

Parwati Vs. Janabai

Parwati Vs. Janabai

SooperKanoon Citation : sooperkanoon.com/337283

Court : Mumbai

Decided On : Nov-17-1967

Reported in : AIR1969Bom77; (1968)70BOMLR517; ILR1969Bom297; 1968MhLJ441

Judge : Abhyankar and ;Chandurkar, JJ.

Acts : Hindu Women's Rights to Property Act, 1937 - Sections 3; Hindu Women's Rights to Property (Amendment) Act, 1938; Hindu Law

Appeal No. : A.F.A.D. No. 301 of 1961

Appellant : Parwati

Respondent : Janabai

Advocate for Def. : D.R. Bhagade, Adv.

Advocate for Pet/Ap. : Mr. and Mrs. Chendke, Adv.

Judgement :

Abhyankar, J.

1. The following two questions have been referred to Division Bench by the learned Single Bench Judge:

(1) Whether the share obtained by a member of a joint Hindu family on partition is and continues to be an interest in joint family property?

(2) On the death of such a divided coparcener what is the extent of the interest which his widow would take in that property, if there are other separated coparceners in existence?

2. The questions arise out of a Second Appeal filed by the original defendant Parwati against reversing judgment in the District Court. The facts giving rise to this litigation will be necessary to be detailed to comprehend the nature of the controversy between the parties. One Gadi and his son Santosh formed a joint Hindu family having coparcenary property. That property consisted of land Khasra No. 639 with a total area of 11.40 acres at Katol. It is an admitted position that on 23-5-1946, there was a partition by metes and bounds between Gadi on the one hand and his son Santosh on the other. The property was divided into two shares, an area of 3.80 acres having been allotted to Santosh and the remaining area of 7.60 acres was allotted by Gadi to his share. Parwati the present appellant, is the wife of Santosh and the respondent Janabai alias Bani was the wife of Gadi. Gadi died on 8-10-1948. It appears, Gadi had acquired one acre of land from one Laxman, who had purchased it out of the land allotted to the share of Santosh. Thus at the time of his death, Gadi was in possession of 8.60 acres of land. Janabai his widow, leased out 8.60 acres of land to one Appaji. Santosh filed Civil Suit No. 80- A of 1949 against Janabai and the lessee Appaji claiming an injunction against both of them from trespassing into, trespassing into or interfering with, the property in dispute, that is, 8 acres and 60 gunthas of land left the right to have become the exclusive his father Gadi. Apparently Santosh claimed the right to have become the exclusive owner of the property on the death of his father Gadi. That suit was dismissed in the District Court in Civil Appeal No. 100-A of 1951. The appeal was allowed and Santosh was granted a decree. Against this judgment and decree, Janabai preferred Second Appeal. During pendency of the litigation in the District Court, Santosh died and his widow Parwati, the present appellant, was brought on record. The Second Appeal came to be decided in this Court on 19-11-1957 and that decision is reported in *Jana alias Bani v. Parvati* : AIR1958 Bom346. The learned Single judge, who allowed the appeal, held that

the decision of the trial Court holding that the land devolved on the widow of Gadi as well as the son of Gadi in equal shares was not challenged by the appeal filed by the widow. The learned Single Judge took the view that the case was governed by Section 3(2) of the Hindu Women's Rights to Property Act, 1937, and therefore, confirmed the dismissal of Santosh's suit in the trial Court. The learned Judge expressly left open the question whether the trial Court was right in holding that the son acquired half share in the property along with the widow, that is, whether Santosh could claim any share in the property along with Janabai.

3. In view of the uncertainty of the rights of the parties, the second round of litigation seems to have commenced by the suit out of which the present appeal has arisen. Janabai filed the suit on 23-10-1958. In this suit, she claims a declaration that the plaintiff alone is entitled to 8.60 acres to the exclusion of the defendant Santosh, and therefore, Santosh, or now his widow Parwati, should be permanently restrained from interfering with plaintiff's possession and enjoyment of this much land.

4. The defence raised on behalf of Santosh put forth several contentions. Santosh denied that there was a partition or that the father and the son were in separate possession of the lands alleged to be allotted to the share of each. The lease to Appaji was also denied and he contended that the decision of the trial Court that both were co-owners having been upheld by the High Court, that decision operates as *res judicata* and the matter should not be reagitated.

5. On the pleadings of the parties several issues were framed. The trial Court held that there was a partition between Gadi and Santosh under which 7.60 acres were allotted to Gadi and 3.80 acres were allotted to Santosh. On 31-3-1947 Santosh sold to one Laxman one acre out of 3.80 acres which he got in partition and that Gadi purchased the same. The trial Court held that Santosh inherited, on the death of Gadi, one half share in property left by Gadi and the plaintiff alone could not claim to have inherited the whole of 8.60 acres of land. The trial Court held against the contention of the defendant on the question of *res judicata* on account of the position in the previous suit. But the suit was ultimately dismissed as the Court held that both were co-owners to the extent of one half share each.

6. Against this judgment and decree Janabai preferred an appeal. On a review of authorities the lower Appellate Court held that it was proved that Janabai, the plaintiff, had become exclusively entitled to 8.60 acres of land after the death of her husband and had confirmed the finding of the trial Court that the previous decision was not res judicate between the parties. The appeal was therefore, allowed and suit has been decree.

7. Against this decision, Parwati filed Second Appeal in this Court and when arguments were advanced before the learned Single Judge, in view of certain conflicting authorities, a reference has been made to the Division Bench for answers to the question framed by the learned Judge.

8. The provision of law required to be interpreted is provision of Section 3 of the Hindu Women's Rights to Property Act i.e. Act No. XVIII of 1937, as amended by Central Act No. XI of 1938. Section 3, as amended, is as follows:

'3(1) When a Hindu governed by the Dayabhaga School of Hindu law dies intestate leaving any property, and when a Hindu governed by any other School of Hindu law, or by customary law dies in-testate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son;

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son;

Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable there to descends to a single heir or to any property to which the Indian Succession Act, 1925, applies'.

9. Now, there is not much dispute between the parties, that in view of the decision of the Federal Court reported In Umayal Achi V. Lakshmi Achi the property allotted to the share of Gadi In the partition between himself and his son Santosh, in 1940, cannot be considered as separate property of Gadi. It was not the self-acquired property of Gadi, and therefore, cannot be considered to be 'separate property' to which the provision of sub-section (1) of Section 3 could properly be attracted in this case. The argument, therefore, revolves round the interpretation and true construction to be placed on sub-section (2) of Section 3 of the Hindu Women's Rights to Property Act. It is contended on behalf of the respondent by the learned counsel that the property allotted to Gadi in the partition between himself and his son, if it is not to be treated as 'separate' or 'self-acquired property', must be treated as property belonging to a Hindu joint family. In other words, it is contended that Gadi, as a Hindu, who is governed by Mitakshara School, had, at the time of his death, an interest in a Hindu joint family property, and therefore, on his death his widow, namely, Janabai, alone should be held entitled to get that property.

10. On the other hand, the contention of the learned counsel for the appellant is that there is no joint family and there was no joint family property inasmuch as Gadi had already separated from his son with whom he could possibly form and constitute a joint family, and therefore, this is a case which is outside all the provisions of both sub-sections (1) and (2) of Section 3 of the Hindu Women's Rights to Property Act and the general provisions of Hindu Law are attracted in determining the succession to the property. Under general Hindu law where Statute has not interposed to give rights to women or widows in competition

between son and the widow of the deceased Hindu in respect of property left by him and which cannot be considered as his self-acquired property or separate property, the preferential heir between the two will be the son to the exclusion of the widow, or at any rate, along with the widow. But it may be that because of the previous position in the case, at any rate, Santosh cannot be denied one half share. We have to decide which of these rival contentions is correct, in view of the judicial pronouncements of different Courts and also in this Court in one case.

11. Considerable reliance is placed on a Division Bench decision of Nagpur High Court on behalf of the appellant in a case reported in *Bhaorao v. Chandrabhagabai*. In that case one Pandurang had a son by name Dada and two wives Chandrabhagabai and Bhimabai. Pandurang being lunatic, proceedings appear to have been taken under the Lunacy Act and the manager was appointed in respect of property of Pandurang. While the case was before the District Judge, the property belonging to the joint family was partitioned and the son, Dada, received half share in the property. On death of Pandurang, the manager applied that the property allotted to Pandurang should be handed over to lawful heirs and a direction to that effect should be given by the District Judge. Notice of this application was issued to Dada but he also died before he appeared in Court. His sons then put in a claim. The contest was between the widows of Pandurang and sons of Dada, that is, widows of father and sons of deceased son respectively. The District Judge ordered that the property be handed over to the two widows and against this order sons of Dada preferred an appeal. The Division Bench accepted the contention of Dada's sons and held that the position of the divided son was superior to that of the widows, and therefore, Dada's sons were entitled to inherit in preference to widows. In coming to this conclusion, the Division Bench observed in paragraph '7 as follows:

'The position of a widow vis-a-vis a separated son is discussed by Mulla in Sections 340 and 341 of his book. According to the learned author, the effect of a partition is to dissolve the coparcenary with the result that the separating members hold their respective shares as their separate property and the share of each member passes on his death to his heirs. The position of the divided son, is superior to that of the widow. The learned author says that if there be no undivided

son, the divided son is entitled to succeed to the self-acquired property in preference to his father's widow. No distinction is made between self acquired property and property obtained on partition as a separate share. The illustration to Section 341 given by the learned author says: A and his son B are members of an undivided family, B receives his share of the joint property, and separates from A. A then dies leaving a widow and his son B. B as A's son, is entitled to inherit to A in preference to the widow. The fact that B has separated from A does not interfere with his right of inheritance.

In Section 230 of his book Sir Dinshaw Mulla says:

'Property acquired in any of the following ways is the separate property of the acquirer, it is called 'self-acquired' property and is subject to the incidents mentioned in Section 222.

(6) Share on partition-property obtained as his share on partition by a coparcener who has no male issue', It would thus appear that the 'divided son is a preferential heir under the Hindu law. We have next to see if the Hindu Women's Rights to Property Act has made any difference. The coparcenary had certainly come to an end with the partition unless a son was born to Pandurang. After Pandurang's death, there was no chance of any coparcener coming into existence as the widows' powers of adoption were at an end. The property must, therefore, be treated as separate property as defined by Mulla in Section 230 of his book in the extract quoted in the preceding paragraph. In , their Lordships of the Federal Court have laid down that by 'separate' property in the Act it meant self-acquired property in the narrow sense. This narrow meaning can be found in Mulla at page 257 (Edition 10th) where he says:

'In practice the expression 'self-acquired' property is used as referring to property acquired by a Hindu by his own exertions without the assistance of family funds.' Thus, according to the decision of the Federal Court the widows would only be entitled to share in the self-acquired property in the narrow sense and not the other separate property which will pass to the grandsons of Pandurang.'

12. Another decision which supports the contention urged on behalf of the appellant is the decision of Andh, Pra. in Chunduru Seshamma v. Chunduru Ramakoteswara Rao, AIR 1958 Andh Pra 280. The Division Bench held that the Act does not deal with all kinds of property of which a Hindu dies possessed. Subsection (1) of Section 3 of the Act deals only with the self-acquired property of a deceased Hindu and neither that sub-section nor sub-section (2) deals with the two categories of separate property represented by what a Hindu holds as a sole surviving coparcener and what he has obtained at a partition as and for his share. In coming to this conclusion, the Division Bench dissented from the view in the decision of the Madras High Court in A. N. Subramanian v. A. S. Kalyanarama Iyer : AIR1953 Mad22 and Subramanian V. Kalyanarama Iyer : AIR1957 Mad456 as well as the view of the Orissa High Court in a decision in Jogendra Nath Das V. Charan Das : AIR1958 Ori160 .

13. We have already referred to the previous litigation between the parties in this very case, which came to this Court in the earlier round. The litigation between them and the questions now posed were discussed and considered but not ultimately decided in the Single Bench decision : AIR1958 Bom346 . After referring to the decision of the Federal Court in Umayal Achi's case which seems to have given rise to divergent interpretation, the learned Single Judge has observed as follows in paragraph 12:

'Question arose whether the ratio decidendi of that case was to be confined only to property which devolved on a male Hindu as a sole surviving coparcener or was equally applicable to property acquired by him on partition of joint family property. In the case before the Federal Court the dispute was between the widow of a predeceased son on the one hand and the widows and daughters of the deceased owner on the other, and the rule which found favour with their Lordships was that property held by a sole surviving coparcener was not 'separate property' within the Purview of Section 3(1). It is true that the Federal Court was not called upon to deal with the question of devolution of property acquired by a male Hindu on partition with his son or sons but it does emerge from the judgment in that case that in the con-text of Section 3(1) the two types of property were equated and it will be noticed that they were bracketed throughout the discussion on the meaning

of the expression 'separate property.' I am dutifully bound to follow the decision and it is not open to me to express any opinion of my own on the question of the interpretation of the expression 'separate property'. An alternative argument advanced by Mr. Bhagade, learned counsel for the appellants, was that the Federal Court has not decided that the share acquired by a male Hindu on partition in a family governed by the Mitakshara is not separate property and I must distinguish that case and hold that it is separate property. Mr. Bhagade's first contention was that in view of what has been stated in the judgment of the Federal Court in discussing the meaning of 'separate property' it must follow that the share obtained by the father on a partition with his son or sons is 'an interest in a Hindu joint family' and in the alternative he urged that the decision of the Federal Court should be distinguished.'

'Now, speaking generally,' the nature and incidents of such property held by a Hindu father must be ascertained as of the time when the question arises whether it is separate property or joint family property, and I confess to some difficulty in acceding to this argument. The construction urged has, of course, the merit of being a logical corollary to the narrow meaning of the expression 'separate property' used in sub-section (1). Since that expression has to be understood in a narrow sense in sub-section

(1) a parity of reasoning should apply and a comprehensive meaning and wide connotation must attach to the words 'interest in joint family property' in sub-section (2). This is no doubt partly on the assumption that sub-sections

(1) and

(2) are intended to deal with all types of property of a Hindu governed by the Mitakshara School dying intestate leaving him surviving among his heirs his widow and a son or sons. But the assumption is not a priori and is justified. It is extremely difficult to subscribe to the argument pressed before me on behalf of the respondent, that property acquired by a father on partition with his son is not within the scope of either of the two sub-sections of Section 3 and that this is a *casus omissus*. I have little doubt that any property left by a father in any such case must fall either under sub-section

(1) or sub-section

(2) of Section

3. Support is to be derived for this conclusion from the View expressed by the Federal Court in the case of Umayal Achi that one defect which the Act set out to remedy was the hardship which under the previous law was caused when the owner left a widow as well as sons. The expressions 'separate property' and 'interest Hindu joint family property' are used in juxtaposition in sub-sections

(1) and

(2) of the Section and between them deal with all property left by such owner. Support is also to be derived for this view when the two expressions are read in the light of the context of the Act and the scheme of the Act. Then again, there is considerable support lent to this view from intrinsic evidence in the form of the words 'when a Hindu governed by the Dayabhaga school of Hindu law dies intestate leaving any property'. These words 'any property' understood in their common and ordinarily accepted sense may or may not include any special or peculiar type of property but would in any case apply to property acquired by a father on partition with his son and property held by a sole surviving coparcener. If the Act deals with such property in a case governed by the Dayabhaga school there seems no reason to suppose that the Legislature omitted to deal with such property in respect of a case governed by the Mitakshara School. For the reasons which I have indicated, I conclude that the 8.30 acres of land in question which Gadi died possessed of was 'interest in joint family property' and its devolution was controlled by sub-section

(2) of Section 3.'

14. The passage which we have quoted above from the judgment of the learned Single Bench would, therefore, indicate that so far as the issue between the parties to this appeal was concerned, the matter was finally decided with the finding in the Second Appellate Judgment that 8.30 acres of land which Gadi died possessed of was interest in the joint family property and that its devolution was

controlled by sub-section (2) of Section 3.

15. However, as the matter was left open so far as the decision of the trial Court in that case was concerned., the second round of litigation was inevitable between the parties. All the rights will have to be pronounced upon in this litigation.

16. We have referred to the decisions on which reliance is placed on behalf of the appellant in support of her contention that this is a case which is not provided for either by sub-section (1) or sub-section (2) of section 3 of the Hindu women's Rights to Property Act, and therefore, under the general law her husband Santosh would be the preferential heir as against Janabai. As against this view there were series of decisions of other Courts, taking different view, to which our attention was invited and which are necessary to examine. *Tayi Visalamma V. Tayi Jagannadha Rao* : AIR1955 Ori160 has taken the opposite view. The Division Bench has held that the disputed property, that is, the property left by father obtained on partition between himself and his sons was joint family property within the meaning of sub-section (2) of Section 3 of the Act and after the death of the father his widow was entitled to the same interest in that which he had, that is, entire 16 annas Interest On this view of the law, the suit brought by the son was dismissed. In a Single Bench decision of the Madras High Court in : AIR1953 Mad22 a view was taken that the observations of the Federal Court as to the nature of the property that fell to the share of the father on partition were obiter in nature, and that the decision of the Federal Court should be final so far as its binding character is concerned only in respect of the property that devolved on the sole surviving Coparcener. In repelling this suggestion, the Division Bench has observed that though the Federal Court was not directly concerned with a case of property that fell to a father on partition, with his sons, the reasons given in that judgment show that this class of property was treated practically on the same level as the property of a sole surviving coparcener. The passage to which reference seems to have been made from the Federal Court decision is to be found at page 32 of :

'It is true, as the preamble enacts, that the measure was intended 'to give better rights to women'. But it must be remembered that the Act was not a codifying Act

or even a general amendment of the Hindu law of inheritance It will help us to ascertain the precise scope of the Act, if we can ascertain the defects which It set out to remedy. Even under the ordinary Hindu law, a widow would in certain circumstances have succeeded to the property held by her husband as the last surviving coparcener or as the holder of a share obtained on partition. By themselves, these cases did not call for the interference of the Legislature, It is only if the owner had sons (including in that term, grandsons and great-grandsons) that the widow would be excluded by the sons. Legislative interference was required to obviate hardship when the owner left a widow as well as sons. Once we take note of the contingency requiring legislative interference, the difference between separate property in the strict sense and separate property in the loose sense will become apparent. In the former case, the sons would not become coparceners with their father and the inheritance would devolve on them only at their father's death. But in the case of property obtained by the father on partition or obtained by him as the last surviving coparcener, the moment sons are born to him they will become coparceners and there will be no occasion for the property devolving on them at the death of the father The closing words of Section 3(1) of the Act, vii. 'devolve upon his widow along with his lineal descendants in like manner as it devolves upon a son' will be appropriate to the former case but not to the latter case. The language of the clause substituted by Act III of 1938 is slightly different but the scheme remains the same. The widow was certainly not intended to become a coparcener with her husband even during his lifetime. The Act of course in-tended to redress the widow's disabilities even in such a case, but that redress is provided by sub-section (2) and not by sub-section (1) of Section 3. When the sons become coparceners with their father in property which was originally held by him as sole surviving coparcener or as his share obtained on partition, the father and the sons become a joint family within the meaning of subsection (2) and when the father dies his widow will under sub-section, (2) get his share'. (Underlining (here in ' ') is ours).

17. In view of this pronouncement by the Federal Court as far back as in 1948, it is difficult to accept the contention that both the parts of Section 3 of the Hindu Women's Rights to Property Act are not intended to cover cases of all kinds of property left by Hindu male leaving a widow. It is true as urged so often, that the

case leading to the decision in the Federal Court concerned the case of property in the hands of sole surviving coparcener. But the case of the property in the hands of sole surviving coparcener has been equated with and is considered on par with the property obtained by partition by the father, and it should really make no difference in principle whether the property obtained by father is as a result of partition between father and a son and father and the brothers.

18. In Madras High Court the first time the question came up was in MR 1957 Mad 456. The question was not finally decided as mentioned in paragraph No 6 in that case, observing that It was a difficult point as to what will be the share to which the widow would be entitled in such a case in respect of property left by her husband and whether she would be entitled exclusively to the property left by her husband, or was bound to share it with divided sons. But answers to these questions have been given in the next case in that Court in Onnamalai Ammal v. Seethapathi Reddiar : AIR1961 Mad90 . The Division Bench held.

'The very object of the Hindu Women's Rights to Property Act was to modify the ordinary rule of Hindu law. by which a Hindu widow would be excluded from taking any benefit in the properties of her husband. which he obtained in a joint family partition, in the presence of her step-son.

After the partition between D and his son S by first wife. D married O and was in possession of his share till his death in 1951. After D's death S sued O for share in D's property. O relied on a will by D in her favour granting her entire property.

The true effect of Section 3(2) was to exclude S from taking any share in the properties in suit left by his father D, even if he had died intestate.'

This interpretation of the provisions of Section 3 has been uniformly followed by the later decision of the Madras High Court in Commr. of Income-tax Madras v. S. S. Thiagarajan. : [1963]49ITR581(Mad) and the latest case is reported in P. N. Venkatasubramania Iyer v. P. N. Easwara Iyer : AIR1966 Mad266 . The learned counsel for the appellant brought to our notice particularly the observations in paragraph 4 in the case reported in : [1963]49ITR581(Mad) , where the Division Bench stated that if the matter were res integra, they would have been inclined to

take a different view Decision of this Court in : AIR1958 Bom346 was cited before the Court. We do not think that there is any inherent contradiction in saying with respect to a Hindu who has partitioned his share that such a person dies 'having at the time of his death an interest in the Hindu joint family property' and the case of a Hindu male who dies in a state of jointness with other members of his family whether those members are his sons or other coparceners. In our opinion' It will be equally legitimate to describe the interest of a Hindu male. who has had his share separated from either his son or other coparceners from out of an erstwhile Hindu joint family 'as interest in Hindu joint family property' because his branch could itself be considered a Hindu joint family so long as there was a possibility of a son being born or adopted in the family. It is not disputed that if in such a case a son is born to a separated father, that son would have interest by birth in the property which the father received as his share in partition with his separated sons' It is not the birth of the son which alters the character of the property, but it is because of the character of the property being joint family property that a son born to such father gets interest by birth in such property. It is also possible to conceive of cases where a son could, in given circumstances, be adopted, if unfortunately the separated sons are no longer there while the father is alive. If this be the true character of the property obtained by a copartner or a male Hindu, as a result of the partition among the members of the joint family we do not see why such a case is not covered by the provisions of sub section (2) of Section 3 of the Hindu Women's Rights to Property Act. This view also finds support in the decision of the Patna High Court in Mt. Khatrani v. Smt Tapeshwari : AIR1964 Pat261 (FB). In paragraph 10, the Full Bench observed as follows:

'A Hindu family cannot be finally brought to an end while it is possible in nature or law to add a male member to it and therefore it is only when there is no woman capable of introducing a coparcener in the family, either in nature or by way of adoption, that the property held by sole surviving coparcener or property allotted on partition to a coparcener without a male issue ceases to be joint family property and becomes the separate property of the holder.'

19. In the latest edition of Mulla's Hindu Law, the position is examined again vis-a-vis the provisions of the Hindu Women's Rights to Property Act and the effect of

the decision of the Federal Court In Umayal Achi's case vide Hindu Law by Mulla, 13th Edition, pages 95 and 96. At page 96, the learned editor, who was also the author of the decision of this Court in : AIR1958 Bom346 has this comment to make:

'As already mentioned the preferable view would seem to be that the expression 'separate property' used in subsection (1) and 'interest in a Hindu joint family property' used in this subsection must be read in juxtaposition and that between them the two sub-sections deal with all property left by such owner. All cases, therefore, where the last owner died leaving property other than his self-acquired property must in view of the decision of the Federal Court, it is submitted, fall under this Section, In this context it may be noted that the sub-section has adopted the Hindu conception that a widow is the surviving half of the deceased husband and introduced the *factio furis* that she continues the legal person of her husband. Of course, this does not mean that the husband is for all purposes to be deemed to live till the widow claims partition or files a suit for working out her rights.'

We agree with the view taken in the Single Bench decision of this Court as to the effect of Section 3(2) and hold that the property left by a Hindu male obtained at a partition between such male person and other members of the family where the partition was between a father and a son or between a father and the other members of the joint family, is covered by Section 3(2) of the Act.

20. On the review of the authorities, therefore, we have come to the conclusion that the question No. 1 referred to us should be answered in the affirmative and question No.2 will be answered according as a person claiming such property on the death of the male Hindu is either a widow as a sole claimant, or other joint coparceners, who have right to inheritance along with the widow to the property of the deceased male Hindu and separated coparceners are excluded.

21. The papers may be placed before the learned Single Judge for final disposal of the appeal.

22. Reference answered.

