

**IN THE HIGH COURT OF MADHYA PRADESH
A T J A B A L P U R**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

FIRST APPEAL No.280 of 2003

KRISHNI DEVI AND OTHERS

Versus

BALADATT (DEAD) THROUGH LRS. SMT. UMA AND OTHERS

Appearance:

*Shri Sanjay Agrawal - Senior Advocate with Miss Aishwarya Nandani
Tiwari - Advocate for LR's of appellant No.2.*

*Shri Aditya Singh Rajput - Advocate for respondents No.3 to 6 and
LR's of respondent No.2.*

Shri Vijay Kumar Shukla - Advocate for respondent No.8.

J U D G M E N T

(Reserved on 13.08.2026)

(Pronounced on: 31.08.2026)

The present appeal under Section 96 of the Code of Civil Procedure has been filed by the defendants No.1 and 2 challenging the judgment and decree dated 26.02.2003 passed by the Trial Court in RCSA No.32/2002 decided by 4th Additional District Judge, Satna.

2. A suit was filed by the plaintiffs seeking declaration of Will dated 24.03.1998 to be null and void document. Further declaration of various

lands as contained in the plaint to be of the ownership of plaintiffs was prayed and it was also prayed for permanent injunction to restrain the defendants No.1 and 2 from interfering in possession of the plaintiffs.

3. The said suit has been decreed by the Trial Court against which the defendants No.1 and 2 are before this Court.

4. Learned counsel for the appellants/defendants No.1 and 2 has vehemently argued that the suit is between brothers and sisters, inasmuch as, the plaintiffs are the brothers of defendant No.1-sister. The defendant No.2 is the husband of defendant No.1. The father of these brothers and sisters expired in the year 1945 and he left behind properties in 5 survey numbers out of the 10 survey numbers which are the properties involved in the suit. It is argued that there are two sets of properties. One set of 5 survey numbers which were inherited by the parties from their father and the second set of 5 survey numbers is those lands which were self-acquired by the third brother who expired issueless i.e. Rameshwar Prasad who died on 29.03.1998. The entire dispute has arisen after death of Rameshwar Prasad as to in what manner the share of Rameshwar Prasad is to be dealt with, who admittedly was issueless.

5. Learned counsel for the appellants has argued that the defendant No.1, who is the sister, has been left out of the matter altogether by the Trial Court by erroneously holding the existence of Hindu Undivided Family (“HUF” for short) or joint Hindu family though it did not find the existence of any coparcenary to be proved. It is argued that by holding the properties of the three brothers to be joint family property, it has been erroneously held that upon death of one of the brothers, namely, Rameshwar Prasad, the properties would go back to joint Hindu family and would not be dealt with as per Hindu Succession Act though Rameshwar Prasad expired in the year 1998 after enactment of Hindu Succession Act, 1956.

6. It is further argued that the said Rameshwar Prasad was residing along with the appellants and he had executed a Will in favour of the appellant No.1 but, the Trial Court, on irrelevant considerations, by misreading the evidence and by overlooking the evidence adduced by the defendants, has held the said Will to be null and void document, which is also improper and needs to be interfered with by this Court.

7. It is argued that the Trial Court in paragraph 9 of the impugned judgment has erroneously held that it is settled position of Hindu Law

that the members of Hindu family would always be deemed to be constituting a joint Hindu family, which is erroneous. It is argued that even without any proof of partition, there cannot be any inference of coparcenary, though there may be property jointly held, but there cannot be any presumption of joint Hindu family. There is a difference between property jointly held and existence of coparcenary. On these assertions, it is prayed to set aside the impugned judgment and decree and to dismiss the suit filed by the plaintiffs.

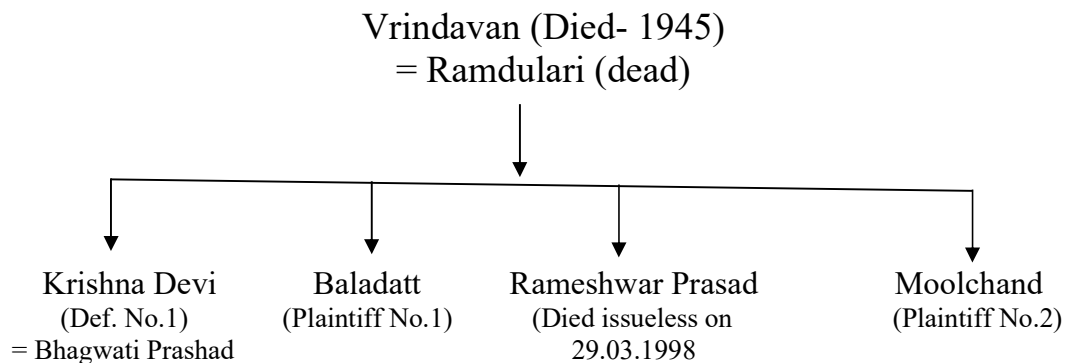
8. *Per contra*, learned counsel for the plaintiffs has vehemently supported the impugned judgment and decree by contending that there was existence of a joint Hindu family or HUF or coparcenary, inasmuch as, the father of parties died in the year 1945 and, therefore, the property devolved on the male children i.e. the sons and the sons thereafter constituted joint Hindu family because there was no partition as such. Though plea of partition was raised, but partition could not be proved by the defendants and hence, there is existence of joint Hindu family. Therefore, after death of Rameshwar Prasad, the property would not go to his successors as per Hindu Succession Act, but would go back to the HUF and there is no error committed by the Trial Court in holding

so. Therefore, on such assertions, it is prayed to confirm the impugned judgment and decree passed by the Trial Court.

9. This Court has heard learned counsel for the rival parties at length and perused the record.

10. In the present case, the father of these brothers and sisters is said to have expired in the year 1945 and he left behind four children, being one daughter and three sons. The father, namely, Vrindavan having allegedly died in the year 1945 with the following genealogy:-

GENEOLOGY



11. The plaintiffs have set up the case that since the father had died in the year 1945, prior to enforcement of Hindu Succession Act, 1956, therefore, the devolution of property would go by the classical Hindu Law and not as per Hindu Succession Act, whereby the female child would not get any share. It is their case that since the brothers succeeded

the property from their father prior to 1956, therefore, there is a continuation of coparcenary.

12. Plaintiff was filed in 1998 and as per plaintiff assertions, the father of these parties expired 53 years prior to filing of suit, that comes to around year 1945. There is another assertion in plaintiff that plaintiff No.1 was about 7 years old at that time, and the defendant No.1-sister had been married off by the father in his lifetime.

13. However, the plaintiff No.1 (PW-1 Baladatt) states in para-1 of his Court deposition recorded in 2001, that the father expired about 55 years ago, then says around year 1956-57, then he goes on to say that he was 18 years old at that time. Then in para-7 he says that when the father died, the defendant No.1 was 3 years old, and she got married in 1962. In para-1 itself, he states that he cannot say that when his father had died. Then in para-13 he states that his father expired around year 1935-40. In para-14 he states that plaintiff pleading about defendant No.1 being married in lifetime of father, is wrong. Therefore, the entire evidence of this witness regarding his father having died in 1945, is unreliable. Comparing plaintiff pleading that the father had married off defendant No.1 in his lifetime, with cross-examination in saying that

the defendant No.1 was married in 1962, totally renders the plaintiff's case utterly suspicious as to the father of the plaintiffs having died prior to enforcement of Hindu Succession Act 1956.

14. PW-4 Gorelal states in para-6 that partition between Vrindawan and Ramgopal (father and uncle of plaintiffs) took place about 35-40 years ago. This deposition taken in 2001 also indicates that father of plaintiffs might have been alive in 1961-62.

15. No documentary evidence was placed on record to indicate as to when the father of the plaintiffs had expired, i.e. prior to enforcement of Hindu Succession Act, or later to it. No death certificate, or any certificate of panchayat, or any revenue mutation proceeding or any revenue Khasra was placed on record to indicate the approximate date as to when the father of plaintiffs expired.

16. Though the defendants have also not placed any evidence on record to indicate the date of death of father of plaintiffs. However, in para-4 of written statement filed in 1999, it has been categorically stated by the defendant No.1 that she was married off by her father about 35 years ago. Therefore, the case of the defendants also is that the father of plaintiffs and defendant no.1 was alive till about the year 1964. The

burden was on the plaintiffs to prove that their father expired prior to enforcement of Hindu Succession Act, that they failed to discharge.

17. Therefore, it would be a clear case that upon death of their father, there would be deemed partition and the successors got the lands individually, and not as coparcenary. In absence of further partition between the three sons of deceased Vrindawan, they would remain co-owners in their defined, but unpartitioned share. They would not constitute coparcenary, and they would get their shares by succession, and not by survivorship. The case would therefore, be covered by Hindu Succession Act, and not by classical Hindu law.

18. The property was left behind by the deceased father Vrindavan in 5 survey numbers which are in dispute alongwith another 5 survey numbers, which were acquired in the name of deceased son, namely, Rameshwar Prasad, upon whose death, the entire dispute has arisen. The survey numbers can be sub-divided into two groups as under:-

Survey numbers left behind by father	Survey numbers acquired in name of Rameshwar Prasad after death of father
64	129/2
130	144/2
152	153/2
187	154
198	161

19. To adjudicate the question of succession, this Court, firstly, needs to deal with the Will of Rameshwar Prasad because if there is existence of Will, the matter has to be looked into differently, and if there is no existence of Will, then the matter has to be looked into altogether differently.

20. There is a Will of deceased Rameshwar Prasad in picture, which is Exhibit D-1. The said Will is an unregistered Will, which has been notarised by Notary and states it to be executed on 24.03.1998 i.e. five days prior to death of Rameshwar Prasad. The said Will has two attesting witnesses namely Dayashankar Gangele (DW-4) and Bablu Kesharwani (DW-7). It is drafted by S.K. Pandey, Advocate (DW-5) and is notarised by Udayraj Singh Parihar (DW-6).

21. This Court has gone through the deposition of the attesting witnesses. DW-4 Dayashankar Gangele is the son-in-law of defendants No.1 and 2 and he is a beneficiary witness being closely related to the beneficiaries of the Will i.e. defendants No.1 and 2. This witness belongs to Chitrakoot whereas the deceased used to reside at different place in District Satna.

22. The other witness is DW-7 Bablu Kesharwani and this witness is also resident of Chitrakoot which is though in same district Satna but is at some distance from Tahsil Raghuraj Nagar where the testator used to reside.

23. This witness has stated that he happened to meet the testator by chance in the Kachehri premises. It is clear that this witness has deposed that he only by chance met the testator in Kachehri premises. A person about 75 years of age and at the fag end of his life would not choose a person to be witness of his Will who happens to meet a person by chance in the Court premises. The deposition of this witness, therefore, does not inspire any confidence. Insofar as DW-4 is concerned, he is the son-in-law of propounder of Will and he being closely related, his evidence is also required to be dealt with from a different angle.

24. It has been held by the Hon'ble Apex Court in the case of **Kavita Kanwar vs. Mrs. Pamela Mehta and others**, reported in (2021) 11 SCC 209 that a person who takes active participation in execution of Will and who is a major beneficiary of the Will and also attempts to conceal the said fact, then it in itself is a suspicious circumstance surrounding the Will. He in cross-examination has admitted that the elder daughter of defendants No.1 and 2 was married to this witness in the year 1990. However, upon being cross examined he stated that Rameshwar Prasad was the maternal uncle of his wife. Therefore, there is a distinct attempt by this witness to suppress and conceal his relationship with the testator and with the propounder of the Will. He states Rameshwar Prasad to be his "Mama Sasur" though he was his "Chacha Sasur".

25. On the question of the aforesaid Will, there are two more witnesses who are Advocates and legally trained persons who are the Notary and the Draftsman of the Will, namely Udayraj Singh Parihar and S.K. Pandey. These are legally trained persons and their evidence cannot be taken into account for the purpose of proving the Will and

evidence of attesting witnesses is to be seen as per Section 63(c) of the Indian Succession Act.

26. Therefore, this Court has no hesitation in upholding the finding of the Trial Court where learned Trial Court has held the will to be sham and null and void document. To that extent, the findings of the Trial Court are upheld.

27. Now, it is to be seen that in what manner the property left behind by Rameshwar Prasad would devolve upon his death intestate.

28. The Trial Court in para 9 of the impugned judgment has held that the five survey numbers, which were left behind by the deceased father of these parties, namely Vrindavan, who died in the year 1945, would constitute HUF or joint Hindu family and every property acquired by any person would be deemed to be joint Hindu family property.

29. This Court does not agree with such drastic proposition by the Trial Court that if some children inherit any property from their father jointly, then every property which would be acquired by his children would be joint Hindu family property and there would be presumption of joint Hindu family or coparcenary. In the opinion of this Court, as already noted above, upon death of father, each issue would succeed

the property in his own right. If their names are jointly recorded in revenue records, then it will simply indicate a unpartitioned property with distinct but unpartitioned shares of co-owners.

30. In the plaint, there is no assertion of there being a joint Hindu family and para 5 of the plaint simply mentions the property to be jointly owned property. Para 5 of the plaint categorically mentions that the plaintiffs had acquired lands in Survey Nos.64, 130, 152, 187 and 198 from their father and five more survey numbers were acquired in the name of Rameshwar Prasad by the two plaintiffs and Rameshwar Prasad jointly. It was the case of plaintiffs that sale deed used to be executed in name of Rameshwar Prasad because he was residing in the village. It was contended in the plaint that on the said land all the three brothers had joint shares.

31. Therefore, there is no pleading in the plaint regarding there being existence of joint Hindu family but there is a pleading regarding property being jointly owned by three brothers and jointly acquired by three brothers. Even from the revenue record Exhibit P-5 which is Khasra of the year 1987 to 1991, the land succeeded from their father

is shown to be in the joint name of Moolchand, Baladatt and Rameshwar Prasad.

32. The story put up by the plaintiffs was that the two plaintiffs had gone to Rishikesh and were doing a petty job in a hotel/restaurant at Rishikesh and were earning their livelihood at Rishikesh. These two plaintiffs used to remit money to their village and from that money some more properties were purchased but since the plaintiffs were residing at Rishikesh, therefore, the properties were purchased in the name of the third brother Rameshwar Prasad, who stayed back in the village.

33. It is not the case of a person going out of the country and sending remittance to his family and there is inability of party to come down for execution of sale deed in his name.

34. The distance between Satna to Rishikesh is not so much that a person cannot possibly come down to Satna to get a sale deed executed in his name.

35. To infer existence of joint Hindu family, no evidence has been placed on record by the plaintiffs and there is no pleading as such. Upon death of their father, the property would have devolved jointly upon the

sons because the father died prior to 1956. The property would, therefore, remain to be jointly owned property and merely because the three sons have succeeded some property from their father jointly, it would not infer that for all times to come, there would be joint family of these three sons and whatever property would be acquired by any of the three sons would be deemed to be joint property of all the sons. Such a proposition is too drastic to be accepted.

36. Even as per plaint assertions that two plaintiffs had gone to Rishikesh many years ago to earn livelihood and it in itself indicates that even if there was joint family, it was broken at that point of time, as some members had broken off from the joint family and went to earn livelihood at Rishikesh. In view of such pleading, the burden was heavier on the plaintiffs to prove existence of joint family and they even did not plead joint family in their plaint.

37. Only in evidence they stated about existence of joint family and remitting money to the deceased Rameshwar Prasad for purchasing the five survey numbers which were purchased in name of Rameshwar Prasad. However, no proof of any remittance was placed on record, no proof of earning money and sending money to Rameshwar Prasad was

placed on record and only on oral assertions, the property acquired by Rameshwar Prasad in his lifetime has been held to be joint property of HUF which in itself is not found to exist by this Court in the present case.

38. It has been held by the Hon'ble Apex Court in the case of **Appasaheb Peerappa Chamdgade vs. Devendra Peerappa Chamdgade and others**, reported in (2007) 1 SCC 521 that there is no presumption of a joint Hindu family and initial burden is on the plaintiff to show that entire property was a joint Hindu family property and after discharge of initial burden, then burden may shift on the defendants to show that property claimed by them was not purchased out of joint family nucleus.

39. There is no evidence placed on record in the present case that what was the joint family nucleus, how the nucleus was being earned and how much was the sale consideration of the five survey numbers which were acquired in the name of Rameshwar Prasad and who contributed how much amount and who was earning how much amount.

40. This suit was filed after lifetime of Rameshwar Prasad and Rameshwar Prasad had died in ripe age of 75 years and the plaintiffs could have litigated against Rameshwar Prasad for declaration of property as joint family property in the lifetime of Rameshwar Prasad. However, Rameshwar Prasad was not alive to rebut the assertions of the plaintiffs when the suit was filed in the year 1998.

41. Therefore, this Court is of the considered opinion that there is no evidence in the present case to infer the existence of a joint family and/or of a coparcenary but it cannot be disputed that some unpartitioned property was held jointly by three brothers upon death of their father.

42. The counsel for the rival parties were at consensus to argue that there has been no pleading of any coparcenary and no proof of any coparcenary in the present case.

43. Therefore, it would be clear that the properties in five survey numbers acquired by deceased Rameshwar Prasad in his lifetime in his name would be properties of Rameshwar Prasad only and the plaintiffs cannot seek any declaration on such properties. So far as 1/3rd share in the five survey numbers left behind by their father upon his death is

concerned, the share of Rameshwar Prasad would devolve on his Class 2 successors in absence of any Class 1 successors as per Schedule to Hindu Succession Act, 1956. The lands being recorded in the name of three brothers was never agitated by the plaintiff, therefore, at this distance of time, no orders can be passed as to the share of defendant No.1 upon death of her father.

44. The defendant No.1 as well as the plaintiffs are Class 2 successors of deceased Rameshwar Prasad and in the absence of any valid Will, the entire properties held by deceased Rameshwar Prasad, whether succeed by him from his father, or acquired by him in his lifetime, would devolve in 1/3rd share to both of the plaintiffs and the defendant No.3.

45. Therefore, the impugned judgment and decree passed by the Trial Court is modified to the extent that for the lands in Survey Nos.64, 130, 152, 187 and 198, the share of deceased Rameshwar Prasad as available in revenue records on date of his death, would be divided in 1/3rd share each among the two plaintiffs and the defendant No.1.

46. So far as the lands acquired in the name of Rameshwar Prasad in his lifetime in Survey Nos.129/2, 144/2, 153/2, 154 and 161 is

concerned, these lands would be deemed to be the lands owned by deceased Rameshwar Prasad and would also devolve on the two plaintiffs and the defendant No.1 in equal proportion of 1/3 each.

47. The parties shall approach the concerned authority under Section 54 of the Code of Civil Procedure to get consequential partition carried out. They are also entitled to recover possession of their share as per law.

48. In the above terms, the appeal stands *partly allowed and disposed of*.

(VIVEK JAIN)
JUDGE

psm