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## Case Commentary: *Uttam v. Saubhag Singh & Ors. (2016)* - Partition and Coparcenary under Hindu Law

-*Akanksha Kumari*

**Citation:** *Uttam v. Saubhag Singh & Ors.*, [2016] 2 S.C.R. 100, Civil Appeal No. 2360 of 2016

**Bench:** Hon'ble Justice Kurian Joseph and Justice R. F. Nariman, JJ.

**Date of Judgment:** 2 March 2016

### INTRODUCTION

The case of *Uttam v. Saubhag Singh & Ors. (2016)* refers to the meaning of the Hindu Succession Act, 1956<sup>1</sup>, mainly whether a grandson can acquire the coparcenary rights by birth in ancestral property which had already passed by intestate succession. The issue was at dispute in Dewas at Madhya Pradesh, where Uttam petitioned a partition suit in 1998 against his father and paternal uncles on the basis of a 1/8th portion of the property that was family joint property<sup>2</sup>. The issue was of whether a man may assert the birthright to property which was no longer joint at his birth and whether a grandson may assert partition where his father was living, being the Class-I heir. In its decision the Supreme Court accepted that Uttam was never made a coparcener and, according to this, could not continue a partition suit<sup>3</sup>. The ruling made it clear that Hindu law does not impose coparcenary rights on the descendants who were born subsequent to the devolution of the property<sup>4</sup>.

### FACTS AND HISTORY OF THE CASE OF *UTTAM V. SAUBHAG SINGH & ORS. (2016)*

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<sup>1</sup> The Hindu Succession Act, 1956, § [Section Number], No. 30, Acts of Parliament, 1956 (India).

<sup>2</sup> *Uttam v. Saubhag Singh & Ors.*, (2016) 4 SCC 68.

<sup>3</sup> *Uttam v. Saubhag Singh & Ors.*, (2016) 4 SCC 68.

<sup>4</sup> Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956 (India)

The dispute at Dewas, Madhya Pradesh, arises from a Hindu undivided family. Plaintiff Uttam filed a partition suit against his father (Defendant No.3) and three paternal uncles (Defendant Nos. 1, 2, 4) on December 28, 1998. He claimed the suit property was ancestral and he was entitled to a 1/8th coparcenary share by birth under Mitakshara law<sup>5</sup>. The first startling question that arises is: if the property was ancestral, why would his own father object to his son's legal share?

The defendants filed a common written statement denying that the property was ancestral. Thereafter, the appellants-respondents raised a defence that the father of Uttam had already been separated by a previous partition, which would nullify any form of coparcenary<sup>6</sup>. Curiously, however, there was no date, deed, or document in evidence to establish such a previous partition. It is this lack of evidence that would become a serious issue.

The Trial Court judgment dated December 20, 2000, was in favour of Uttam. The fact that DW-1 Mangilal himself admitted the ancestral origin of the property was a sufficient reason for it. It also pointed out that there was no evidence to prove the earlier partition as claimed by the defendants.

On January 12, 2005, the date of the First Appeal, the judgment reached a critical legal turning point. The appellate court considered one important historical fact: Uttam's grandfather Jagannath Singh died in 1973, leaving behind his wife Mainabai<sup>7</sup>. On the death of a male Hindu leaving behind a female Class-I heir, his property passes by intestate succession under Section 8<sup>8</sup> and not by survivorship, by virtue of the proviso to Section 6 of the Hindu Succession Act, 1956<sup>9</sup>.

This led to a notional partition in 1973<sup>10</sup>, whereby the property's status as a joint-family holding automatically changed to that of a tenancy-in-common between the widow and sons. And this is the final nail: Uttam wasn't born until 1977, four years after the legal separation between widow and sons. Legally, then, the question is: On what basis can he claim birthright over property which was not held jointly at the time of his birth?

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<sup>5</sup> *Uttam v. Saubhag Singh & Ors.*, (2016) 4 SCC 68.

<sup>6</sup> *Uttam v. Saubhag Singh & Ors.*, (2016) 4 SCC 68.

<sup>7</sup> *Uttam v. Saubhag Singh & Ors.*, (2016) 4 SCC 68.

<sup>8</sup> Hindu Succession Act, 1956, § 8, No. 30, Acts of Parliament, 1956 (India)

<sup>9</sup> Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956.

<sup>10</sup> *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh*, (1985) 3 S.C.C. 123 (India)

Succession having opened, a grandson does not acquire a birthright in his grandfather's property, the High Court held, upholding this reasoning<sup>11</sup>. It pointed out that Uttam had no independent standing to claim partition while his father, a Class-I heir, was alive.

All these findings were ultimately upheld by the Supreme Court that held the appellant's suit for partition was not maintainable and that the ancestral character of the property came to an end in 1973 and he himself had never become a coparcener. The appeal being dismissed, symbolically ended the litigation that had started with the claim of a grandson against his own family.

### **RELATED LEGAL PROVISIONS OF THIS CASE:**

1. Hindu Succession Act, 1956, Section 6<sup>12</sup> lays down the manner in which the property of a coparcener must pass to descendants. It does not apply retrospectively once the property has devolved upon any other party.
2. Hindu Succession Act, 1956, Section 8<sup>13</sup> – Under intestate succession rules, the devolution of property to Class I heirs will terminate the existence of the shared family unit and cease to exist prior to Uttam's birth.
3. Coparcenary Rights – Only exist with respect to joint family property presently held; Uttam cannot have coparcenary rights since the property has already devolved to his father<sup>14</sup>.
4. Right to Partition – It has to be claimed by the individuals making up the current co-owners or coparceners of the property in question; Uttam does not have a standing to sue for partition<sup>15</sup>.

### **UTTAM'S ARGUMENTS (PLAINTIFF):**

1. Uttam being a grandson of the first owner is thus entitled to 1/8 of the ancestral property as coparcener.
2. The ancestral property was joint family property and hence as coparcener, he was entitled to 1/8 of it.

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<sup>11</sup> *Sheela Devi v. Lal Chand*, (2006) 8 S.C.C. 581 (India).

<sup>12</sup> Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956 (India).

<sup>13</sup> Hindu Succession Act, 1956, § 8, No. 30, Acts of Parliament, 1956 (India).

<sup>14</sup> *M. Yogendra v. Leelamma N.*, (2009) 15 S.C.C. 184 (India).

<sup>15</sup> *Kalyani v. Narayanan*, (1980) 1 S.C.C. 83 (India).

3. As a coparcener, he therefore had the right to file any suit for partition against his father and uncles, even though his father was still alive.

#### **FATHER AND PATERNAL UNCLES' ARGUMENTS (THE DEFENDANTS):**

1. The father and paternal uncles contended that the property had already devolved by intestate succession upon the death of the grandfather leaving behind a widow and, as such, it did not remain the joint family property during the lifetime of Uttam.

2. They stated that Uttam was not a coparcener under the Hindu Succession Act, 1956 because he was born after the end of the coparcenary.

3. Moreover, they argued that only those who are coparceners now can sue for partition; as Uttam is not such a coparcener, his suit cannot be maintained.

#### **THE FOLLOWING ARE THE MAIN ISSUES OF THE CASE:**

1. Whether a grandson gets coparcenary rights in an ancestral estate inherited by a parent of the grandson on the date of his birth, if such estate had devolved by intestacy to that parent of the grandson?

2. Does the Hindu Succession Act, 1956, allow a grandson to file a partition suit against his father as one of his Class-I heirs during the lifetime of his father?

3. If the property is appropriated as joint family property and afterwards the original coparcenary had terminated and grandchildren are born, would that property remain joint family property?

#### **CASE ANALYSIS:**

The following case is a sure example of the spectrum of conflict between human beings wanting to receive something based on their belief, such as family connection, and the very structured legal framework of Hindu succession law. A grandson of Uttam, he believes that since he is part of his ancestors, he naturally deserves to inherit his grandparents' property, which represents a bond between him and his past and signifies that he belongs to that family. Emotionally, he is of the opinion that he deserves such inheritance based on his desire to continue on with his family lineage and have a continued connection with his ancestors<sup>16</sup>.

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<sup>16</sup> *Uttam v. Saubhag Singh & Ors.*, (2016) 4 SCC 68.

In contrast, his father and paternal uncles make their arguments based on the two most relevant aspects of inherited wealth in terms of legal certainty. Section 6 and Section 8 of the Hindu Succession Act, 1956 suggest that the property has already devolved into the individual ownership of all coparceners that is, it ceased to be a joint family asset<sup>17</sup>. If they were retrospectively to recognise Uttam's claim over the property today, they would disturb the current disposition of property among the coparceners and set precedent for endless claims against the coparceners who survive the end of a coparcenary<sup>18</sup>. The argument, then, put forth by Uttam's father and paternal uncle is one to preserve the integrity of the laws of inheritance so that this does not happen.

The Supreme Court arrived at this decision by weighing the competing interests of allowing Uttam to establish his emotional/family claims and recognising coparcenary rights as prospective in nature. In effect, the Supreme Court held that once the property has devolved by inheritance upon the death of a person, no fresh ownership interests can be created by the remaining coparceners<sup>19</sup>. Further, the Supreme Court narrowed the class of individuals who could file a partition action, limiting those to the coparceners who are alive at the time. Thus, while upholding the lower court's decision dismissing Uttam's action, the Supreme Court achieved legal clarity at the same time as recognising the emotional aspect of disputes in inheritance matters<sup>20</sup>.

At the same time, this judgment by the Supreme Court of India has been subject to various criticisms from numerous scholars in academia. One such critique is provided by Poonam Pradhan, who critically analyses that this judgment resorted to heavy reliance on formalism in interpreting the inheritance law, giving more importance to the dictates of certainty and security embodied in the latter, without considering the sociological and family features of Hindu Joint Families, and hence, it was protecting the interest of the future generations only in a limited way<sup>21</sup>. More specifically, because of the application of Sections 6 and 8, the interest of descendants born after a certain period of time, including specifically grandchildren, will not have any property interest despite the fact that the property was inherited from the ancestor. She also posits that this judgment greatly erodes the protection

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<sup>17</sup> Hindu Succession Act, 1956, §§ 6–8, No. 30, Acts of Parliament, 1956 (India); *Sheela Devi v. Lal Chand*, (2006) 8 S.C.C. 581 (India).

<sup>18</sup> *Sheela Devi v. Lal Chand*, (2006) 8 S.C.C. 581 (India); *M. Yogendra v. Leelamma N.*, (2009) 15 S.C.C. 184 (India).

<sup>19</sup> *Uttam v. Saubhag Singh & Ors.*, (2016) 4 SCC 68.

<sup>20</sup> *Kalyani v. Narayanan*, (1980) 1 S.C.C. 83 (India); *Uttam v. Saubhag Singh & Ors.*, (2016) 2 S.C.R. 100 (India).

<sup>21</sup> Poonam Pradhan, *Revisiting Coparcenary Rights after Uttam v. Saubhag Singh*, J. Indian L. & Soc'y (2017)

provided by the coparcenary laws and undermines the role coparcenaries have come to play in ensuring fair treatment of successive generations in Hindu families.

On the other hand, this decision is also consistent with the overall objective of Hindu Inheritance Law being the predictability and consistency of application and enforcement through statutory authority rather than being based upon feelings or morals<sup>22</sup>. The Supreme Court attempted to accomplish this by limiting the rights of partition to only those coparceners that exist today, and by treating a coparcener's rights as prospective rather than retrospective i.e. that the rights of a coparcener in the present will be determined by the next generations, thereby attempting to eliminate the uncertainty and protracted litigation that would otherwise result from having multiple generations try to establish a right of partition or ownership to the same property. Hence, while the criticisms presented by Pradhan raise significant issues of fairness to future generations, this ruling ultimately reinforces the concept of legislative intent and ultimately provides that the finality of law shall govern disputes that may arise under the rules of Hindus concerning the inheritance of their property

#### **CONCLUSION:**

The trial court accepted Uttam's plea because it identified that the ancestral property originated from Uttam's grandfather, and any prior partition of such a property had not occurred<sup>23</sup>. In giving Uttam what was perceived by him as his share of the property, the trial court took into consideration the emotional side of the relationship between Uttam and his family. The judgment order of the trial court shared a perception of the interests of Uttam based on the historical ties of blood.

The appellate courts and finally the Supreme Court of India did, however, shift the case from the emotional claims of inheritance and resorted to a more formalised concept of a legal framework supporting certainty and finality with respect to succession. The appellate courts made it clear that Uttam was never a coparcener of the family property and that the coparcenary had ceased to exist at the time when Uttam's grandfather died. The property was divided equally between the brothers under sections 6 and 8 of the Hindu Succession Act of 1956<sup>24</sup>. In this regard, the appellate and Supreme Courts maintained the necessary balance in

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<sup>22</sup> Hindu Succession Act, 1956, §§ 6, 8, No. 30, Acts of Parliament, 1956 (India).

<sup>23</sup> *Uttam v. Saubhag Singh & Ors.*, (2016) 4 SCC 68.

<sup>24</sup> Hindu Succession Act, 1956, §§ 6, 8, No. 30, Acts of Parliament, 1956 (India).

providing for descendant's emotional claims and ensuring that the legal principles of property, the certainty of ownership, and the future rights of owners were protected<sup>25</sup>.

Various academic analyses of the judgment pronounced by the Supreme Court of India in *Uttam v. Saubhag Singh and Ors.* are available. As Poonam Pradhan observes, the interpretation of the Hindu Succession Act, 1956, Sections 6 and 8, establishes a fundamental tenet that statutory determination will always override continuation of coparcenary by birth; this would imply that at the time when succession opens, the law closes the door for any possibility of reinstatement of coparcenary for all descendants born subsequent to the opening of succession, and therefore the ancestry of property is irrelevant<sup>26</sup>.

On the other hand, Pradhan feels that such a limiting reading of Mitakshara coparcenary curbs the essential protective nature of Mitakshara coparcenary by limiting the right of inheritance to the time when such a statutory determination is made and, in turn, eliminating grandchildren born after such determination. According to Pradhan, this decision strengthens predictability in succession law through the ban on reopening settled successions, preventing constant partition claims being made by descendants<sup>27</sup>.

In conclusion, while the ruling restricts inter-generational claims under coparcenary law, it aligns Hindu succession with legislative finality rather than customary expectations.

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<sup>25</sup> Hindu Succession Act, 1956, §§ 6, 8, No. 30, Acts of Parliament, 1956 (India).

<sup>26</sup> Poonam Pradhan, *Revisiting Coparcenary Rights after Uttam v. Saubhag Singh*, *J. Indian L. & Soc'y* (2017)

<sup>27</sup> *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh*, (1985) 3 S.C.C. 123, 133–34 (India).