PETITIONER:
MRS. MALATI RAMCHANDRA RAUT AND ORS.

Vs.

RESPONDENT:
MAHADEVO VASUDEO JOSHI AND ORS.

DATE OF JUDGMENT20/12/1990

BENCH:
THOMMEN, T.K. (J)
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THOMMEN, T.K. (J)
SAHAI, R.M. (J)

CITATION:
1991 AIR 700 1990 SCR Supl. (3) 577
1991 SCC Supl. (1) 321 JT 1991 (1) 19
1990 SCALE (2)1366

ACT:

Partition Act, 1893: Sections 2 and 3--Partition suit--Properties incapable of division by metes and bounds Plaintiffs prayer for its sale and distribution of the proceeds--Defendants willing to buy.

Plaintiffs' shares--Determination of valuation of plaintiff's shares --What is relevant date--Is it when the defendants sought leave of the court to buy plaintiffs' shares or the date of the preliminary decree declaring the shares of the parties?

HEADNOTE:

The respondents filed a suit for partition claiming together 2/3rd share while admitting that the defendants together held 1/3rd share in the suit properties. It was pleaded by the plaintiffs that the suit properties could not be reasonably and conveniently divided and therefore had made a prayer for its sale and distribution of the proceeds amongst the shareholders. The defendants proposed to buy at a valuation the 2/3rd shares held by the plaintiffs and accordingly made a request to the court under section 3 of the Act to direct a valuation of the same. The plaintiffs tried to backtrack by asking for amendment of their plaint to delete their averment that the properties could not be reasonably and conveniently divided and for its sale and distribution of the proceeds. This was disallowed by the trial court and appeal preferred against this rejection was unsuccessful.

The learned single judge of the High Court after noticing that there was no dispute between the parties as regards their shares nor was there dispute any longer that the properties were incapable of division by metes and bounds they had to be sold and the proceeds distributed according to their shares. But the defendants being willing and actually having sought leave of the court to purchase the shares of the plaintiffs at a valuation, those shares had to be valued as on the date leave to purchase was sought by them. He, therefore, directed valuation of the properties so that shares of the plaintiffs could be sold to defendants. The plaintiffs took an appeal before the Division Bench which held that the present appellants who claimed to be the legal

representatives of the original defendants, had first to obtain probate or letters of administra-
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tion and thereafter a preliminary decree declaring the shares of the parties has to be passed and the valuation of the properties would have to be made with reference to the date of such preliminary decree.

The defendants have come in appeal challenging the correctness of this decision. Allowing the appeal, setting aside the judgment of the Division Bench and restoring that of the single judge, this Court,

HELD: It is the duty of the Courts to order the valuation of the shares of the party asking for a sale of the property under Section 2 and to offer to sell the shares of such party to the shareholders applying for leave to buy them in terms of section 3 at the price determined upon such valuation. As soon as a request for sale is made by a shareholder under Section 2, any other shareholder becomes immediately entitled to make an application under Section 3 for leave to buy the shares of the former. The right to buy having thus arisen and become crystallised, the date with reference to which valuation of the shares in question has to be made is the date on which the right arose. [581C-D]

The fact that legal representatives representing the estate of a deceased defendant had not yet obtained probate or letters of administration did not mean that the right which arose in favour of that defendant during his life when he sought leave under section 3 did not accrue to the benefit of his estate, but was postponed till they obtained probate or letter of administration. This right came to he vested in his estate. The valuation of the shares has to he made as on the date of accrual of the right and valuation being a fact finding process must be resorted to as soon as possible after such accrual. [581E-G]

Whenever the shares in question in the properties come to be sold to the persons entitled to buy them under section 3, the price of those shares will have to be determined on the basis of the valuation made with reference to the time of accrual of the right. [582C]

R. Ramatnunhi Iyer v. Raja V. Rajeswara Rao, [1972] 2 SCC 721 at p. 727, followed.

JUDGMENT: