

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3170 OF 2009
(Arising out of SLP (C) No.24760 of 2007)

Lehja Bai (D) Thru LRs.

..... Appellant(s)

Vs.

Sewanti Bai & Anr.

..... Respondent(s)

J U D G M E N T

R. V. RAVEENDRAN J.,

Leave granted. Heard. This appeal is by the defendants in a suit for partition and separate possession filed by first respondent.

2. This appeal arises out of a suit for partition. One Ganaram and his son Sahdeo constituted a joint family. Lehja Bai was the wife of Ganaram and mother of Sahdev. Ganaram and Lehja Bai had four daughters in addition to their only son Sahdeo. Sahdeo died intestate in the year 1972 issueless survived by his wife Sewanti Bai. Ganaram died in the year 1986.

3. Sewanti Bai filed a suit for partition and separate possession of her share in the joint family properties, in the year 1989. She impleaded her mother-in-

law Lehja Bai as the first defendant, four sisters-in-law as defendants 2 to 5 and the State of Madhya Pradesh as defendant no.6. Defendants 2 to 5 resisted the suit *inter alia* on the ground that the deceased Ganaram had left a will dated 22.2.1983 bequeathing the suit properties in their favour.

4. The suit was decreed by the trial court by judgment and decree dated 21.12.1999 declaring that Sewanti Bai was entitled to 7/12th share in the suit schedule properties and directing division by metes and bounds through the Revenue Authorities. The trial court also declared that the will dated 22.2.1983 was not valid nor binding on the plaintiff. Feeling aggrieved, defendants 1 to 5 filed an appeal before the District Judge, Chhindwara (MP). In the said appeal, Sewanti Bai filed cross objections contending that she was entitled to mesne profits from the date of the suit to the date of possession. The first appellate court by judgment dated 14.2.2003, dismissed both the appeal and cross objections thereby confirming the decision of the trial court.

5. The trial court and the first appellate court proceeded on the basis that Ganaram and Sahdeo each had a half share in the suit schedule properties, that on the death of Sahdeo, his wife Sewanti Bai succeeded to his half share; that when Ganaram died subsequently, his wife Lehja Bai, his daughter-in-law Sewanti Bai and four daughters (D2 to D5) each became entitled to 1/6th share

in his half share; and that therefore, Sewanti Bai was entitled to the half share of Sahdeo plus $1/12^{\text{th}}$ share from Ganaram's share (that is, $1/6^{\text{th}}$ of Ganaram's half share), in all to $7/12^{\text{th}}$ share. The trial court and first appellate court also held that defendants 1 to 5 each were entitled to $1/12^{\text{th}}$ share.

6. Defendants 1 to 5 filed a second appeal before the High Court wherein the only question that was raised was whether the courts below were justified in holding that Sewanti Bai was entitled to $7/12^{\text{th}}$ share. The High Court by judgment dated 27.7.2006 allowed the appeal in part. It held that if there had been a partition of the joint family properties during the life time of Ganaram, then Ganaram, Lehja Bai and Sahdeo would have each got $1/3^{\text{rd}}$ share in the suit schedule properties; that when Ganaram died, his wife, four daughters and son were each entitled to a $1/6^{\text{th}}$ share in his $1/3^{\text{rd}}$ share; that as his son Sahdeo had died, Sahdeo's $1/18^{\text{th}}$ share was further divided into two shares of $1/36^{\text{th}}$ each and taken by his wife Sewanti Bai and mother Lehja Bai. Strangely, the High Court did not calculate or state what was the share of Sewanti Bai in the joint family properties or what was the share of Lehja Bai therein. The High Court neither answered the substantial question of law raised nor indicate its final 'decision' in the matter except stating that the judgment and decree of the courts below was modified in terms of its judgment.

7. The said judgment is challenged in this appeal by special leave by defendants 2 to 5, as first defendant died after the decision of the High Court. The appellants contend that Lehja Bai was entitled to $21/36^{\text{th}}$ share, Sewanti Bai was entitled to $7/36^{\text{th}}$ share and defendants 2 to 5 were each entitled to $1/18^{\text{th}}$ share. The contention of the appellant is that Lehja Bai was entitled to $1/3^{\text{rd}}$ share in the joint family properties on her own account, $1/6^{\text{th}}$ share as legal heir of her son, $1/18^{\text{th}}$ share as legal heir of her husband, and $1/36^{\text{th}}$ share as legal heir of her son in the share of Ganaram.

8. But during arguments, both counsel fairly agreed that the correct method of calculation would be on the following basis : that Ganaram and Sahdeo would be entitled to $\frac{1}{2}$ share each in the joint family properties; that on the death of Sahdeo, his half share would have devolved in two equal shares on his mother Lehja Bai and wife Sewanti Bai and consequently, each of them would have got $1/4^{\text{th}}$ share; and that when Ganaram died, his half share would have devolved equally on his wife, daughter-in-law, and four daughters equally which would mean that each of them would get $1/12^{\text{th}}$ share as legal heirs of Ganaram's share. It was therefore, agreed that Lehja Bai would have $1/4^{\text{th}} + 1/12^{\text{th}}$ equal to $1/3^{\text{rd}}$ share; that Sewanti Bai would also have $1/4^{\text{th}} + 1/12^{\text{th}}$ equal to $1/3^{\text{rd}}$ share; and the four daughters (D2 to D5) would each have $1/12^{\text{th}}$ share together $1/3^{\text{rd}}$ share.

9. As Lehja Bai died after the decision of the High Court, her one-third share will now devolve upon her four daughters equally. Consequently each of them will have another $1/12^{\text{th}}$ share in addition to their $1/12^{\text{th}}$ each, that is $1/6^{\text{th}}$ each.

10. We accordingly allow this appeal and modify the judgments and decrees of the courts below holding that the share of plaintiff in the joint family properties is $1/3^{\text{rd}}$ (one-third) and the share of each of defendants 2 to 5 is $1/6^{\text{th}}$ (one-sixth). The trial court's decree for division and separate possession of plaintiff's share remains undisturbed. Draw up preliminary decree accordingly. Parties to bear their respective costs.

.....J
[R. V. Raveendran]

.....J
[J. M. Panchal]

New Delhi;
May 4, 2009.