

*During the life-time of Lalji Patil, the plaintiff would have been entitled to one-third share and on succession to a further one-sixth share. Her share, therefore, in the property will be one-half share.*

## **[Case Brief] Rangubai vs Laxman Lalji Patil**

<b><u>Case name:</u></b>	Rangubai vs Laxman Lalji Patil
<b><u>Case number:</u></b>	Second Appeal- 641 of 1962
<b><u>Court:</u></b>	Bombay High Court
<b><u>Bench:</u></b>	Patel, J.
<b><u>Decided on:</u></b>	20 August, 1965
<b><u>Relevant Act/Sections:</u></b>	Hindu Law, Hindu Succession of Act, 1956, Hindu adoptions and Maintenance act, 1956

### **➤ BRIEF FACTS AND PROCEDURAL HISTORY:**

1. This second appeal has been referred to a Division Bench by Chandrachud J., as it raises the important question of interpretation of s. 6 of the Hindu Succession Act, 1956 and also as some doubt was entertained by the learned Judge as to the correctness of a decision of the Division Bench in **Shiramabai Bhimgonda Patil v. Kalgonda Bhimgonda Patil 1963 66 Bom. L.R 351.**
2. The plaintiff is the widow of Lalji Patil. At his death, he left the plaintiff and the defendant, his adopted son and the widow asked for the share in the property as her right.
3. The widow filed the present suit, claiming a half share in the property. T
4. The trial Court granted one-sixth share to her and the learned Assistant Judge, with slight modification, confirmed this decree.
5. Hence, this second appeal was referred and the question of women right as coparceners was discussed and how must be the widows share must be ascertained.

6. Mr. Rane, relying on some of the provisions of the Adoptions and Maintenance Act, has argued that the wife's or mother's right to share or the right of daughters for provision on partition of the joint family property is abrogated

➤ **ISSUE BEFORE THE COURT:**

1. Correctness of a decision of the Division Bench in *Shiramabai Bhimgonda Patil v. Kalgonda Bhimgonda Patil* 1963 66 Bom. L.R 351.

➤ **RATIO OF THE COURT**

1. The court after considering *Lakshman Ramchandra Joshi v. Satyabhamabai*, 1877 I.L.R 2 Bom. 494 observed that it would, therefore, seem to be suggested that though she has no right to demand a partition as such, her right is not a right available against the husband and sons personally, but is a right in the property of the coparcenery.
2. Their Lordships approved of the observations of Mitter J. in ***Sheo Dyal Tewaree v. Judoonath Tewaree . 1868 9 W.R 61***, at p. 62., which are as follows:  
*“The mother, or the grandmother, is entitled to a share when sons, or grandsons, divide the family-estate between themselves; but (that) she cannot be recognized as the owner of such share until the division is actually made; she has no preexisting right in the estate except a right of maintenance.”*
3. In ***Venkiteswara Pai v. Luis [1964] A.I.R Ker. 125, F.B***, a Full Bench of the High Court while considering the provisions of O. XXII, r. 4, held that, in view of the proviso an Explanation to s. 6, the share of a deceased coparcener in the coparcener property must be deemed to have been partitioned out immediately before his death and to have devolved on his heirs.
4. In many of the Schools governed by the Mitakshara law, as close an heir as a sister, or a daughter's daughter, or a son's daughter, or a sister's son were not entitled to inherit the brother, the grandfather or the maternal uncle.
5. It is true that, in view of what we have stated above, the decision in *Shiramabai's case* cannot be accepted. On the other hand, it is also extremely difficult to accept the apparent view of the sections expressed in Sir Dinshaw Mulla's Hindu Law.
6. The court finally concluded that when the interest of the deceased coparceners to be determined, the Courts should first determine what is the property available for partition as provided in Section 304 then partition the coparcenery property setting aside the share of the

widow to which she is entitled in her own right and divide the share of the deceased coparcener amongst the heirs; and by the decree make proper provision for the maintenance and marriage expenses of the daughters and award the widow her due share in the coparcenary property and divide the property of her husband amongst the heirs.

➤ **DECISION HELD BY COURT:**

1. The court finally held that on a partition during the life-time of Lalji Patil, the plaintiff would have been entitled to one-third share and on succession to a further one-sixth share. Her share, therefore, in the property will be one-half share.
2. A preliminary decree will accordingly be drawn up and remitted to the trial Court for effecting partition in accordance with the preliminary decree within two months from the record reaching the trial Court.