

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.3818 OF 2012

SARJU MISHRA (D) THR. LRS. & ORS.

...Appellant(s)

Versus

JANGI (D) THR. LRS. & ORS.

...Respondent(s)

J U D G M E N T

V. RAMASUBRAMANIAN, J.

1. This appeal arises out of the dismissal of a writ petition challenging the outcome of the proceedings under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953.

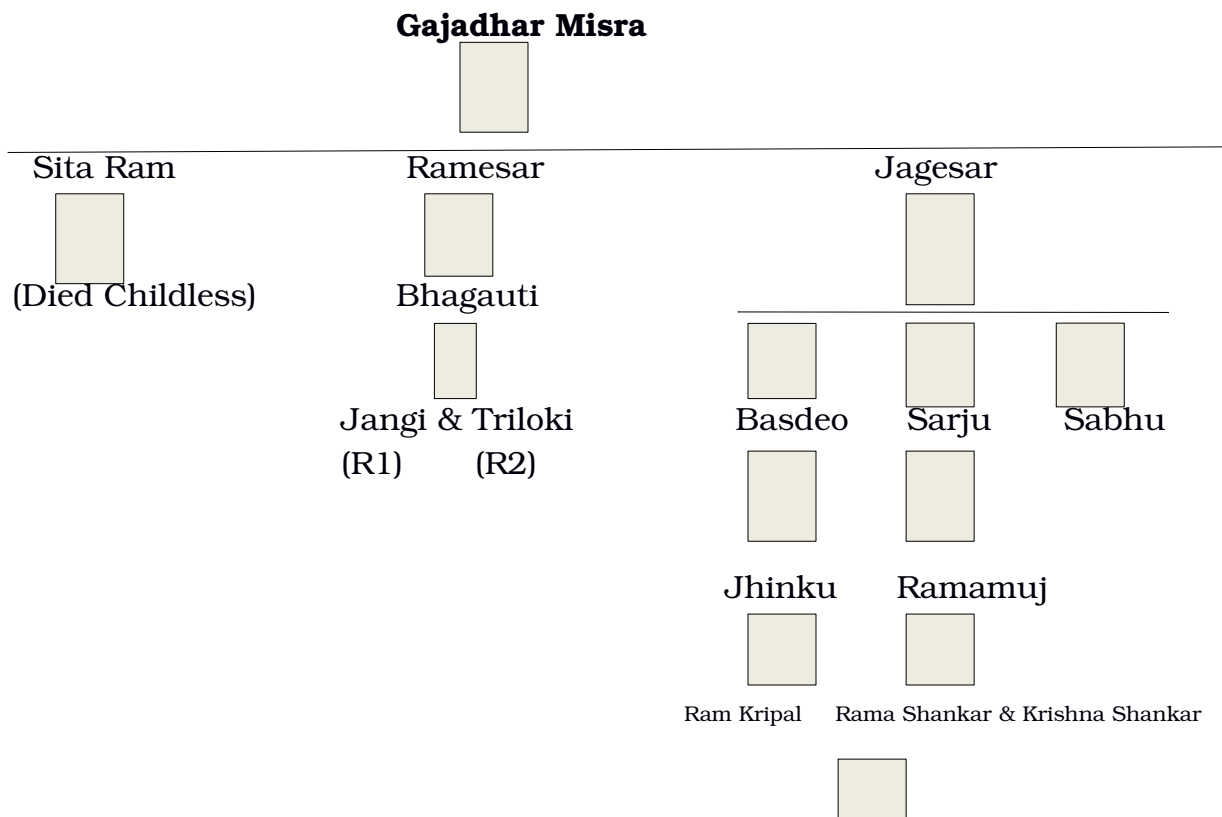
2. We have heard the learned counsel for the respective parties.

3. Since the litigation in which the parties are involved, is nearly a century old, it may be necessary to begin the narration

with a genealogy tree of the family. The common ancestor of both the parties was one Gajadhar Misra. He had three sons by name Sita Ram, Ramesar and Jagesar. Sita Ram died issueless. Ramesar had a son by name Bhagauti. This Bhagauti had two sons by name Jangi and Triloki.

4. Jagesar had three sons by name Basdeo, Sarju and Shabhu. Each of them had his own lineage.

5. The genealogy tree of the family is as follows:-



6. In the year 1928, Bhagauti filed a suit for partition, in suit No.934 of 1928. When an objection to the jurisdiction of the Court was raised, the plaint was returned for presentation to the proper Court. Accordingly, it was presented to the Additional Civil Court and numbered as Suit No.119 of 1929.

7. By consent of parties, the dispute was referred to arbitration by elders and the arbitration award about the manner of partition was accepted and the suit decreed in terms of the award.

8. It appears that Sita Ram as well as Ramesar, two of the three sons of Gajadhar Misra died after the decree. The exact dates of death of Sita Ram and Ramesar are not indicated. However, it was claimed by one group that Ramesar pre-deceased Sita Ram and that, therefore, Sita Ram's $1/3^{\text{rd}}$ share went to Jagesar by way of survivorship, making the share of Jagesar as $2/3^{\text{rd}}$.

9. But Bhagauti, son of Ramesar filed a suit in Suit No.331 of 1944 claiming that the decree passed in the suit of the year 1929 was collusive and not binding. But the said suit was dismissed by the trial Court by a Judgment dated 21.01.1946. The dismissal was confirmed by the First Appellate Court.

10. It appears that mutation in the revenue records took place in 1952 and thereafter objections were filed apparently by both parties under Section 9 of the U.P Consolidation of Holdings Act, 1953. The rival contentions revolved around the validity of the partition decree passed in Suit No.119 of 1929 and the dismissal of the subsequent suit of the year 1944. One branch of the family claimed that the partition decree was never given effect to and that the land continued to be in their possession.

11. The Consolidation officer passed an Order dated 04.05.1973, holding that the share of Ramesar got separated in the partition that took place in 1929 and that the shares of Jagesar and Sita Ram were held jointly and that therefore, upon the death of Sita Ram without any issues, his share would have

gone to Jagesar. As a consequence, the consolidation Officer held that Jangi & Triloki, the children of Bhagauti, who was the son of Ramesar will get only $1/3^{\text{rd}}$ share and the children of Jagesar will get $2/3^{\text{rd}}$ share.

12. Both the branches filed appeals. The appeal of the persons representing the branch of Jagesar was confined to a self acquired property, even in which the other branch was allotted $1/3^{\text{rd}}$ share.

13. The Assistant Settlement Officer dismissed the appeal filed by the members of the branch of Jagesar.

14. The above order led to the filing of two revision petitions by the branch of Jagesar and another revision petition by the branch of Ramesar.

15. The Deputy Director of Consolidation allowed the revision petition filed by the branch of Ramesar and dismissed the revision petitions filed by the branch of Jagesar. This was on the ground that the preliminary decree for partition granted in the suit of the year 1929 was never given effect to. It was also held

that there was no evidence to show who among the two namely, Sita Ram and Ramesar died first. The revisional Authority therefore held that both the branches of Ramesar and Jagesar are entitled to half share each.

16. Aggrieved by the order of the revisional Authority allowing the revision petition filed by the branch of Ramesar, the other branch filed a writ petition in WP No.5109 of 1974 on the file of Judicature at Allahabad. The said writ petition was dismissed by the High Court by an Order dated 11.09.2009. It is against the said order that the branch of Jagesar has come up with the above appeal.

17. The main contention of Shri S. R. Singh, learned senior counsel for the appellants is that the authorities under the Consolidation of Holdings Act cannot go beyond the decree passed by the Civil Court and that a preliminary decree for partition attains finality as regards the shares to which the parties are held entitled, even if no final decree has been passed resulting in the actual division by metes and bounds. According

to the learned senior counsel for the appellants, the contention of the respondents as though the decree for partition passed in the suit of the year 1929 was collusive, already stood rejected in the suit of the year 1944 and that therefore the authorities under the Consolidation Act are obliged to give effect to the preliminary decree for partition.

18. On first principles, the learned counsel for the appellants is correct. But the aforesaid contentions of the learned senior counsel for the appellants overlook one crucial aspect. At the time when the suit for partition of the year 1929 was decreed on the basis of an arbitration award, all the three brothers namely Sita Ram, Ramesar and Jagesar were alive. They were all held entitled to $1/3^{\text{rd}}$ share each. It was only subsequently that Sita Ram died issueless. None of the parties have any clue as to the exact date of death of Sita Ram or Ramesar. The question as to who pre-deceased whom, is not clear and there is a controversy relating to the same. The claim of the branch of Jagesar was that Ramesar pre-deceased Sita Ram and that, therefore, Sita Ram's

1/3rd share came to Jagesar by survivorship. This is why the branch of Jagesar claimed 2/3rd share.

19. But even in the Judgment passed in Suit No. 331 of 1944, no categorical finding was recorded in this regard. The relevant portion of the Judgment dated 21.01.1946 passed in Suit No. 331 of 1944 reads as follows:-

“He also stated that Rameshar had died earlier to the death of Sitaram. There was no cross examination of the deft no.1 on this point. Therefore it is clear that Rameshar father of the plaintiff pre-deceased Sitaram, which Sitaram pre-deceased Jageshar. Thus Jageshar would be entitled to inherit his share to inheritance bring a nearer collateral heir than the plaintiff. If he died in joint with him alive he would be entitled to take his share by survivorship, hence in my opinion it is not necessary to enquire this point. However, as the suit no.119 of 1929 must be decreed to have effected a complete separation between all the parties and as no union has been proved between Sitaram and Jageshar must hold that Sitaram died separate from the defts father. Issue decided accordingly.”

20. The above portion cannot be taken to be a categorical finding on the specific issue as to whether Sita Ram died before or after Ramesar and whether his 1/3rd share went to the branch of Jagesar as a consequence. The revisional authority under the Consolidation Act has not actually gone beyond the Civil Court's

decree for partition. At the time of partition all the three brothers were alive. The authorities under the Consolidation Act were confronted with two questions, namely, **(i)** whether Sita Ram or Ramesar died first; and **(ii)** whether Sita Ram's $1/3^{\text{rd}}$ share would go to Jagesar by way of survivorship, if he had died after Ramesar. The answer to this question did not depend upon the decree for partition. Therefore, the only ground of attack to the order of Deputy Director of Consolidation as confirmed by the High Court cannot be sustained. It is true that the Deputy Director of Consolidation did not articulate his discussion on this issue with clarity. But that will not make his order vulnerable.

21. To put it in simple terms, Jagesar's branch would be entitled to take Sita Ram's $1/3^{\text{rd}}$ share only if it is established that Ramesar had pre-deceased Sita Ram. This question was not decided by the Civil Court in the partition suit and it was raised only before the consolidation authorities. Therefore it is not correct to say that the Consolidation authorities went beyond the

civil court's decree. Finding that there was no evidence regarding the dates of death, the Deputy Director of Consolidation found it equitable to distribute Sita Ram's 1/3rd share equally between the branches of Ramesar and Jagesar. Therefore, the High Court was right in upholding the judgment of the Deputy Director of Consolidation and we find no reason to interfere with the same. Hence the appeal is dismissed. There will be no order as to costs.

.....**J.**
(Hemant Gupta)

.....**J.**
(V. Ramasubramanian)

NEW DELHI
JULY 13, 2022