



2026:CGHC:768

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

Judgment reserved on 13.10.2025

Judgment delivered on 06/01/2026

**FA No. 199 of 2014**

1. Smt. Jamuna Singh W/o Late Ishwar Singh Aged About 32 Years R/o Alankar Complex, Mahatma Gandhi Nagar, Ward No. 26, Near State Bank of India, Bhilai, Tah. And Distt. Durg C.G.,

**... Appellant**

**versus**

1. Smt. Kamla Bai W/o Late Jagannath Singh Aged About 70 Years R/o Mahatma Gandhi Nagar, Alankar Complex, Ward No. 26, Camp-2, Near State Bank of India, Bhilai, Tah. & Distt. Durg CG.
2. Smt. Rekha Singh W/o Late Tanja Rathore R/o Mahatma Gandhi Nagar, Alankar Complex, Ward No. 26, Camp-2, Near State Bank Of India, Bhilai, Tah. & Distt. Durg C.G.,
3. Anita Lal W/o Shatruhan Lal R/o Village- Baloudi, Tah. & Distt. Durg C.G.y
4. Sunita W/o M.A. Quraishi R/o Mahatma Gandhi Nagar, Alankar Complex, Ward No. 26, Camp-2, Near State Bank Of India, Bhilai, Tah. And Distt. Durg C.G.

**... Respondents**

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For Appellant	:	Mr. Rajneesh Singh Baghel, Advocate
For Respondents	:	Mr. Parag Kotecha & Mrs. Bhavika Kotecha, Advocates

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**SB: Hon'ble Mr. Justice Parth Prateem Sahu**

**C A V Order**

1. Plaintiff/appellant has filed this appeal under Section 96 of the Code of Civil Procedure, 1908 (henceforth 'the Code of 1908') questioning the legality and sustainability of the judgment and decree dated 26.11.2014 passed by learned 3<sup>rd</sup> Additional District Judge, Durg in Civil Suit No.69A/2012 dismissing civil suit of plaintiff/appellant herein.
2. Facts relevant for disposal of this appeal are that plaintiff filed a suit for declaration that plaintiff and defendant No.1 are entitled for equal share in disputed house, defendants No.2 to 4 are not having right or title over suit property/house; partition and permanent injunction restraining the defendants from interfering with possession of house to be received by plaintiff in partition. It is further prayed that plaintiff is already in possession of 1260 sq. ft. area of house, possession of remaining area of house constructed over 595 sq. ft. land be granted, pleading that the plaintiff got married with Ishwar Singh son of defendant No.1, they performed love marriage and from their marriage, they were blessed with three children namely Gaurav, aged about 12 years, Harsh, aged about 9 years, and Tajdhan Singh aged about 6 years. Plaintiff along with her children was residing in a part of house situated near Alankar Complex. After death of husband of defendant No.1,

and father of defendants No.2 to 4, defendants are residing in another portion of suit house. During lifetime of their father, defendant No.2 to 4 got married, however, defendant No.2 after death of her husband came to her mother-in-law (defendant No.1). Similarly, defendant No.3 also used to visit frequently to her mother-defendant No.1. Defendant No.4 performed marriage with a person of other caste, therefore, she is not having any right, title over the property of her father Late Jagannath. Husband of plaintiff died in the year 2008. Plaintiff along with her children resided in house of her husband in which defendant No.1 is also residing unauthorizedly. After death of her husband, plaintiff was in continuous occupation, however, defendants are making all attempts to oust her from the house and part of the shop. Proceeding under Section 145 of Criminal Procedure Code, 1973 was also filed before the Sub-Divisional Magistrate which was decided against plaintiff on 10.3.2011. In plaint it is also pleaded that cause of action arose for filing of suit after passing of order dated 10.3.2011 by the Sub-Divisional Magistrate.

3. Defendants have filed written statement to plaint denying all adverse pleadings made therein. In proceeding under Section 145 CrPC (for short 'CrPC') defendant No.1 specifically stated and pleaded that plaintiff after breaking

open lock of house forcefully entered into the house. In additional pleadings, defendants have pleaded that though plaintiff has pleaded that she had performed love marriage with son of defendant No.1, there is no specific pleading with regard to date and year of marriage and when she started residing in the house of defendant No.1 as her daughter-in-law. Plaintiff is defective and therefore prays for its dismissal.

4. It was also pleaded that there is no specific pleading as to place of birth of three children named in plaintiff. Plea of marriage of plaintiff with son of defendant No.1 in absence of specific proof and evidence is not acceptable. Status of plaintiff to be daughter-in-law of defendant No.1 is denied on the ground that plaintiff has not produced evidence with regard to her title and right on the property prior to 2008 or thereafter (after death of her husband). It was further pleaded that plaintiff and her children are not having any right, title over the suit property. After forcible entry of plaintiff in house of defendant No.1, FIR was lodged based on which Crime bearing No.542/2009 was registered. Proceeding under Section 145 CrPC was decided on 10.3.2011 against plaintiff pursuant to which eviction warrant was also issued against her. Status of plaintiff is of encroacher on the property of defendant No.1.

5. Learned trial Court based on the pleadings made by

respective parties has formulated 08 issues for consideration which includes the issue relating to entitlement of plaintiff over half share of suit property; whether property marked in the map attached with plaint with red portion was received by plaintiff in partition; whether defendants be restrained from interfering with possession of plaintiff on the property marked with red ink in the map attached with plaint; whether plaintiff is encroacher over the suit property and whether the suit is properly valued or not, along with other issues.

6. Learned trial Court while appreciating oral and documentary evidence on record had held the plaintiff to be an encroacher over the suit property and entitlement of plaintiff over half portion of suit property and her entitlement to get half share in the suit property to be not proved. Issue with regard to possession of plaintiff after partition on the suit property is also not found proved. Accordingly the suit was dismissed.
7. Learned counsel for plaintiff/appellant would submit that finding recorded by learned trial Court is perverse to the evidence available on record. He contended that learned trial Court has not discussed about status of plaintiff as pleaded in plaint and stated in evidence of her being wife of Late Ishwar Singh, son of defendant No.1. Learned trial Court failed to appreciate the fact that property, subject matter of suit, originally belonged to Late Jagannath Singh from whom the

plaintiff being daughter-in-law and defendant No.1 being widow, had derived title. Learned trial Court also committed error in disbelieving document Ex.P-14, which is settlement / compromise executed between the parties of which defendants are also signatories. Learned trial Court erred in concluding that plaintiff failed to prove her right and title over suit property and further that property possessed by plaintiff was received by her in mutual partition based on settlement deed. Considering the order passed by the Sub-Divisional Magistrate in the proceeding under section 145 CrPC as one of the grounds to dislodge claim of plaintiff, is erroneous as the proceeding under Section 145 CrPC is summary in nature and it does not decide the question of right and title of a party. It can only be decided by a regular civil suit.

8. Learned counsel for defendants/respondents herein supported the impugned judgment and decree passed by learned trial Court. He submits that from the oral and documentary evidence available in record it is clearly appearing that plaintiff forcibly entered into the house possessed by her and therefore in the proceeding under Section 145 CrPC the Sub-Divisional Magistrate passed the order against plaintiff and consequent thereto eviction warrant was also issued against plaintiff. Learned trial Court rightly held the status of plaintiff to be an encroacher. Judgment and

decree passed by learned trial Court is based on proper appreciation of pleadings and evidence on record and therefore, it does not call for any interference.

9. Heard learned counsel for respective parties and also perused the record of learned trial Court.
10. From perusal of pleadings made in plaint as also written statement it is appearing that claim of plaintiff of partition and possession of suit property to the extent of half share is based on her marriage with Late Ishwar Singh, son of defendant No.1 as they performed love marriage and from their wedlock they were blessed with three children. Defendant No.1 was having one son and three daughters. Husband of plaintiff and son of Defendant No.1 died in the year 2008. Defendants have denied marriage of plaintiff with Late Ishwar Singh and birth of three children from their wedlock. Learned trial Court has not framed any specific issue to decide the status of plaintiff to be widow of Late Ishwar Singh, son of defendant No.1.
11. Plaintiff in support of pleadings made in plaint has exhibited 15 documents in all. Ex.P-1 is self-assessment property tax which is in the name of Sunita Singh (defendant No.4, daughter of defendant No.1). Ex.P-2 is affidavit before the Notary Public; Ex.P-3 is challan of deposit of tax. Ex.P-4 is self-assessment property tax from the year 2003-04 to

2009-10. Plaintiff submitted *jaccha-bachha* card prepared under the National Vaccination Mission in the particulars as mentioned in Ex.P-5, in which name of mother is mentioned as Jamuna Bai, husband name is mentioned as Ishwar Singh and expected date of delivery is 21.9.2006. Progress card in the name of Gaurav Singh issued by the Headmaster, Government New Primary School Camp-2 Bhilai, Durg is Ex.P-6 in which date of birth of Gaurav Singh is mentioned as 26.1.2001 and his father's name is mentioned as Ishwar Singh Bais. Ex.P-7 is progress card of Harsh Kumar Singh of the academic year 2010-11 and in which his father's name is mentioned as Late Ishwar Singh Bais and date of birth as '13.1.2004'. Result of KG-1 of Taj Dhanshri issued by Principal, Adarsh Vidya Niketan, Camp-2, Power House, Bhilai District Durg is Ex.P-8 in which father's name is mention as Late Ishwar Singh and date of birth of child is mentioned as 9.10.2006. Death certificate of late Ishwar Singh is filed as Ex.P-9 in which date of registration is mentioned as 07.05.2008 and it was stated to be issued on 20.5.2008. Electricity bill in the name of Jamuna Bai (Plaintiff) is filed as Ex.P-10 and Ex.P-11, which are of the month December 2011 and July 2012, and address in these bills is mentioned as "MG Nagar, Camp-2 Bhilai". Plaintiff has also filed voter identity card issued by the Election

Commission of India in which name of elector is mentioned as Jamuna Bai (plaintiff) and husband's name is mentioned as Ishwar Singh. This card appears to have been issued on 27.5.2002. Ration card is filed as Ex.P-13 in which name of head of family is mentioned as Ishwar Singh son of Jagannath and details of family members of the card holder is mentioned as under:-

- “(i) Ishwar Singh son of Jagannath Singh
- (ii) Jamuna Singh wife of Ishwar Singh
- (iii) Gaurav Singh son of Ishwar Singh
- (iv) Harsh Singh son of Ishwar Singh
- (v) Aditya Singh son of Ishwar Singh”

12. Settlement deed with the title “sulahnama” is filed as Ex.P-14, it bears signature of defendant No.1, plaintiff, defendant No.2 to 4 and under the head of witnesses, signature of several persons with their details are also mentioned. Property tax payment receipt of Municipal Corporation Bhilai issued in the name of plaintiff Jamuna Bai dated 13.7.2010 is produced as Ex.P-15.
13. Plaintiff examined herself as PW-1, Satish Thosar as PW-2, Smt. Rukhmani Sharma as PW-3, Smt. Meena Singh as PW-4, Smt. Archana Chatterjee as PW-5.
14. In order to prove the pleadings in written statement, defendants have produced 38 documents. Ex.D-1 is valuation

report. Ex.D-2 is the order dated 15.1.2013 passed by the High Court in MA No.114/2013 which was filed against the order of temporary injunction passed in favour of plaintiff. Preliminary order passed in the proceeding under Section 145 CrPC dated 30.8.2009 is produced as Ex.D-3. Final order passed in the proceeding under Section 145 CrPC dated 10.3.2011 is Ex.D-4. Order sheet of proceeding under Section 145 CrPC dated 10.3.2011 is Ex.D-5. Letter of compliance of the order dated 10.3.2011 issued by the Sub-Divisional Magistrate is filed as Ex.D-6. Copy of voters list is filed as Ex.D-30. Copy of FIR registered on 19.6.2009 against the plaintiff for alleged commission of offence under Sections 448, 294, 506, 323 of IPC is filed as Ex.D-37.

15. Defendants have examined defendant No.1 as DW-1, Sunita Bai Kohle as DW-2, Rajendra Sharma as DW-3; defendant No.4 as DW-4; defendant No.3 as DW-5; defendant No.2 as DW-6.
16. Plaintiff has not filed any document to prove her marriage with Late Ishwar Singh, son of defendant No.1. However, she has placed on record other documents in which relation of plaintiff and her children with Late Ishwar Singh is shown as husband and father respectively. Progress cards which are placed in original bear signature of Headmaster of Govt. Naveen Prathmik Shala, Camp-2 Bhilai and Headmaster of Adarsh

Vidya Niketan. Camp-2 Bhilai. Ration card bears name of Ishwar Singh to be head of family and in description of family members of card holder, name of plaintiff and her children is also mentioned. Ishwar Singh is shown to be son of Late Jagannath Singh. Jagannath Singh to be father of Ishwar Singh and husband of defendant No.1 and father of defendant No.2 to 4 is not in dispute. In fact, in the pleadings description of defendants is not disputed wherein name of defendant No.1 is shown to be widow of Late Jagannath Singh.

17. From the aforementioned facts, name of Ishwar Singh as mentioned in ration card produced by plaintiff as Ex.P-13, it is appearing that Ishwar Singh, which is mentioned therein and son of defendant No.1, is one and the same person. Further, against the details of other family members in ration card, name of plaintiff and her children are mentioned. Copy of sulahnama (Ex.P-14), which is filed by plaintiff, also bears signature of defendants. Plaintiff in her evidence, stated about execution of sulahnama on 20.5.2010. She also stated that in that document signature of plaintiff, defendants and other local residents are present.
18. Smt. Meena Singh (PW-4) in examination-in-chief stated that defendant No.1 is her aunt (younger sister of her mother) and plaintiff is wife of Late Ishwar Singh (son of defendant No.1).

Marriage of plaintiff with Ishwar Singh was performed at Bamleshwari Temple, Dongergarh and after marriage, plaintiff was residing along with her mother-in-law. She also stated that settlement between plaintiff and defendant No.1/defendants was recorded in writing in presence of local residents. This witness was cross-examined by counsel for defendants. She was not put any specific question with regard to relationship of plaintiff with Ishwar Singh, execution of settlement deed, but normal questions not relating to the facts in issue involved in the case and sated by witnesses were posed to her.

19. Smt. Archana (PW-5) in her cross-examination has stated that her house is situated in Sector-2 Bhilai and shop at Camp-2 Bhilai. Her husband used to sit in shop. She further clarified that she also used to sit in shop. Her elder son is studying in Class 12<sup>th</sup> and daughter in Class 10<sup>th</sup>. In her shop, she is having facility of photocopy, internet, fax, mobile recharge voucher and business of online mobile recharge. She stated that plaintiff used to come to her shop for recharge of mobile phone and distance of house of plaintiff from her shop to be about five meters. However, she stated that she was not present at the time of marriage of plaintiff with Ishwar Singh and further, that she is not aware as to in whose presence and at which place their marriage was solemnized. No

question is posed to this witness about settlement deed though she clearly and specifically stated in Para-4 of her examination-in-chief that settlement deed was recorded through local residents.

20. Defendant No.1 denied execution of settlement deed dated 20.5.2010. In cross-examination, she admitted that two of her daughters have performed love marriage and further shown her unawareness on the point whether her son Ishwar had performed love marriage or not. She also stated that she was not present in the marriage of Ishwar Singh. She also denied relationship of Meena (PW-4) with her to be daughter of her elder sister. She shown her unawareness about preparation of settlement deed, however, she admitted her signature in settlement deed Ex.P-14 (wrongly mentioned as Ex.D-14 in deposition sheet because Ex.D-14 is the document issued by Chhattisgarh State Electricity Board). She also stated that she is not aware whether her daughter has signed the settlement deed or not.
21. Sunita, daughter of defendant No.1, is examined as DW-4. She stated that document Ex.D-3, Ex.D-4 and Ex.D-8 produced by them bear name of husband of plaintiff Jamuna Singh as Ishwar Singh. She stated that in Ex.P-14 her signature is appearing but it is not of her. She also stated that it is wrong to say that signature is not of her.

22. Defendant No.3-Anita Lal, who was examined as DW-5, has denied settlement alleged to have arrived at between the parties. She also denied her signature. Defendant No.2 Rekha Bai is examined as DW-6. She has shown her unawareness about execution of settlement deed in presence of residents of that area. She stated that her brother Ishwar Singh was running business of tent house in the name of their mother. She stated that it is correct to say that she is having no knowledge about marriage of her brother, if he has performed anywhere. However, she stated that her brother has not performed marriage. She denied her signature in Ex.P-14.
23. It is well settled that preponderance of probabilities is a legal standard of proof, mainly in civil cases, meaning a fact is considered true if an evidence shows it is more likely than not to have happened, outweighing the opposite. It is like a balance scale where the evidence for one side weights more heavily even slightly than other proving the claim is more plausible than not. It is like tipping the scale of justice which is slightly in favour of one side, not needing absolute proof. It is about considering a fact to be more plausible or probable based on evidence.
24. In case of **Dr. N. G. Dastane Vs. Mrs. S. Dastane** reported in **(1975) 2 SCC 326**, Hon'ble Supreme Court held as under :-

"24. The normal rule which governs civil proceedings is that a fact can be said to be established if it proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist considers its existence so probably that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities, the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" Per Dixon, J. In *Wright vs. Wright* (1948) 77 C.L.R. 191 at p. 210; or as said by Lord Denning, "the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear". *Blyth vs. Blyth* (1966) 1 A.E.R. 534 at 536. But whether the issue is one of cruelty or of a loan on a promissory note, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged".

25. The doctrine of preponderance of probabilities was discussed in the judgment titled Postgraduate Institute of Medical Education and Research Vs. Jaspal Singh, (2009) 7 SCC 330 which reads as under :-

"17. In Syad Akbar Vs State of Karnataka (1980) 1 SCC 30 this court dealt with in details the distinction between negligence in civil law and in criminal law. It has been held that there is marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt".

26. In the case of **M. Siddiq (Dead) Through Legal Representatives (Ram Janambhumi Temple Case) vs. Mahant Suresh Das and others**, reported in (2020) 1 SCC 1, Hon'ble Supreme Court held as hereunder:-

"721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in *Bater v. Bater*, 1951 P. 35 (CA) where he formulated the principle thus: (p. 37)

"... So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter." (emphasis supplied)

725. The Court recognised that within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved.

726. In *State of U.P. v. Krishna Gopal*, [*State of U.P. v. Krishna Gopal*, (1988) 4 SCC 302 : 1988 SCC (Cri) 928], this Court observed: (SCC p. 314, para 26)

"26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge."

27. In view of discussions made above and applying the doctrine of preponderance of probabilities to the facts of present case. Where plaintiff's case is that she performed love marriage with Late Ishwar Singh (son of defendant No.1), she produced ration card (Ex.P-13) mentioning name of card holder as Ishwar Singh and in the name of other family members, name of plaintiff and her children are mentioned, document of school of her children mentioning name of their father as Ishwar Singh, in the opinion of this Court, plaintiff has proved the fact of her marriage with Late Ishwar Singh on the touchstone of preponderance of probabilities.

28. Learned trial Court erred in observing that both the parties failed to produce documents relating to title of property in dispute. Said finding is contrary to oral evidence brought on record by respective parties. The house, subject matter of suit, was constructed by Late Jagannath Singh, husband of defendant No.1 and father of Late Ishwar Singh (husband of plaintiff). In the aforementioned facts of case and evidence available on record, when the Court applying the doctrine of preponderance of probabilities held the plaintiff to be married wife of Late Ishwar Singh, she is also entitled for share in the property left behind by her father-in-law through her husband. Therefore, finding recorded by learned trial Court that plaintiff failed to prove that she is entitled for partition of suit property is not sustainable. She may not be entitled for one-half share, but being wife of Late Ishwar Singh son of Late Jagannath Singh, she is entitled for some share in the suit property. Consequently, findings recorded on Issue No.1 and 2 are set aside.

29. From the pleadings and evidence of respective parties, it is appearing that the parties to suit belong to Hindu family and therefore, right to share in the property will be governed by the Hindu Succession Act. In case at hand, plaintiff is claiming her right over the property through her husband Late Ishwar Singh, who was son of Late Jagannath Singh.

Defendant No.1 is widow of Late Jagannath Singh. Defendants No.2, 3 and 4 are daughters of Late Jagannath Singh. As deceased Jagannath Singh was survived by widow, son and three daughters, the daughters have also accrued right to share of property as of son in accordance with provisions of Section 6 of the Hindu Succession Act.

30. In case of **Vineeta Sharma vs Rakesh Sharma**, reported in **(2020) 9 SCC 1**, Hon'ble Supreme Court has held in categorical terms that the daughter shall have the same equal rights in ancestral property like a son. Relevant paras of the said decision are quoted herein below for ready reference:-

“56. The daughter is treated as a coparcener in the same manner as a son by birth with the same rights in coparcenary property and liabilities. However, the proviso of sub-section (1) contains a non-obstante clause providing that nothing contained in the sub section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of the property which had taken place before 20.12.2004.

60. The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son." Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the

same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20.12.2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

85. The right to claim partition is a significant basic feature of the coparcenary, and a coparcener is one who can claim partition. The daughter has now become entitled to claim partition of coparcenary w.e.f. 9.9.2005, which is a vital change brought about by the statute. A coparcener enjoys the right to seek severance of status. Under section 6(1) and 6(2), the rights of a daughter are pari passu with a son. In the eventuality of a partition, apart from sons and daughters, the wife of the coparcener is also entitled to an equal share. The right of the wife of a coparcener to claim her right in property is in no way taken away".

31. According to evidence available on record, Late Jagannath Singh died in the year 2005 leaving behind his widow

defendant No.1, three daughters (defendant No.2, 3 and 4) and son Ishwar Singh, husband of plaintiff. Hence, by applying notional partition to the property, subject matter of suit, as provided under Section 8 of the Hindu Succession Act, it is to be partitioned between owner of property Late Jagannath Singh, son and three daughters of Late Jagannath i.e. one-fifth share to each. Defendant No.1, widow of Late Jagannath, will get share of her husband, as the property subject matter of suit, is a dwelling house (part of which is also used for commercial purpose). Plaintiff is held entitle for share of her husband Ishwar Singh i.e. one-fifth, in the suit property.

32. For the foregoing discussions, findings recorded by learned trial Court on Issue Nos.1, 2, 3, 4, 5, 7 and 8 are not sustainable and the same are accordingly set aside. Suit filed by plaintiff/appellant is allowed in part. A decree be drawn up accordingly.

Sd/-  
(Parth Prateem Sahu)  
Judge

roshan/-