IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

SECOND APPEAL No. 264 of 2015

CNR No.: MPHC030184922015

PREMBAI AND OTHERS

Versus

RAMSWAROOP AND OTHERS

Appearance:

Shri Ashish Shrivastava- learned counsel for the appellants.

Shri Rajendra Jain - learned Government Advocate for respondent no.2/State.

Reserved on : 16/10/2026

Delivered on : 26/10/2026

ORDER

1. The appellants/plaintiffs are aggrieved by the judgment and decree dated 16/05/2015 passed by the First Additional District Judge, Guna (M.P.) in Civil Appeal No.52-A/2014, whereby the judgment and decree dated 17/05/2012 passed by the Fourth Civil Judge Class-1, Guna (M.P.) in Civil Suit No.52A/2010 has been affirmed and the suit filed by them for declaration of their title and possession and for permanent injunction has been dismissed.

2. For convenience, the appellants are referred to as “plaintiffs” and respondents are referred to as “defendants” in this order as per their respective status in the civil suit. Further, the suit property would mean the

land consisting of 13 Survey numbers having a total area of 5.908 hectares situated in village Baskhedi, Patwari Halka No.30, Tahsil and District-Guna (M.P.). The details of the survey numbers of the land are given in the paragraph 1 of the plaint which are not in dispute.

3. The facts which are not in dispute in this case are that the suit land is the ancestral property of defendant no.1. Further, the plaintiff no.1 is the wife of defendant no.1 while the plaintiffs no.2 & 3 are his sons.

4. The plaintiffs filed the present suit *inter-alia* contending that the suit land is recorded in the name of defendant no.1 and his brothers in revenue records and is their ancestral property. On 21/07/2010, defendant no.1 threatened them to sell the suit land and not to give them any share therein. The plaintiffs, thus, apprehended that the defendant may sell the suit land which will extinguish their rights in this ancestral property, they filed the present suit seeking declaration of their title and possession over the suit land and for decree of permanent injunction on the ground that the property being ancestral, the plaintiffs have right therein since birth and, therefore, defendant no.1 is not competent to sell the same.

5. During the pendency of the suit, defendant no.1 sold part of suit land to defendant no.3 vide sale-deed dated 20/04/2011. Accordingly, the plaintiffs amended the plaint and included defendant no.3 as party in the suit and also sought for declaration of the sale-deed dated 20/04/2011 as null and void.

6. The defendant no.1 filed his written statement denying the plaintiffs' claim over the suit land. He averred that there is no dispute between him and his brothers and there is already a partition between them with regard to suit land. He also averred that the plaintiffs have no right in the suit land

during his lifetime.

7. Defendant no.3 filed her separate written statement wherein she asserted her right, title and possession over the property purchased by her on the basis of sale-deed dated 20/04/2011. She also averred that the land purchased by her vide aforesaid sale-deed was not included in the plaint earlier and, therefore, provisions of Section 52 of the Transfer of Property Act are not attracted.

8. After taking oral and documentary evidence of both sides, the learned trial Court dismissed the suit vide judgment dated 17/05/2012. The trial Court relied upon the judgment of this Court in the case of ***Chandrakanta and another Vs. Ashok Kumar and others*** reported in ***2002(3) M.P.L.J. 576*** and held that after coming into force of Section 8 of the Hindu Succession Act, the concept of birth right in the ancestral property does not exist. The plaintiffs cannot have any right in the suit land during the lifetime of defendant no.1. The judgment and decree passed by the learned trial Court has been affirmed by the First Appellate Court in appeal filed by plaintiffs. Challenging the same, the present appeal is filed by plaintiffs.

9. Learned counsel for the appellants submitted that admittedly, the suit land is the ancestral property in the hands of defendant no.1. As per his submission, the plaintiffs are the coparceners and are thus, having right in the property since birth. As per his submission, defendant no.1 is not competent to sell the property to anyone else defeating the plaintiffs' right in the suit land.

10. In order to meet the judgment of this Court in the case of ***Chandrakanta (supra)***, learned counsel argued that the plaintiffs may not

have any right to claim share in the property during the lifetime of defendant no.1, however, defendant no.1 is also not entitled to sell any part of the suit land which may defeat plaintiffs' claim therein. As per his submission, though the plaintiffs may not have a right to claim share during lifetime of defendant no.1, they certainly have a right in the suit land which may come into force after the death of defendant no.1. However, if the defendant no.1 is permitted to sell the land, their right to get the land after his death is defeated.

11. Considered the submissions and perused the record.

12. The facts are not much in dispute. The suit land which is in dispute is the ancestral property in the hands of defendant no.1. Plaintiffs claim to have their right and share in the land by virtue of they being coparceners.

13. At the outset, it may be noted that the plaintiff no.1 being the wife of defendant no.1, could not come within the category of coparceners. It is only the sons that is plaintiffs no.1 & 2, who would fall in the said category. Therefore, even if the plaintiffs' contention is accepted, it is only plaintiffs no. 1 & 2 who would get any right in the property.

14. The Courts below have dismissed the plaintiffs' suit holding that after coming into force of Section 8 of Hindu Succession Act 1956, the plaintiffs are not entitled to claim any right in the suit land during the lifetime of defendant no.1.

15. It is not in dispute that all the plaintiffs were born after coming into force of the provisions of Hindu Succession Act, 1956 (for short "Act of 1956"). Section 4 of the Act of 1956 provides for overriding effect of the Act of 1956 over any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the

commencement of this Act. Section 4 of the Act of 1956 being relevant is reproduced hereunder:

> "**4**. **Overriding effect of Act**.—(1) Save as otherwise expressly provided in this Act,—
> (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
> (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

16. The interpretation of provisions of Section 4 *vis-a-vis* Section 6 & 8 of the Act of 1956, came up for consideration before coordinate bench of this Court in the case of ***Uttam vs. Saubhag Singh*** reported in ***2013 SCC OnLine MP 10873 (=ILR 2014 MP 1593)***. In relation to Section 4 of the Act, the Court held as under:

> "8.Under the Hindu law existing prior to coming into force of the Hindu Succession Act, 1956, grand-son had birth right in the Mitakshara coparcenary property in the hands of his grand-father but the position has changed after commencement of the Act. Section 4 of the Act provides for over-riding effect of the act on any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act being inconsistent with the provisions of the Act. Section 6 of the Act deals with devolution of interest in coparcenary property and in terms of this Section, interest of a male Hindu dying intestate in the Mitakshara coparcenary property devolves by survivorship upon the surviving members of the coparcenary and not in accordance with the Act and in terms of Explanation (1), the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property

had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not."

17. Dealing with the effect of coming into force of Act of 1956, the Court held thus:

> "11. In the matter of Yudhishter v. Ashok Kumar, reported in (1987) 1 SCC 204 : AIR 1987 SC 558 referring to the earlier judgment in the case of Chancier Sen (supra) **it has been held by the Supreme Court that the property which devolved upon the father on the demise of the grandfather cannot be said to be HUF property in the hands of the father vis-a-vis his own sons**. In the matter of Sheela Devi v. Lai Chand reported in (2006) 8 SCC 581, it has been further clarified by the Supreme court by holding that **prior to the commencement of the Act as per the Mitakshara law usage once a son was born he used to acquire an interest in the coparcenary property as an incident of his birth, but now the Act would prevail over the Hindu law. In that case son's son was born prior to the commencement of 1956 Act therefore, it was held that he would retain his share of the property as a coparcener even after the commencement of the 1956 Act, while father who had died in 1889, his. share will devolve upon his heirs according to the provisions of the Act**. The Single Bench of this Court in the matter of Chandrakanta v. Ashok Kumar, reported in (2002) 3 MP LJ 576 has also held that **after coming into force of Hindu Succession Act, the theory of birth right does not exist and the son gets share in the property only after death of his father**. Similar view has also been taken by another Single Bench judgment in the matter of Babulal v. Ramkali Bai, reported in ILR 2012 MP 1271."

18. The Court ultimately concluded by stating that:

> "15. Thus in view of the provisions contained in Sections 4,6, 8 and Schedule of the Act as well as the law settled by the aforesaid judgments, it is clear that after coming into force of the Act grand-son has no birth right in the properties of grand-father and he cannot claim partition during lifetime of

his father."

19. The judgment rendered by this Court in the case of ***Uttam (supra)*** has been affirmed by the Apex Court in ***Uttam vs. Saubhag Singh*** reported in ***(2016)4 SCC 68***. The Apex Court summarized the law as under:-

> "***18***. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. ***Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe [Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe, (1988) 2 SCC 126] , Sheela Devi v. Lal Chand [Sheela Devi v.Lal Chand, (2006) 8 SCC 581] and Rohit Chauhan v. Surinder Singh [Rohit Chauhan v. Surinder Singh, (2013) 9 SCC 419 : (2013) 4 SCC (Civ) 377]*** were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarised as follows:
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> (i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).
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> (ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.
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> (iii) **A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states**

> **that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship**.
> (iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.
> (v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.
> (vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants-in-common and not as joint tenants.

20. The principle of law is laid down by coordinate bench of this Court in the case of ***Govardhan & ors. vs. Ramvati Bai & ors. in C.R. No.404/2022***, following ***Uttam***.

21. It is thus clear that after coming into force of the Hindu Succession Act, the theory of birth right does not exist, and son gets share in the property only after death of his father. It is only when the coparcener was born prior to coming into force of Hindu Succession Act, the property will devolve by survivorship upon the surviving members of the coparcenary vide Section 6. This is because, as held in the case of ***Uttam (supra)*** by the

Hon'ble Supreme Court, upon death of ancestor after enforcement of Hindu Succession Act, there is a deemed partition by operation of law immediately before his death, and the property ceased to be joint family property and the successors were merely tenants-in-common, and not joint family members.

22. In the case in hand, the plaintiffs themselves have averred in para 2 of the plaint that defendant no.1 got the suit land in partition from his father. Meaning thereby, the property was received by defendant no.1 and became his self-acquired property on partition. Consequently, during the lifetime of father i.e. defendant no.1, the plaintiffs could not have claimed any share in the property. The view of the learned appellate court that the suit property is not the coparcenary property of plaintiffs, is thus upheld, though for different reasons stated above.

23. Consequently, this Court does not find any illegality in the judgment and decree passed by the Appellate Court, the same is, accordingly upheld. The appeal is found to be devoid of any substantial question of law and is accordingly, **dismissed**.

(ASHISH SHROTI)
JUDGE

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RAHUL SINGH PARIHAR

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