-framing-substantial-questions-of-law-supreme-court-236022>, (last visited, 25<sup>th</sup> January, 2025).

<sup>44</sup> Section 8, Hindu Succession Act, 1956, Act No. 38 of 1956.

<sup>45</sup> “*Succession to the Former Limited Estate of a Remarried Hindu Widow Under the Hindu Succession Act, 1956*, (1973) 1 SCC J-17.

- (ii) (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.’’<sup>46</sup>

The word property under this section means all the property of the intestate inheritable under this act. It includes not only his separate self-acquired property but also his interest in a Mitakshara coparcenary property, in case he is survived by any of the female heirs or a daughter’s son mentioned in the Class I heirs of the Schedule.<sup>47</sup> It also includes property which he might have inherited from his father or grandfather after this act came into force.<sup>48</sup>

When a male having interest in the Mitakshara coparcenary property dies, his property would first devolve by succession upon any of the relatives mentioned in Class I. If there is no Class I heir, then the property would devolve upon the relatives mentioned in Class II, in the specified order.

In the rare case that there is no Class to heir, the property will go to the agnates and if there are no agnates, then to the cognates. If there are still no heirs then the Government will come in and escheat the property.<sup>49</sup>

Hence, at the time of the death of a coparcener, his interest in the coparcenary property would devolve according to this doctrine of survivorship. The self-acquired property would devolve not according to this doctrine of survivorship but according to the inheritance to the *Sapindas*. These included son, grandson and great-grandson, and after 1937, widow, predeceased son’s widow, and predeceased son’s predeceased son’s widow.<sup>50</sup>

The main question in front of the judiciary was whether the property which the son inherits from his father would be self-acquired or coparcenary, as his separate property or his own joint family property. There have been various judicial pronouncements, the case of **Commissioner of Wealth Tax v. Chander Sen**<sup>51</sup> served as a full stop to this prominent dilemma.

Prior to this case, various High Courts, had already given their judgment regarding this

---

<sup>46</sup> Section 8, Hindu Succession Act, 1956, Act No. 38 of 1956, [https://www.indiacode.nic.in/bitstream/123456789/5519/1/hindu\\_succession\\_act%2C\\_1956.pdf](https://www.indiacode.nic.in/bitstream/123456789/5519/1/hindu_succession_act%2C_1956.pdf), (last visited, 14<sup>th</sup> March, 2025).

<sup>47</sup> *Inheritance Right of Hindu Women in Agricultural Property: Uncertain Justice*, 65 *JILI* (2023) 123.

<sup>48</sup> *Can a Hindu Woman Inherit Ancestral Property? An Analysis*, 3.3 *JCLJ* (2023) 379.

<sup>49</sup> *Demystifying the Conundrum Regarding the Applicability of Hindu Succession Act, 1956 upon Agricultural Lands*, 2024 *SCC OnLine Blog OpEd* 8.

<sup>50</sup> *Evolution of Coparcenary Rights under Hindu Law*, 2.4 *JCLJ* (2022) 885.

<sup>51</sup> *AIR 1986 SC 1753*.

question. In 1977, the Gujarat High Court held that such property would automatically become the joint family property as in the case of *Commissioner of Income Tax v. Babubhai*<sup>52</sup>. But in 1979, in the case of *Additional Commissioner of Income Tax v. PL Karuppan*<sup>53</sup>, the Madras High Court, held the complete opposite that the property would become one, that would be individually owned by the son.

The Allahabad High Court had as well passed a judgement saying that such a property will not be joint family property.<sup>54</sup> One of the latest High Court case in this regard is one in Madhya Pradesh High Court, where the court reiterated the decisions of the Madras and the Allahabad High Courts.

Section 8 groups the heirs of the male intestate into four categories and lays down that heritable property first upon the heirs specified in the Class I of the Schedule. Under law in force before 1937, simultaneous heirs of a male intestate consisted only of a son, son of a predeceased son, and the son of predeceased son of predeceased son. Those were enlarged by *Hindu Women's Right to Property Act, 1937*, by adding three more heirs namely, the widow of son, widow of predeceased son and widow of son of predeceased son of predeceased son. All six heirs succeeded simultaneously and the doctrine of representation applied to their case.<sup>55</sup>

In Class I of the schedule enumerated 12 heirs so as to include in the new scheme of heirs the mother and the daughter of the intestate and some more descendants, latter by reference to the principle of representation. All these heirs inherit simultaneously. On failure of any such heirs specified in Class I, the property devolves upon the enumerated heirs specified in the Class II, an heir in the first entry of the Class II being preferred to the second entry and so on in succession.<sup>56</sup>

If there is no heir belonging to Class I or even Class II, the property devolves upon the *agnates* (a person related to another by relation of blood or adoption wholly through males) of the deceased. Lastly, if there is no agnate of the deceased in existence at the time of his death, the

---

<sup>52</sup> Commissioner of Income-Tax v. Babubhai M. Chinai, 1979 SCC OnLine Bom 368.

<sup>53</sup> Addl. Commissioner of Income-Tax v. Sm. M. Muthappa Chettiar and Sm. Kr. Karuppan Chettiar Firm, 1980 SCC OnLine Mad 279.

<sup>54</sup> (1968) 67 ITR 164 (All).

<sup>55</sup> *Inheritance Rights of Hindu women in Agricultural Property: A Critical Analysis*, 2.3 JCLJ (2022) 1543.

<sup>56</sup> *Relinquishing A Minor's Share in Devolved Property: A Case Comment on M. Arumugam v. Ammaniammal*, (2021) 15 NSLR 1.

property devolves upon his *cognates* (related by blood or adoption but not wholly through males).<sup>57</sup>

In *Savitri v. Devaki*<sup>58</sup>, it was held that, *where a partition of a joint family property takes place and a separate share is given to the mother, then in the case of death of one of the sons, the mother would be entitled to have a share in the separate property of her son.*

In *Yudhistir v. Ashok Kumar*<sup>59</sup>, it was held that, *a Hindu male is governed by Mitakshara school under Section 8 of the Act, the property that devolves on him will be his separate property. Such a property would never amount to joint family property in his hands as against his son.*

In the case of *Harishchandra Vithoba Narawade v. Vatsalabai*<sup>60</sup>, it was held that, *devolution of interest in coparcenary property where a male Hindu dies intestate would devolve by survivorship upon the surviving members of coparcenary and not under the Act, but if he dies leaving behind female Class I heirs, interest of the deceased shall devolve upon the female heirs by intestate succession.*<sup>61</sup>

In *Prem Bhatnagar v. Ravi Mohan Bhatnagar*<sup>62</sup>, the Hon'ble Court held that *the grandsons have no right in the property of their grandfather who died intestate, but being male descendant and members of the Hindu Joint Family, they would become coparceners in the Hindu coparcenary along with their father, while sons inherit self-acquired property of their father in terms of Section 8 of the Act. Similar view was also taken in Sheela Devi v. Lal Chand.*<sup>63</sup>

In *Subbayajoga Naik v. Narayanai*<sup>64</sup>, a suit by the daughter claiming her share from the self-acquired property of her deceased father as Class I heir who died intestate was allowed and the daughter was held to be entitled to a share in the property though she was married 20 years back.

---

<sup>57</sup> Hindu Succession Act, 1956, November 19, 2022, <https://blog.ipleaders.in/the-hindu-succession-act-1956/>, (last visited, 14<sup>th</sup> March 2025).

<sup>58</sup> AIR 1982 Kar. 67.

<sup>59</sup> AIR 1987 SC 558.

<sup>60</sup> 2005 (1) HLR 147 (Bom).

<sup>61</sup> R. Misra and V. Kumar (eds.), Mayne, HINDU LAW AND USAGE, 16<sup>th</sup> ed. 2008, Bharat Law House, New Delhi.

<sup>62</sup> 2006 (2) HLR 219 (Del).

<sup>63</sup> 2006 (1) HLR 144 (P & H).

<sup>64</sup> AIR 2004 Kant 430.

In *Seethamma v. Bathenna*<sup>65</sup>, it was established that, *where a male Hindu died intestate and issueless, the brother of the deceased, who is in Class II of the Schedule can claim property as his successor. The legal representatives of another brother who predeceased him are not entitled to claim share in the property of the deceased.*<sup>66</sup>

Thus, when a Hindu inherits the property from his father under Section 8, he takes it as his separate property and not as joint family property.<sup>67</sup> The property in Section 8 includes agricultural land also.<sup>68,69</sup>

## RELEVANT JUDGEMENTS REFERRED TO IN THE CURRENT CASE

The Court addressed the critical issue of determining who bears the responsibility for proving the existence of a Joint Hindu Family and whether a nucleus of joint family income was used to acquire a particular property.

The first case, *D.S. Lakshmaiah v. L. Balasubramanyam*<sup>70</sup>, dealt with *the presumption of joint Hindu family property. The Supreme Court held that there is no automatic presumption of property being joint Hindu family property simply because the family is joint. The burden of proof lies with the person asserting the property to be joint family property. In the Makhan Singh case, this principle was applied to establish that the onus of proving the property's joint family nature rested on the defendant. The Supreme Court corrected the errors made by the trial and appellate courts in applying this principle.*

Drawing from the precedent set in *K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer & Ors.*<sup>71</sup>, the Court observed that *there is no presumption in law that property acquired in the name of a family member inherently belongs to the Joint Hindu Family. To establish such a characterization, it must be demonstrated that the family possessed a nucleus of income or*

---

<sup>65</sup> AIR 2006 NOC 1055 (Kant).

<sup>66</sup> "AN ANALYSIS OF HINDU SUCCESSION LAWS IN VIEW OF THE DECISION RENDERED BY THE HON'BLE APEX COURT IN VINEETA SHAMR'AS CASE", Ravi Kumar H.R., Deputy Director, Karnataka Judicial Academy, Crescent House, Crescent Road, Bengaluru – 560001, 29.09.2021, <http://kjablr.kar.nic.in/assets/articles/Hindu%20Succession%20Act.pdf>, (last visited, 14<sup>th</sup> March, 2025).

<sup>67</sup> *Commissioner of Wealth Tax v. Chander Sen*, AIR 1986 SC 1752.

<sup>68</sup> *Tukaram Genba Jadhav v. Laxman Genba Jadhav*, AIR 1994 Bom 247.

<sup>69</sup> *Section 8 of Hindu Succession Act*, Uploaded by Prateek Bansal on Oct 09, 2017, <https://www.scribd.com/document/361125140/109499347-Section-8-of-Hindu-Succession-Act-Copy-doc>, (last visited, 14<sup>th</sup> March, 2025).

<sup>70</sup> (2003) 10 SCC 310.

<sup>71</sup> AIR 1956 SC 289 : (1964) 7 SCR 490.

*assets from which the property was purchased. In the absence of such evidence, the property is treated as self-acquired.*

Referring to *Commissioner of Wealth Tax, Kanpur & Ors. v. Chander Sen & Ors.*,<sup>72</sup> the Court emphasized that *a son inheriting property from his father under Section 8 of the Hindu Succession Act does so in his individual capacity and not as the Karta (manager) of a Hindu Undivided Family. This principle clarifies that inherited property does not automatically acquire the character of Joint Hindu Family property.*

The Court further concurred with the High Court's view that no presumption exists that property owned by members of a Joint Hindu Family inherently shares the same status. To establish the joint nature of such property, the claimant must provide evidence of two critical elements: the existence of a nucleus of Joint Hindu Family income and the purchase of the property using that nucleus. The burden of proof squarely lies with the party asserting the joint character of the property, as reinforced by the *K.V. Narayanaswami Iyer case*.

Applying these principles to the present case, the Court noted that the 11 marlas of land were purchased by Dula Singh using his income as a Railway employee. This property was therefore classified as his self-acquired property. When the property later devolved upon his sons, it retained its self-acquired character and could not be deemed part of the Joint Hindu Family property. The Court's reliance on the *Chander Sen* case further validated this conclusion.

These rulings collectively highlight the necessity of establishing a clear connection between the income of the Joint Hindu Family and the acquisition of property to substantiate claims regarding its joint nature<sup>73</sup>

## JUDGEMENT OF THE CASE

In the current case, the Supreme Court addressed disputes concerning the enforceability of agreements to sell properties, including land, a building, and machinery in an ice factory. The court emphasized critical aspects of Hindu Law and procedural principles under the Code of Civil Procedure, 1908.

<sup>72</sup> (1986) 3 SCC 567 : 1986 SCC (Tax) 641.

<sup>73</sup> *Case Summary: Makhan Singh v. Kulwant Singh*(2007) 10 SCC 602; *Appeal (Civil) 4446 of 2005*, <https://lawlex.org/case-summary/case-summary-makhan-singh-v-kulwant-singh-2007-10-scc-602-appeal-civil-4446-2005/13901>, (last visited, 25<sup>th</sup> January, 2025).

The judgment clarified that:

1. There is no presumption that a property is joint family property merely because a joint Hindu family exists. The burden of proof lies on the party asserting such a claim.
2. Properties inherited under Section 8 of the Hindu Succession Act, 1956<sup>74</sup>, are inherited by the individual in their personal capacity, not as a karta of a joint Hindu family.
3. The High Court in a second appeal has limited jurisdiction and cannot reappraise evidence, but it can interfere if there is an improper application of legal principles, such as the burden of proof.

The Supreme Court ultimately reversed parts of the High Court's findings, reaffirming the principles of individual ownership under Section 8 of the Hindu Succession Act<sup>75</sup>.

## ANALYSIS OF THE CASE

### 1. Ownership and Nature of Property

The central issue was whether the property in dispute was self-acquired or joint family property. The defendant initially denied executing the agreements but later admitted to their execution, complicating the claims. The court examined the source of acquisition of the disputed property and concluded:

- 11 marlas of land were the father's self-acquired property, inherited by his sons as personal assets under Section 8 of the Hindu Succession Act.
- The remaining 30 marlas, though purchased in the names of all four sons, did not inherently qualify as joint family property without proof of joint family funds contributing to the purchase.

### 2. Burden of Proof

The judgment highlighted the shifting burden of proof:

- Initially, the plaintiff bore the burden of proving that the property was not joint family property.
- Once the plaintiff showed that the property was purchased from non-joint family income, the burden shifted to the defendant to prove otherwise.

The High Court correctly rectified the misapplication of this principle by the lower courts, which had unfairly placed the entire burden on the plaintiff.

---

<sup>74</sup> Section 8, Hindu Succession Act, 1956.

<sup>75</sup> *Id.*

### 3. Second Appeal Jurisdiction

The Supreme Court reiterated the restricted scope of second appeals under Section 100 of the CPC. While factual findings of lower courts are generally binding, misapplication of the burden of proof justified the High Court's interference.

### 4. Specific Performance

The agreements to sell the defendant's shares in the property were partially enforceable. While the sale of 30 marlas and the machinery was upheld, the claim for specific performance regarding 11 marlas was denied, as it was deemed joint family property at the time of the agreement.

## CONCLUSION

The case reaffirmed critical principles of Hindu law regarding property inheritance and ownership under the Hindu Succession Act, 1956<sup>76</sup>. It underscored the importance of proving the character of the property before asserting joint family ownership. Additionally, it clarified procedural aspects, particularly the role of appellate courts in correcting errors in law without reappraising evidence.

This decision balances property rights under personal law with procedural fairness, ensuring that legal presumptions and burdens of proof are correctly applied. It also serves as a precedent for handling disputes involving self-acquired and joint family property.<sup>77</sup>

## BIBLIOGRAPHY

### Books and Treatises:

1. John D. Mayne, *Treatise on Hindu Law and Usage*, 11th ed. (1950).
2. John D. Mayne, *Mayne's Treatise on Hindu Law & Usage*, 18th ed., Bharat Law House, New Delhi, pp. 966–972.
3. *Mulla on Principles of Hindu Law*, 21st ed. (2010), citing Mitakshara, ch. I, s. 1, para 27.

---

<sup>76</sup> Hindu Succession Act, 1956.

<sup>77</sup> MANU/SC/7260/2007.

**Articles and Journals:**

1. Poonam Pradhan Saxena, "Notes and Comments: Judicial Re-Scripting of Legislation Governing Devolution of Coparcenary Property and Succession Under Hindu Law," *Journal of the Indian Law Institute* (JILI), Vol. 58 (2016), p. 337.
2. Paras Diwan, "Ancestral Property After Hindu Succession Act, 1956: Joint Family Property or Separate Property? A Muddle Under Tax Cases," *Journal of the Indian Law Institute* (JILI), Vol. 25 (1983).
3. Poonam Pradhan Saxena, "Crucifying the Concept of Mitakshara Coparcenary at the Altar of Income-Tax Law," *Journal of the Indian Law Institute* (JILI), Vol. 53 (2011).
4. Inheritance Right of Hindu Women in Agricultural Property: Uncertain Justice, 65 JILI (2023) 123.
5. Can a Hindu Woman Inherit Ancestral Property? An Analysis, 3.3 JCLJ (2023) 379.

**Case Laws:**

1. Commissioner of Wealth-Tax vs. Chander Sen, (1986).
2. Gur Narain Dass v. Gur Tahal Das, AIR 1952 SC 225.
3. Makhan Singh v. Kulwant Singh, (2007) 10 SCC 602.
4. Satrugan Isser v. Sabujpari, AIR 1967 SC 272.
5. Surjit Lal Chhabda v. CIT, (1976) 3 SCC 142: AIR 1976 SC 109.
6. SBI v. Ghamandi Ram, (1969) 2 SCC 33: AIR 1969 SC 1330.
7. D.S. Lakshmaiah v. L. Balasubramanyam, (2003) 10 SCC 310: AIR 2003 SC 3800.
8. Radhakant Lal v. Nazima Begum, AIR 1917 PC 128.
9. Gokal Chand v. Hukum Chand Nath Mal, AIR 1921 PC 35.
10. K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer, AIR 1956 SC 289.

**Legislations:**

1. Hindu Succession Act, 1956, Act No. 38 of 1956, Section 8.
2. Hindu Succession (Amendment) Act, 2005, No. 39 of 2005.
3. Specific Relief Act, 1963.
4. The Code of Civil Procedure, 1908, Section 100.

**Online Resources:**

1. "Difference Between Joint Hindu Family and Coparcenary," *iPleaders Blog*, June 28, 2020, available at <https://blog.ipleaders.in/difference-between-joint-hindu-family-and-coparcenary/> (last visited January 24, 2025).
2. "Commissioner of Wealth-Tax vs. Chander Sen (1986)," *iPleaders Blog*, July 15, 2024, available at <https://blog.ipleaders.in/commissioner-of-wealth-tax-vs-chander-sen-1986/> (last visited January 24, 2025).
3. Abhishek Srivastava, "Introduction, Hindu Joint Family: An Analysis," *GEHU Law Review*, Vol. 2, Issue 2, available at <https://gehulawreview.com/wp-content/uploads/2022/08/8.pdf> (last visited January 24, 2025).
4. Justice Mirror Staff, "Family Law II Notes for Law Students: BA LLB (Hons.)," March 30, 2019, available at <https://justicemirror.com/family-law-ii-notes/#module-i-hindu-joint-family-and-coparcenary> (last visited January 24, 2025).
5. Deepanshu Singhal, "Difference Between Joint Hindu Family Property and Self-Acquired Property," *Scribd*, available at <https://www.scribd.com/document/376104817/Family-Law> (last visited January 24, 2025).
6. "Understanding Self-Acquired Property Under Hindu Law: Rights, Protection, and Disposal," Marg ERP Ltd, May 11, 2023, available at <https://margcompusoft.com/m/self-acquired-property-under-hindu-law/> (last visited January 25, 2025).
7. *Introduction, Specific Performance Under Contract Law*, July 22, 2023, available at <https://blog.ipleaders.in/specific-performance-under-contract-law/> (last visited Jan. 25, 2025).
8. "Scope of High Court's Jurisdiction Under Section 100 of the Civil Procedure Code, 1908," Dr. R. Prakash, (2003) 5 SCC (Jour) 27.
9. *Specific Performance of Contracts*, October 13, 2023, available at <https://www.drishtijudiciary.com/to-the-point/ttp-specific-relief-act/specific-performance-of-contracts-1> (last visited Jan. 25, 2025).
10. *The Hindu Succession Act*, November 19, 2022, available at <https://blog.ipleaders.in/the-hindu-succession-act-1956/> (last visited Jan. 25, 2025).
11. *Section 100 CPC Description*, available at <https://lawrato.com/indian-kanoon/cpc/section-100> (last visited Jan. 25, 2025).

12. *Substantial Questions of Law in Second Appeal*, Aug. 24, 2023, available at <https://www.drishtijudiciary.com/current-affairs/substantial-questions-of-law-in-second-appeal> (last visited Jan. 25, 2025).
13. "High Court Cannot Admit Regular Second Appeal Without Substantial Question Of Law: Supreme Court," Gyanvi Khanna, *Live Law*, August 24, 2023, available at <https://www.livelaw.in/supreme-court/high-court-cannot-admit-regular-second-appeal-without-framing-substantial-questions-of-law-supreme-court-236022> (last visited January 25, 2025).

**Additional Notes:**

1. For an elaborate exposition on Mitakshara coparcenary, see Mayne's *Hindu Law and Usage*, pp. 364-365 (11th ed.).
2. Interactive sessions on "Devolution of interest in Mitakshara coparcenary" at Chandigarh Judicial Academy (2010-2011) by Paras Diwan.

