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AS.No.84 of 2015

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 84 of 2015

R. Purushothaman

.. Appellant

Versus

1. Raghutha

2. A.Sengani

.. Respondents

Appeal Suit is filed under Section 96 of Civil Procedure Code to set aside the Judgment and Decree dated 28.11.2014 passed in O.S. No. 51 of 2012 on the file of the learned III Additional District Judge, Puducherry.

For Appellant	:	Mr. P.S. Ganesh
For Respondents	:	Mr. P. Valliappan for Ms.PV Law Associates for R1

JUDGMENT

This Appeal had been filed by the first Defendant in the suit seeking to set aside the judgment and decree passed in O.S. No. 51 of 2012, whereby a preliminary decree was granted holding that the Plaintiff and first Defendant are entitled to half share in the suit schedule property.



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'Plaintiff' and 'Defendants' as has been arrayed in the suit.

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3. The Plaintiff has instituted the suit for partition and separate possession of the suit schedule properties. As per the averments in the plaint, it was stated that the Plaintiff is the sister of the first Defendant. It is also stated that they are the children of Ramasamy. According to the Plaintiff, their father Ramasamy had purchased the suit properties by sale deed dated 28.08.1923. The property was enjoyed as joint family properties by the Plaintiff and first Defendant along with their parents. While so, the father of the Plaintiff and first Defendant, Ramasamy died intestate in the year 1942 and their mother Rajambal also died intestate in the year 1977 leaving behind the Plaintiff and the first Defendant as their legal heirs. After the death of their parents, the properties described in the plaint was in common enjoyment by the Plaintiff and the first Defendant. While so, the first Defendant alone had sold a portion of the second item to the second Defendant on 30.03.2009 thereby deprived the right of the Plaintiff in such property. The Plaintiff therefore demanded partition with the first Defendant in person but the first Defendant did not oblige. Therefore, the Plaintiff sent a notice dated 28.02.2012 demanding her half share in the suit properties. The first Defendant received the notice but did not sent any reply. Therefore, the Plaintiff had filed the suit for partition as against the Defendants.



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4. On notice, the first Defendant filed written statement contending *inter alia* that there is no dispute in the relationship between the Plaintiff and the first Defendant. It is true that the Plaintiff is the sister of the first Defendant. It is further stated that the first Defendant and the Plaintiff are admittedly natives of Pondicherry. Therefore, the right to partition of the immovable properties claimed by the Plaintiff will be in accordance with the Hindu Customary Law which is in force in the Union Territory of Pondicherry. The Plaintiff and the first Defendant are Pondicherry Hindus. Therefore, they are governed only by the Customary Hindu Law as it is applied in Pondicherry. Therefore, no right of share in the properties could be claimed by the Plaintiff as a matter of right by applying the provisions of the Hindu Succession Act. The plaint was drafted on the basis of the provisions of Hindu Succession Act which has no application as far as the Hindus of the Pondicherry. Therefore, what the personal law does not provide cannot be claimed by the Plaintiff as a matter of right. Further, applying the customary law as it is in force in the Union Territory of Pondicherry is concerned, there is no joint family system in Pondicherry. The properties that are acquired by the Male Hindu during his life time absolutely belongs to him and the succession that would open on his intestate death can only be towards his male heirs and the female descendants cannot claim any right, interest or share in the property and they do not have



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any such right under the Hindu Customary Law. If the male Hindu during his life time makes any gratuitous disposition of the properties so acquired by him, such gratuitous disposition is restricted to only 1/8th share alone and remaining to be partitioned among his male successors alone. In the case of a female Hindu, the properties acquired by a female Hindu on her intestate death will be open for succession only in respect of female descendants and no male member can claim any right of succession in respect of such properties acquired by a female Hindu. Therefore, this being the position of law in Pondicherry, the Plaintiff's claim for partition in respect of suit schedule properties is without any right. Without prejudice to the contentions raised hereinabove, the suit is also bad for non-joinder of necessary parties. This Defendant is married and has five children, as such, they are all necessary parties to the suit. It is also stated that the Plaintiff was married in the year 1955 and the marriage was solemnised in a frolic and fervor manner. The Plaintiff was given 10 sovereign of golden jewellery and the total expenses of marriage itself was to the tune of Rs.10,000/-. Prior to the marriage, the father of the Plaintiff and first Defendant was not alive. The first Defendant had spent entire amount for the marriage of the Plaintiff along with sufficient sreedhanas. The claim of the joint family in fact is unknown to the region of Pondicherry as far as the natives are concerned. Any claim contrary to the practice which is being followed by the native Hindus in Puducherry cannot be countenanced in the



light of Customary Hindu Law as it is in force today. Therefore, the suit is not maintainable and the first Defendant prayed for dismissal of the suit.

5. On considering the rival pleadings, the learned III Additional District Judge, Pondicherry, had raised the following issues for consideration in the suit and they are:

- (i) *Whether the suit is maintainable?*
- (ii) *Whether the suit is valued properly?*
- (iii) *Whether the Plaintiff is entitled for judgment and decree as prayed for?*
- (iv) *To what other relief, the parties are entitled to?*

6. Before the trial Court, the Plaintiff examined herself as P.W-1. During the course of her evidence, she marked documents under Exs.A-1 to A-5. Ex.A-1 is the Birth Certificate of the Plaintiff dated 03.04.1941. Ex.A-2 is the copy of the sale deed in favour of the father of the Plaintiff and first Defendant dated 24.08.1923. Ex.A-3 is the copy of the sale deed executed by the first Defendant in favour of the second Defendant dated 30.09.2009. Ex.A-4 is the copy of the lawyer's notice dated 28.02.2012 issued on behalf of the Plaintiff to the first Defendant seeking partition. Ex.A-5 is the acknowledgment card for the notice received by the first Defendant dated 03.03.2012. P.W-1 was cross-examined on behalf of the first Defendant. On behalf of the Defendants in the suit, the first Defendant R. Purushothaman was examined as D.W-1. No document was marked on the side of the Defendants.



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D.W-1 was cross-examined on behalf of the Plaintiff by her Counsel.

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7. On appreciation of evidence, the learned III Additional District Judge, Pondicherry, had in the judgment dated 28.11.2014 granted preliminary decree of partition of half share in the suit property in favour of the Plaintiff.

8. Aggrieved by the grant of preliminary decree for partition, the first Defendant in O.S. No. 51 of 2012 filed this Appeal.

9. The learned Counsel for the first Defendant submitted that the learned trial Judge failed to appreciate that the concept of joint family did not exist in the custom applicable to the parties to the suit. Further, the learned trial Judge failed to apply the customary law prevalent upon the Hindus of Pondicherry. When it is admitted by the Plaintiff herself that the property was acquired by her father only and that she was a resident of Puducherry, the Hindu Succession Act will have no application to the native Hindus of the Pondicherry and consequently, the Plaintiff cannot maintain the suit for partition. The findings of the trial Court that the Customary Hindu Law will not have its application is not supported by any legally acceptable reasons. The Plaintiff and the first Defendant are sister and brother. Both are natives of Pondicherry. The territory of Pondicherry was included in the Indian Union



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only in the year 1963, after it was freed from French Rule. Till such time, they were treated as French Citizens and the French Civil Code only applied to them. Hindus in Pondicherry were Indian Nationals and are called as "Renoncants". For them, the Hindu Customary Law is applicable under the law of "Renoncants" instead of French Civil Code. The properties in the Hindu Family were treated as belonging to the father. Even if the sons acquired properties in their own name it will be treated as that of the property of the father and till the fathers' life time they cannot seek partition. After the death of the father, partition is possible. During the life time of the father, 1/8th share of the property could be gifted or encumbered by the owner/father. As per the Plaintiff pleadings, the father of the Plaintiff and the first Defendant, died in the year 1942. The Plaintiff was married in the year 1955. The mother of the Plaintiff and the first Defendant died in the year 1977. The Plaintiff was married for which all the expenses were made by the first Defendant. From the year 1942, as per the law of "Renoncants", only male in the family was the first Defendant. Therefore, he succeeded to the properties. There were two other male members in the family who pre-deceased their father. Therefore, as on the date of the death of the father, as per the Customary Law of "Renoncants", the property devolves on the first Defendant only. After Pondicherry was freed from French Rule in the year 1963, Laws applicable to the other territory of India was made applicable by notification of Pondicherry Administration of



Territory Act. The Hindu Succession Act was made applicable only from the year 1963.

10. The learned Counsel for the first Defendant invited the attention of this Court to the averments in the Plaint, the written statement filed by the first Defendant and the issues framed by the learned trial Judge. The learned Counsel for the first Defendant also invited the attention of this Court to the Judgment passed by the learned III Additional District Judge, Pondicherry, wherein relevant portion is extracted hereunder:

“7. Issue No.3: It is argued on the side of the Defendant that as per the Customary Law there is no joint family system in Pondicherry and the male heirs alone is entitled to get share in the property of his father. In order to support it 1984 Madras 271: It deals with Christians governed by Hindu Law, so it is not apt. As per 1986 (1) MLJ 160 : Joint Family System is not applicable to Pondicherry. As per 1993 (2) L.W. 387 : Sons have no share in the property during the lifetime of father in French Law. As per the Journal of the Indian Law Institute : When in 1819 the French code civil was made not applicable in Pondicherry it was provided to be governed by the customs of their castes. In the present case what was the custom of the Plaintiff and D1 and their father's family is not stated and they were following the customary law is also not proved through oral and documentary evidence. So after 1963 the native persons who are living in Pondicherry also the law applicable is Hindu Succession Act. So the female heirs are also entitled to get share in the self acquired property of the father along with male heirs. So the Plaintiff is entitled for ½ share in the Suit property and issue No.3 is answered accordingly.”

11. The learned Counsel for the first Defendant also invited the attention of this Court to the Hindu Customary Succession as prevailed in Pondicherry which has been highlighted and discussed in various Judgments



which are extracted below:

WEB COPY (i) In ***Maniammal alias Rajambal -vs- Mangalakshmy and others***

reported in ***1986 – MLJ (1) 160*** it is observed as under:

“The other propositions recognised by Sannar are: A communaute or the common family commences between the male legitimate heirs in direct descending line of a father of a family, himself not being a member of a common family. The properties of the deceased father devolve on the members of the communaute. The death of one member of the communaute will have no bearing on the family association. But when only one male member is left surviving, the properties which remain undivided will devolve on that sole male member and no co-existing female element has any right to pretend herself as co-owner of those properties with him.

But, as per the French Hindu Law, the theory of Regime de la co-propriete Familiale has been introduced and it is stated that if the major sons live under the father's authority and are residing with him, it is not forbidden to them, according to the existing usages, to possess particular properties, but those properties are presumed to belong to the chief or the head of the family till the contrary is proved. On the opening of the communaute after the demise of the father, the position as amongst the members, namely, the sons, appears to be the same as the members of a joint family. The impact of the introduction of the [Hindu Succession Act](#) 30 of 1956 may also be taken note of. But on the facts of the present case, such a contingency would not arise because Rangasami Gounder died even before the said Act was made applicable to the Union Territory of Pondicherry and hence, the law as it prevailed prior to such introduction enabled survivorship to be operative in spite of any widow or other female heirs being alive in the branch of Rangasami Gounder. The presumption with regard to acquisition by the major sons during the Regime de la co-propriete Familiale is a rebuttable presumption. If it is a case of donation or gift deed, the document itself will speak and it must be held that the acquisition under such a deed is exclusively that of the son. In other cases, it must be proved that the acquisition was made with the separate and personal income of the son, and further the acquisition never merged with the family patrimony. The rebuttal materials may fall under different categories. It could be pleaded that the son was carrying on a business or an industry or a profession of his own yielding sufficient income. But this by itself has been held to be not sufficient. It



could also be pleaded that the price or the consideration for the acquisition was paid by means of a loan raised by the son. Here again, the peculiar legal position governing the locale is that that circumstance by itself will not be sufficient proof of the acquisition, because by reason of its special nature, the loan itself is reputed to have been made in the interest of the family and discharged by common funds. But in spite of the rigorous rule of presumption, it is not as if the son who has made the acquisition is helpless. He can still pass through the hurdle and establish, as already referred to, that the acquisitions were made by income personal to him and furthermore, they were never merged with the family patrimony. It is contemplated that if there had been an admission by the father of the right claimed by the son, that would be an excellent evidence that the acquisitions were only those of the son and they were never merged with the properties of the family.”

(ii) ***Maanvizhi @ Mana Vijie Vs. Venkatachalam (Vingudasalam &***

Ors reported in ***2010-1-L.W-172*** it is observed as under:

“7. It would be worthwhile to state the legal position relating to the right of a Hindu domiciled in Pondicherry, who claims any right on the basis of devolvement of ancestral property. In the judgment of a Division Bench of this Court in the case of *Viswanathan Vs. Savarimuthurayan*, reported in 2004 (4) M.L.J. 229, the legal position has been directly set out in paragraph No.10 which reads as under:

“The learned Judge in the decision in *Ramalingam v. Manicka Gounder* (1980 (1) M.L.J., 350), has held as follows:

“10. In the event, I think, it would be proper to hold that under the Hindu Law as in vogue in Pondicherry all properties held by a father in a joint family are his absolute properties, whatever might be their origin or their modes of acquisition, and all of them devolve on his death in accordance with the law which governs succession to a male Hindu's absolute estate. This was the law as administered in Pondicherry when the *Hindu Succession Act, 1956* came to be extended to that territory in 1963.”

(iii) ***Muthaiyan Vs. Poongothai*** reported in ***2018-1-L.W-209*** wherein

this Court has observed as follows:

“27. It is evident from the above that if a Hindu died after



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01.10.1963, the law of Succession to the properties is as per the *Hindu Succession Act* and the repealed Customary Hindu Law cannot be applied. In other words, after the application of *Hindu Succession Act* on 01.10.1963 to the State of Pondicherry, the Hindus domiciled in Puducherry are governed by the provisions of the *Hindu Succession Act*, whatever be their personal law before 1st October 1963. Therefore, we are of the view that those Hindus, who are domiciled at Pondicherry will be governed by *Hindu Succession Act* after 01.10.1963, unless they accrue any right under the Customary Hindu law before 01.10.1963. In so far as the Hindus who are French Nationals and renoscants, the *Hindu Succession Act* will not apply. So far as all others are concerned, who are not renoscants, only *Hindu Succession Act* will apply irrespective of their nationality. In the instant case, the Plaintiff neither got any accrued right under the Customary Law before 01.10.1963 nor claimed any right as renoscant and hence, *Hindu Succession Act* alone will apply to the Plaintiff in this case. The parties to the appeal are governed only by *Hindu Succession Act* and customary Hindu Law will have no application to their case. We find that the Trial Court, without framing any issue as regards the applicability of Coromandal Law in this case has dealt with the same and proceeded to pass a preliminary decree in favour of the Plaintiff.

28. The learned Counsel for the respondents 2 and 5 submits that the suit property was not the self-acquired property of Ramasamy Mudaliar and therefore he has no right to execute the Will in favour of the first Defendant/Appellant herein. This submission of the Counsel for the respondents 2 to 5 cannot be accepted. As we have held above, the parties to the appeal are governed only by *Hindu Succession Act*. Further, the trial Court has rendered a finding that the suit properties are the absolute property of Late. Ramasamy Mudaliar and the said finding has not been challenged by the respondents 2 to 5 herein. The only error committed by the trial Court is it had erroneously applied Coromandal Law and arrived at a conclusion that the Will is valid only to the extent of 1/5 share of Ramasamy Mudaliar. Since we have come to the conclusion that Coromandal Law cannot apply to the facts of this case, we hold that the Will executed by Ramasamy Mudaliar in favour of the Appellant herein is valid in entirety."

12. The learned Counsel for the first Defendant invited the attention of this Court to the admission by the Plaintiff as P.W-1 in her evidence,



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particularly, in her cross-examination, which is extracted hereunder:

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வாதி தரப்பு சாட்சி 1 (1 ம் பிரதிவாதி தரப்பில் குறுக்கு விசாரணை)

“நான் குருவிநந்தம் கிராமத்தில் பிறந்தேன். என் அண்ணன் புருஷோத்தமனும் குருவிநந்தத்தில் பிறந்தார். குருவிநந்தம் பாகூர் கொம்பூனில் வருகிறது. பாகூர் கொம்பூன் புதுச்சேரி யூனியன் பிரதேசத்தை சேர்ந்தது. நாங்கள் அனைவருமே தலைமுறை தலைமுறையாக பாண்டிச்சேரியை சேர்ந்தவர்கள்தான். இந்த வழக்கில் உள்ள இரண்டு சொத்துக்களும் என் அப்பா ராமசாமிக்கு சொந்தமானது. புருஷோத்தமனுக்கு அப்பா என் அப்பா ராமசாமி தான். இந்த தாவா சொத்தில் எனக்கு பாகம் கேட்க உரிமை இல்லை என்று சொன்னால் அது தவறு. ஆகவே இந்த வழக்கை தாக்கல் செய்ய வழக்கு மூலமே இல்லை என்று சொன்னால் அது தவறு. 1ம் பிரதிவாதி தாவா சொத்தில் எந்த பாகமும் கொடுக்க வேண்டியதில்லை என்று சொன்னால் அது தவறு, வழக்கை தள்ளுபடி செய்ய வேண்டும் என்று சொன்னால் அது தவறு.”

13. Therefore, in the light of the evidence available during cross examination of the Plaintiff, the Plaintiff is not entitled to the relief of partition. Therefore, the Suit filed by her is not maintainable. The Judgment of the learned III Additional District Judge, Pondicherry in O.S.No.51 of 2012 granting the Plaintiff half of the share of the properties left intestate by the father of the Plaintiff and first Defendant is not as per the Customary Law of "Renoncants". Therefore, the Suit has to be dismissed and this Appeal has to be allowed by setting aside the Judgment passed by the learned III Additional District Judge, Pondicherry in O.S.No.51 of 2012 dated 28.11.2014.



Defendant relied on the ruling reported in **1986 – MLJ (1) 160** in the case of

Maniammal alias Mangalakshmy. Here in this case, the Plaintiff in O.S.No.51 of 2012 on the file of the learned III Additional District Judge, Pondicherry is not entitled to the relief of partition, as per the customary law prevailing in Pondicherry applicable to Hindus as per the French Civil Code. The learned Judge ought to have dismissed the Suit, instead the learned Judge misdirected herself and granted preliminary decree for partition. The native Hindus of Pondicherry are governed by the Customary Law in which female Hindus are not entitled to claim any right in immovable properties.

15. Opposing the submissions of the learned Counsel for the first Defendant, the learned Counsel for the Plaintiff submitted that what are all argued by the learned Counsel for the first Defendant is not acceptable as per law. The French Civil Code under Article 145 is applicable to the French states of Pondicherry. As per Article 145 of French Civil Code, the Plaintiff is entitled to share as equal to that of the son. When the father or the male member of Hindu Family died, his daughter is entitled to share as equal to that of the son. Therefore, the Plaintiff is entitled to partition and therefore Judgment pronounced by the learned III Additional District Judge, Pondicherry is to be confirmed and the Appeal filed by the first Defendant is to be dismissed. The learned Counsel for the first Defendant without bringing to the



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notice of this Court the Article 145 of French Civil Code has made submissions which has got nothing to do with the claim of the Plaintiff. As per Section 6 of The Hindu Succession Act, the property of the Male Hindu devolves upon his sons and daughters, in the absence of any other Class-I legal heir. The learned Counsel for the Plaintiff also placed reliance on Article 745 (Section-3) of the French Civil Code, wherein it was held that the children or their descendants inherit the property of their father and mother, grandparents or other ancestors, without distinction of sex or right of primogeniture, even if they are the issues of different marriages. They inherit equally on per capita when they are all related in the first degree to the deceased and entitled in their own right. It is an admitted fact that the provisions of the Hindu Succession Act, 1956 were made applicable to Hindus in Puducherry. The Plaintiff and the first Defendant succeed to the estate of their father Ramasamy on his death. On the death of their mother Rajambal, the share inherited by the mother Rajambal also has to be equally divided among the Plaintiff and the first Defendant due to the intestacy of their mother. The trial Court, on appreciation of the above, has rightly passed a preliminary decree and he prayed for dismissal of the Appeal Suit.

16. The learned Counsel for the Plaintiff further stated that the second Defendant in the suit is a *pendente lite* purchaser of a portion of the property



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from the first Defendant. He was also impleaded as a party to the suit.

However, the second Defendant has not chosen to assail the preliminary decree granted by the trial Court and therefore, the sale of a portion of the item No.2 of the property made by the first Defendant in favour of the second Defendant will not bind the Plaintiff.

17. Heard the learned Counsel for the first Defendant as well as the learned Counsel for the Plaintiff and perused the materials placed on record.

Points for determination:

(1) Whether the Hindu Succession Act is applicable to native Hindus of the Union Territory of Pondicherry?

(2) Whether the right to succeed the co-parcenary property to the woman of the native Hindus, the woman is excluded in Pondicherry?

18. On consideration of the rival submissions of the learned Counsel for the first Defendant and the learned Counsel for the Plaintiff and on perusal of the reasoning given by the learned Trial Judge, it is found that in similar case decided by the Hon'ble Supreme Court in ***Vineeta Sharma Vs. Rakesh Sharma & Ors*** reported in ***(2020) 9 SCC 1***, it was observed as follows:

“129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu



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Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6 (1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the rights in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6 (5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a Court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a Court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

130. We understand that on this question, suits/appeals are pending before different High Courts and Subordinate Courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in Prakash v. Phulavati and Mangammal v. T.B.Raju & Ors. The opinion expressed in Danamma @ Suman Surpur & Anr. v. Amar is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits."

19. In the light of the above ruling of the Hon'ble Supreme Court,



when the Appeal is pending before this Court, as observed by Their Lordship in the Judgment mentioned supra, the daughter is entitled to partition in the joint family property. The question of natives of Pondicherry are governed by the French Code wherein the Hindus of Pondicherry are governed by the Customary Law till the Hindu Succession Act was extended to the State of Pondicherry. The Hon'ble Supreme Court had decided that the daughters shall not be discriminated based on the Hindu Succession Act as amended in 2005. For more clarity, the observation in para No. 116 of the judgment will be very much necessary to be looked into, which reads as follows:-

“116. The intendment of amended Section 6 is to ensure that daughters are not deprived of their rights of obtaining share on becoming coparcener and claiming a partition of the coparcenary property by setting up the frivolous defence of oral partition and/or recorded in the unregistered memorandum of partition. The Court has to keep in mind the possibility that a plea of oral partition may be set up, fraudulently or in collusion or based on unregistered memorandum of partition, which may also be created at any point of time. Such a partition is not recognized under Section 6 (5).

127. A special definition of partition has been carved out in the explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in [section 6\(5\)](#) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of [section 6](#), the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of [section 6\(5\)](#) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible



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in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of [Section 6](#) of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the Court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the Courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigor of very heavy burden of proof which meet intendment of Explanation to [Section 6\(5\)](#). It has to be remembered that Courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the Court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under [Section 6\(5\)](#) had taken place.”

20. In the above judgment, the Honourable Supreme Court had an occasion to interpret the effect of Section 6 of The Hindu Succession Act, 1956 and the amendments made thereto in the year 2005. While referring to Section 6 (5) of the Act relating to plea of oral partition, it was held that oral partition that may be pleaded by a co-parcener to deprive the share of the other has to be examined with caution. It was also observed that the intendment of [Section 6](#) of the Act is only to accept the genuine partitions that might have taken place



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under the prevailing law, and are not set up as a false defence and only oral *ipse dixit* is to be rejected outrightly. It was also held that the object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. Thus, the judgment of the Honourable Supreme Court is crystal clear that the setting up of a plea of oral partition has to be carefully examined, otherwise, it would lead to a situation where the daughters would be prevented from getting a share of their ancestor.

21. In the light of the reported ruling of the Hon'ble Supreme Court in ***Vineeta Sharma Vs. Rakesh Sharma & Ors*** reported in (2020) 9 SCC 1, the contention of the learned Counsel for the first Defendant that the Customary Law among Hindu natives of Pondicherry wherein women were not granted right in joint family coparcenary properties has to be rejected. The Hindu Succession Act, 1956, was extended to the territory of Pondicherry with effect from 01.10.1963 by Regulation 7 of 1963 (Section 2(2A)). Subsequently, the Hindu Succession Act, 1956 as amended in 2005 came into force. Therefore, automatically, the Hindu Succession Act as amended in 2005 is applicable throughout the territory of India and it is also applicable to Hindu natives of Pondicherry as well. Therefore, the grounds of appeal raised by the first



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Defendant is liable to be rejected in the light of the reported ruling of the Hon'ble Supreme Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma & Ors.*** reported in ***(2020) 9 SCC 1.***

22. In the light of the above discussion, the points for determination is answered in favour of the Plaintiff and against the first Defendant. The Hindu Succession Act, 1956 is applicable to native Hindus of the Union Territory of Pondicherry and the woman of the native Hindus in Pondicherry is entitled to the co-parcenary right in the property of their ancestors.

In the result, this ***Appeal Suit is dismissed.*** The Judgment passed by the learned III Additional District Judge, Puducherry in O.S.No.51 of 2012, dated 28.11.2014 is confirmed. No costs.

06.04.2023

dh
Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
To

1. The learned III Additional District Judge,
Puducherry.

2. The Section Officer,
V.R. Section,

<https://www.mhc.tn.gov.in/judis>



High Court, Madras.

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SATHI KUMAR SUKUMARA KURUP, J.

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Pre-delivery Order made in
A.S.No.84 of 2015

06.04.2023