

## Most. Indu Devi and Others Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** Feb. 1, 2007

**Citation:** (2007) 2 PLJR 200

**Hon'ble Judges:** Sheema Ali Khan, J; Barin Ghosh, J

**Bench:** Division Bench

**Advocate:** Shiv Nandan Rai, for the Appellant; Shashi Bhushan and Mr. Amar Nath Mishra for the Respt. No. 5, for the Respondent

### Judgement

Barin Ghosh and Sheema Ali Khan, JJ.

The present appeal was preferred in the year 1995. The brother of the appellant, namely, the sole

private-respondent died in the year 1996. After a long delay, a defective application was filed for recording the death of the sole private-

respondent and for bringing on record his heirs and legal representatives. Subsequent thereto an application was filed seeking setting aside of

abatement as well as condonation of delay. Although the reasons given for the delay in filing the application for setting aside of abatement and

substitution are not convincing, but having regard to the fact that family disputes must be resolved finally, we condone the delay in filing the

application for setting aside abatement and for substitution and accordingly record the death of the sole private-respondent and bring on record his

heirs and legal representatives as particularised in the application.

2. It appears that in 1953 a partition took place in between two brothers. According to the younger brother, namely, the original private-

respondent in the appeal, both the brothers got half and half share in the joint family properties. It appears to be the contention of the appellant

herein that he, being the elder brother, got a larger share and the same had been reduced in writing in the year 1978. According to the younger

brother, the document upon which the elder brother is relying does not contain his signature.

3. Be that as it may, in accordance with the law as was prevalent prior to coming into force of the Hindu Succession Act, on a partition between

the brothers, they were entitled to equal share. There was an ancient Hindu conception of Jyeshthabagam, in terms whereof elder brother was

entitled to a larger share. As would be evident from Mulla on Hindu Law, 15th Edition, paragraph-321, the said concept became obsolete long

long time back and Courts never considered, nor enforced any claim by the eldest member or manager to a larger share of the joint family property

than allotted to other coparceners. It has been held in many judgments including in the judgment rendered by the High Court at Mysore in the case

of Veerabhadrapa vs. Lingappa, reported in AIR 1963 Mysore 5, that no Court shall confirm any unequal allotment in any case on the ground

that the arrangement had been acted upon. Therefore, the elder brother getting a larger share in the joint family property is not permissible.

4. In the instant case the appellant on the foundation that he is the elder brother, sought a larger part of the joint family property. Such a claim not

being legally sustainable, we hold that he was not entitled to the same.

5. Accordingly, we declare that the first authority as well as the appellate authority by acknowledging the right of the appellant to a larger share of

the joint family property went wrong legally and the same has been correctly rectified by the revisional authority as well as by the writ court and

accordingly we confirm the same and declare that both the brothers are entitled to half and half of the entire joint family property. Accordingly, they

shall be entitled to the same in their individual capacity.

6. We accordingly remit the matter back to the first authority with a direction upon him to prepare two lots each containing half of the entire joint

family property according to the value of land and to give the first option to the appellant to take one of those lots. With the observations as above,

this appeal stands disposed of.