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A.S.No.540 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.07.2026

Delivered on : 24.07.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

A.S.No.540 of 2024

and

C.M.P.No.16374 of 2024

1.M.Iyyanar
2.Sarala
3.S.Kumar
4.Chidambaram
5.Prabu

... Appellants

Vs.

1.Kalvikarasi
2.Arivukodi
3.Revathi
4.Sivaranjani
5.Kalavathi
6.Sivagami

... Respondents

Prayer : Appeal Suit filed under Section 96 r/w. Order XLI Rule 1 of the Code of Civil Procedure against the judgment and decree passed by the learned I Additional District Judge, Tindivanam, in O.S.No.43 of 2021, dated 29.09.2023.

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For Appellants : Mr.T.Murugamanickam
Senior Counsel
for Mr.B.Gurunathan

For R1 to R6 : Mr.P.Sankaranarayanan

Amici Curiae : Mr.S.Parthasarathy, Senior Counsel
Mr.S.Mukunth, Senior Counsel
Mr.V.Raghavachari, Senior Counsel
Mr.G.Masilamani, Senior Counsel
Mr.R.Sankaranarayanan,
Senior Counsel
Mr.P.Valliyappan, Senior Counsel
Mr.N.Manokaran
Mr.Sharath Chandran

J U D G M E N T

N. SATHISH KUMAR, J.

Challenging the decree and judgment of the learned I Additional District Judge, Tindivanam, in O.S.No.43 of 2021, dated 29.09.2023, granting a preliminary decree allotting 1/5 share each to the plaintiffs 1 to 3, 4, 5 and 6 in Item Nos.4 to 25 of the suit properties; and 1/25 share each in Item Nos.1 to 3 of the suit properties; and also declaring the documents bearing Nos.2615 of 2013 dated 22.05.2013, 5287 of 2013 dated 09.10.2013, 5289 of 2013 dated 09.10.2013 and 2710 of 2020 dated 10.07.2020 as null and void, all the defendants in the suit have filed the above Appeal.

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2.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.Following are the brief facts of the plaintiffs' case :

The suit properties originally belonged to one Murugesu Gounder. He died on 03.06.2007 leaving behind one son, who is the 1st defendant, and four daughters, namely, Kalavathi, Sivagami, Sundari and Anbazhagi. Sundari died on 16.05.2019. Another daughter Anbazhagi predeceased the father on 03.03.1998. The plaintiffs 1 to 3 are the legal heirs of deceased Sundari. The 4th plaintiff is the daughter of deceased Anbazhagi.

4.It is the case of the plaintiffs that the suit properties were acquired by the said Murugesu Gounder with the aid of income from ancestral properties and hence, the suit properties are ancestral properties. After the death of Murugesu Gounder, the 1st defendant (son), without the consent of the plaintiffs, alienated various items of the suit properties in favour of defendants 2 to 4 by executing three sale deeds and one settlement deed in favour of his son, 5th defendant. It is the contention of the plaintiffs that the



1st defendant had no exclusive right to deal with the properties and the alienations made by the 1st defendant are not binding on the plaintiffs' shares. Though the plaintiffs demanded for partition, the 1st defendant did not accede to their request and hence, they filed the present suit seeking partition.

5.The 1st defendant filed his written statement which was adopted by the defendants 2 to 5 in the suit. The defendants resisted the suit by contending that there had been a family arrangement in the year 2004, in which, the daughters were given various movable and immovable properties in lieu of their shares and they had accepted for allotting suit Item Nos.4 to 25 in favour of the 1st defendant. It was further contended that the plaintiffs, who are aware of the family arrangement, were estopped from re-opening the same. It is the further stand of the defendants that Item Nos.1 to 3 did not exclusively belong to Murugesu Gounder, but stood in the name of joint patta of Murugesu Gounder and his brothers and therefore, the extent of share of Murugesu Gounder is not known. It is also the stand of the defendants that the suit is bad for partial partition, as several ancestral properties have been deliberately omitted from the plaint schedule. Since



necessary parties have not been impleaded, the suit is also bad for non-joinder. The defendants also pleaded ouster and adverse possession contending that the plaintiffs have been excluded from possession for several years and their challenge to the alienations are barred by law.

6. Based on the above pleadings, the trial Court framed the following issues :

- i. *Whether the daughters of deceased Murugesu Kounder were already allotted with certain movables and immovable properties in lieu of their share ?*
- ii. *Whether such allotment of shares as above has been accepted and acted upon by the plaintiffs ?*
- iii. *Whether the oral partition during chithirai month of 2004 said to have been made is true, valid and acted upon ?*
- iv. *Whether the suit properties have been described properly in respect of the shares of deceased Murugesu Kounder ?*
- v. *Whether the suit is bad for non joinder of necessary parties ?*
- vi. *Whether the plaintiffs are entitled for partition and allotment of 1/5 shares to them ?*
- vii. *Whether the relief of permanent injunction prayed in this suit maintainable as the relief vanishes when the suit is disposed ?*
- viii. *Whether the plaintiffs are entitled for the relief of declaration to declare the alienation by way of sale and*



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settlement on various dates on 22.05.2013, 09.10.2013 (two transactions) and on 10.07.2000 as null and void as prayed in Prayer No.5 ?

- ix. Whether the relief of declaration as null and void in respect of transactions dated 09.10.2013 have been made within the period of limitation ?*
- x. Whether the suit has been valued properly and whether correct Court fees has been paid ?*
- xi. To what other relief does the plaintiffs are entitled to ?*

7.On the side of the plaintiffs, the 6th plaintiff and 5th plaintiff were examined as P.W.1 and P.W.2 respectively and Exs.A1 to A17 were marked. On the side of the defendants, the 1st defendant was examined as D.W.1 and one Karunanithi was examined as D.W.2 and Exs.B1 to B3 were marked.

8.Based on the evidence and materials on record, the trial Court granted a preliminary decree allotting 1/5 share each to the plaintiffs 1 to 3, 4, 5 and 6 in suit Item Nos.4 to 25 and allotting 1/25 share each in suit Item Nos.1 to 3 and also annulled the documents dated 22.05.2013, 09.10.2013, 09.10.2013 and 10.07.2020.



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9.Challenging the judgment and decree of the trial Court, the defendants in the suit have filed the above Appeal.

10.The main contention raised by Mr.T.Murugamanickam, learned Senior Counsel appearing for the appellants, before this Court is that one of the daughters in this case, namely, Anbazhagi, predeceased her father on 03.03.1998, even before the commencement of the Hindu Succession (Amendment) Act, 2005, (Act 39 of 2005) i.e., 09.09.2005. It is his contention that the children of the predeceased daughter (4th plaintiff) who was not alive as on the date of commencement of Hindu Succession (Amendment) Act, 2005, i.e., 09.09.2005, are not entitled to shares as coparcener as declared by the trial Court. To claim the benefit under Act 39 of 2005, the daughters must be alive. Though the status of coparcener was extended to the daughters by birth who are born on or before the Act 39 of 2005, the fact remains that, to claim the benefit of the Act 39 of 2005, the daughters who are elevated as coparcener should be alive as on the date of commencement of the Amendment Act. Therefore, when the daughter was not alive on that date, her children are not entitled to shares that may be



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allotted to the daughter who was not alive on 09.09.2005. This aspect has not been addressed by the trial Court. Further, the learned Senior Counsel has also placed reliance on the judgment of the Hon'ble Supreme Court in ***Vineeta Sharma v. Rakesh Sharma and others*** reported in ***(2020) 9 SCC 1***, wherein, the Hon'ble Supreme Court has clearly held that the daughter should be alive on 09.09.2005 to claim equal share as that of a son. Hence, he would submit that the trial Court's decision is not proper. At the most, according to him, the predeceased daughter's legal heirs would be entitled to 1/25 share in the properties, but not as declared by the trial Court.

11. When an important issue is raised by the learned Senior Counsel appearing for the appellants, this Court requested the learned Senior Counsel of the Bar to assist the Court to address the issue which has a wide ramification.

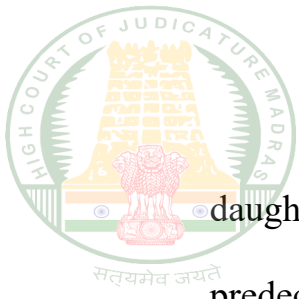
12. Accordingly, Mr.S.Parthasarathy, learned Senior Counsel, appearing as *Amicus Curiae*, would submit that the daughter need not be alive on the date of enforcement of the amendment for her to claim coparcenary right over her father's property, for the reason that coparcenary



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is a right that is acquired through birth according to *Vineeta Sharma's case*

and hence, on the date of Act 39 of 2005 came into force, she need not be alive since she acquires her right by birth. He relied upon the decision of the Hon'ble Supreme Court in *Prakash and others v. Phulavathi and others* reported in **(2016) 2 SCC 36** assigning the same reason, which was later overruled by the Hon'ble Supreme Court in *Vineeta Sharma's case*. According to him, the Full Bench of the Bombay High Court in *Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari* reported in **AIR 2014 Bom 151**, which holds that the daughter should be alive as on the date of commencement of the Amendment Act, had not considered the real intention of the legislation. It is his contention that, when interpreting a Statute relating to womenfolk, due weightage should be given to the Constitutional requirement of equality and status. He further discussed the description of the term “living coparcener” in line with the judgment in *Prakash v. Phulavathi (supra)*. It is his further contention that the right provided in the amendment is not to resurrect the past, but to recognise an antecedent event for the conferral of rights, prospectively. It is his further contention that the Amendment Act has enlarged Class I of the Schedule to add four heirs, viz., the son and daughter of a predeceased



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daughter of a predeceased daughter, the daughter of a predeceased son of a predeceased daughter and the daughter of a predeceased daughter of a predeceased son. Thereby, it extended recognition to two generations of a predeceased daughter's line, exactly as had always been the case for a predeceased son's line. Therefore, for all practical purposes, the 2005 amendment sought to bring about complete parity between the son's line and the daughter's line, both in life and in death. Hence, he would submit that the Hon'ble Supreme Court in *Vineeta Sharma's case* has held that the substituted Section 6 confers the status of coparcener on the daughter born before or after the amendment in the same manner as a son, with the same rights and liabilities, and the rights can be claimed by a daughter born earlier with effect from 09.09.2005 subject to the savings in the proviso to Section 6(1) and Section 6(5). However, according to him, since the right in coparcenary is by birth, it is not necessary that the father coparcener should be living as on 09.09.2005; the notional partition under the old proviso never disrupted the coparcenary; the daughters must be given equal shares even in pending final decree proceedings or appeals notwithstanding a preliminary decree; and a plea of oral partition unsupported by public documents cannot defeat the daughter's right. Hence, according to him, a coparcener dying



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leaving Class I heirs transmits his or her interest ascertained on a notional partition by intestate succession to those heirs. Her children, thus, take the share she would have held, precisely as the children of a coparcener son dying in 1998 would have taken his. Further, according to him, the cut off date, i.e., 09.09.2005 is relevant only to see when the right becomes enforceable. It does not define the class of persons whose birthright the Act recognises. The only exclusions Parliament enacted are the proviso to Section 6(1) and Section 6(5). Therefore, it is his contention that the Courts should not provide for a further exclusion of daughters dying before 09.09.2005, which the Statute does not mandate. Since the daughter, by the legal fiction, is granted the status of coparcener by birth right in the ancestral property being an antecedent, Class I heirs of predeceased daughters are also to be treated equal on par with other coparceners.

13.Mr.N.Manokaran, learned counsel, appearing as *Amicus Curiae*, would submit that a woman, who predeceased before the commencement of the amendment, has a coparcenary right in the property, emphasizing that the amendment has a retroactive operation and that the children of the predeceased daughter would also acquire rights as conferred in the deemed



partition after the death of the father. It is his contention that, though a widow or daughter, as a Class I heir, was entitled to inherit a share in the property of a deceased coparcener, and a widow could also claim a share upon partition, a daughter was not recognised as a coparcener. By the amendment to Section 6, the goal of gender justice, as constitutionally envisaged, is achieved, though belatedly, and the prevailing discrimination is taken care of. Hence, according to him, the father need not be alive on the date of amendment. Further, since the daughter has been conferred the right of coparcener by unobstructed heritage, according to him, the daughter also need not be a living coparcener on the date of amendment. Hence, he would submit that, denying the shares to the legal heirs of predeceased daughter would violate Articles 14, 15 and 39 of the Constitution of India.

14.Mr.S.Mukunth, learned Senior Counsel appearing as *Amicus Curiae*, pointing out that the predeceased daughter is not entitled to the coparcenary right, would submit that Section 6(2) speaks about the incidents of coparcenary ownership, whereas Section 6(3) is the tilting point where the coparcenary right is recognised. He would further submit that the daughter should be alive on the date of 09.09.2005 when the Amendment Act came



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into effect. He has also relied upon the judgment of the Hon'ble Supreme

Court in *Prasanta Kumar Sahoo and others v. Charulatha Sahu and*

others reported in (2023) 9 SCC 641 and would submit that the children of the predeceased daughter who died prior to the Act coming into force certainly are not entitled to share.

15.Mr.V.Raghavachari, learned Senior Counsel appearing as *Amicus Curiae*, would submit that the object of the amendment is only to extend the coparcenary rights to the daughters, but not to include the legal representatives of the predeceased daughters. The right granted under Section 6(1) of Act 39 of 2005 is disposed of under Section 6(2) and Section 6(3) speaks about what happens when there is death of a member after commencement of the Amendment Act. He would further submit that the amendment gives a benefit to the daughters who are alive as on the date of the Act coming into force and the Courts cannot substitute something which is not contemplated under the Act. He would further submit that, in a similar case in *R.Muthulakshmi v. Valliammal and others* reported in (2021) SCC Online Mad 17482, a learned Single Judge of this Court has held that the daughter who died prior to the commencement of the amendment is not



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entitled to equal right. The learned Single Judge has clearly held that a daughter who seeks the benefit under Section 6 must be alive as on the date when Amendment Act came into force and the daughter would not become a coparcener posthumously.

16.Mr.G.Masilamani, learned Senior Counsel who voluntarily assisted the Court as *Amicus Curiae*, vehemently argued that the law is made and handled in two laboratories, viz., the Legislature and Judiciary. The Court cannot put the clock back on time. Act 39 of 2005 specifically confers a new right by way of amendment which commences from the date of the amendment coming into force, i.e., 09.09.2005. It is his contention that, without a female heir being alive, the right cannot be conferred on her as on the date of commencement of the Act, because a right has to be conferred only on a person who is either a natural person or a juristic person, but cannot be on dead person. He has also compared it with the service laws and would submit that the benefits occur only from a specified date, which has to be strictly followed, though it is an artificial line. It is his further contention that the rights of a coparcener have their origin in Mitakshara law, which also contemplates that, if there is no son, there cannot be a



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coparcenary right and the same goes for daughters also after the amendment by Act 39 of 2005. Hence, according to him, for the right to be crystallised in the daughter, she has to be alive on the date of the Act coming into force. All the coparceners are to be alive when there is a conferment of right. He would further submit that coparcenary is only between the father and son/daughter and it cannot be between the brothers and sisters, since where the father is predeceased, the right is already created in favour of the son.

17.Mr.R.Sankaranarayanan, learned Senior Counsel appearing as *Amicus Curiae*, referring to the literary work in Sixteen Stormy Days and the Law Commission report which speaks about the opposition to the First Amendment to the Constitution, would submit that the application of the amendment from the cut-off date becomes a *factum valet* and becomes a narrow construction of exclusion. Referring to the Law Commission's Report, he would submit that the mischief of discrimination against women was removed by the Amendment Act. According to him, the only interpretation of Sections 6(1) and 6(2) would be that, on the amending Act coming into force, a daughter becomes a coparcener by birth. Thus, a legal fiction was created, which made the Act applicable to them from the date of



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their birth. It is his contention that, since an unguided application of coparcenary status to every female Hindu on the commencement of the amendment would be fraught with certain issues relating to the transactions that had taken place from 1956 till 20.12.2004, a cut off date was fixed as 20.12.2004. The Legislature has therefore conspicuously exempted the application of the amendment where the facts in issue fall within the ambit of Section 6(5) of the amended Act. Had there been a daughter alive on 20.12.2004 and the coparcenary property is not affected by any transaction mentioned in Section 6(5), then she became a coparcener from the date of her birth. Therefore, according to him, any interpretation that brings about discrimination against a female Hindu who dies after 20.12.2004 would amount to bringing back the mischief through the backdoor.

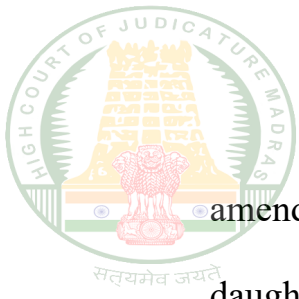
18.Mr.P.Valliyappan, learned Senior Counsel appearing as *Amicus Curiae*, would submit that the notional partition contemplated under Section 6(3) of Act 39 of 2005 must proceed by treating the daughter in the same manner as a son. Accordingly, the daughter is notionally allotted a share equal to that of a son. Once the daughter's share is identified, it becomes part of her estate. Its devolution is thereafter governed by the ordinary rules



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of intestate succession under the Hindu Succession Act. Under this

interpretation, the legal representatives of the predeceased daughter do not claim any independent right under Section 6(3). They merely succeed to the estate of their deceased predecessor. On this interpretation, the mere fact that the daughter died before 09.09.2005 would not defeat the claim of her legal representatives. According to him, Section 6(3) is a machinery provision. The statutory fiction created by the explanation is intended only to determine the share of the deceased coparcener by assuming a partition immediately before his death. It does not regulate the subsequent devolution of the share so determined. Once the daughter's share is identified under the statutory fiction, it becomes part of her estate. Its devolution thereafter is governed by the ordinary rules of intestate succession under the Act. The legal representatives of a predeceased daughter therefore do not claim as coparceners in their own right, but they claim only as successors to the estate of the deceased daughter. He would further submit that a legal fiction must be carried to its logical conclusion. If Section 6(3) requires the Court to identify the daughter's share on a notional partition, the ordinary legal consequences flowing from such identification cannot thereafter be ignored unless the Statute expressly provides otherwise. According to him, if the



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amendment is construed as creating a new statutory right available only to daughters who were alive on 09.09.2005, the claim of the legal representatives of a daughter who died before that date, cannot succeed.

19.Mr.Sharath Chandran, learned counsel appearing as *Amicus Curiae*, would submit that the objective of conferring coparcenary rights on a female is not to resurrect the past, but to prospectively recognize an antecedent for conferral of rights. Hence, according to him, the daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, a daughter born before can claim these rights only with effect from the date of the amendment, i.e., 09.09.2005, with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5). Hence, according to him, to exercise the rights on or from 09.09.2005, conferred retroactively from 1956, the beneficiary of such a right, i.e., the daughter, must be alive as on the date of coming into force of the Hindu Succession (Amendment) Act. According to him, the Full Bench of the Bombay High Court in *Badrinarayan Shankar Bhandari's case (supra)* has clearly held that the daughter must be alive as on 09.09.2005 to enjoy the benefits of the amended Act. It is his further contention that the Hon'ble



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Supreme Court in *Vineeta Sharma's case* did not disturb the finding in

Prakash v. Phulavathi (supra) that the amended Section 6 would apply only if the daughter was alive as on 09.09.2005. He would further point out that a learned Single Judge of this Court in *Muthulakshmi's case (supra)* has questioned, “*should a dead person be considered alive for the purpose of Section 6 ? This Court does not find anything in Section 6 that enables it to accommodate any such amazingly far-fetched interpretation*”. Similar view was also taken by a learned Single Judge of the Bombay High Court in ***Kamlakar Purushotaminamdar v. Rajani Shriram Madiwale*** reported in ***(2024) 5 Mah LJ 372***, wherein, it is held that the daughter should be alive as on 09.09.2005. He further brought to our notice that, subsequently, the said judgment of the Bombay High Court has been confirmed by the Hon'ble Supreme Court in *S.L.P.(C) No.17491 of 2024 [2024 SCC Online SC 2872]* by order dated 12.08.2024.

20.Mr.P.Sankaranarayanan, learned counsel appearing for the respondents 1 to 6, made his submissions in line with that of Mr.S.Parthasarathy, learned Senior Counsel, by stating that the daughter need not be alive as on the date of commencement of the Amendment Act to



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claim the benefit under Section 6 of the amended Act and thereby, the legal heirs of the predeceased daughter are also entitled to shares.

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21.In the light of the above submissions, the points that arise for consideration in this Appeal are as follows :

- i. *Whether, to claim the benefit under Section 6 of the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005), the daughter should be alive as on the date of commencement of the Act, i.e., 09.09.2005 ?*
- ii. *Whether the shares determined by the trial Court are proper ?*

22.Heard all the learned counsel and perused the entire materials available on record.

Point No.(i) :

23.The only legal issue is with regard to the right of the legal representatives of the predeceased daughter who died before 09.09.2005.

24.One line of submissions made is that the daughter must be alive on the date of commencement of the Amendment Act (Act 39 of 2005), i.e., on 09.09.2005 to claim the benefit under the said Act. The other line of

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submissions is that the daughter, who is conferred the benefit retroactively from 1956, need not be alive as on the date of commencement of the Act to exercise such right.

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25.Submissions were made mainly on the interpretation of the judgment of the Hon'ble Supreme Court in *Vineeta Sharma v. Rakesh Sharma and others* reported in (2020) 9 SCC 1, which answered the reference arising out of the conflicting verdicts rendered by two Division Benches of the Hon'ble Supreme Court, one in *Prakash and others v. Phulavathi and others* [(2016) 2 SCC 36] and another in *Danamma @ Suman Surpur and another v. Amar and others* [2018 (3) SCC 343]. In *Prakash v. Phulavathi* (*supra*), the Hon'ble Supreme Court has held that the rights under the Act 39 of 2005 are applicable to living daughters of living coparceners as on 09.09.2005, irrespective of when such daughters are born; disposition or alienation including partitions which may have taken place before 20.12.2004 as per the law applicable prior to the said date will remain unaffected and any transaction of partition effected thereafter will be governed by the Explanation. Whereas, in *Danamma's case* (*supra*), the Hon'ble Supreme Court has held that the amended provisions of Section 6



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confer full rights upon the daughter coparcener; any coparcener, including a daughter, can claim a partition in the coparcenary property; therefore, though the father coparcener is not alive as on the date of commencement of the Amendment Act, the daughter is entitled to coparcenary rights.

26.The larger Bench of the Hon'ble Supreme Court in *Vineeta Sharma's case*, answered the reference as follows :

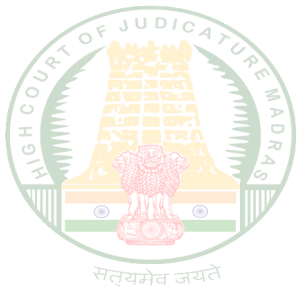
“137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. 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 the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or



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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 I as specified in the Schedule to the 1956 Act 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.

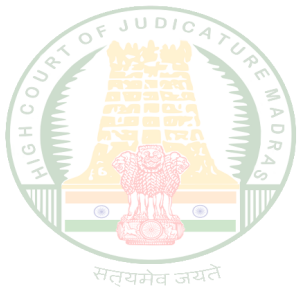
137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a 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 (sic effected) 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.”

27.The Hon'ble Supreme Court, in Para No.80 of *Vineeta Sharma's* case, while coming to the finding in *Prakash v. Phulavathi (supra)*, did not agree with the concept of “living coparcener” as laid down in *Prakash v.*



Phulavathi (supra) and has held as follows :

“80.A finding has been recorded in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of “living coparcener”, as laid down in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549]. In our opinion, the daughters should be living on 9-9-2005. In substituted Section 6, the expression “daughter of a living coparcener” has not been used. Right is given under Section 6(1)(a) to the daughter by birth. Declaration of right based on the past event was made on 9-9-2005 and as provided in Section 6(1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave



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no room to entertain the proposition that coparcener should be living on 9-9-2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part.”

(emphasis supplied)

28.On careful perusal of the above Para No.80 in *Vineeta Sharma's case*, the Hon'ble Supreme Court did not agree with the *Prakash v. Phulavathi (supra)* only in respect of the concept of “living coparcener” alone. Whereas, in the very next line, the Hon'ble Supreme Court, in fact, has also held that, in their opinion, the daughter should be living on 09.09.2005.

29.In Para No.78 in *Vineeta Sharma's case*, it was argued before the Hon'ble Supreme Court that, if the daughter is given the right to be a coparcener by birth and deemed to become a coparcener at any point in the past, in the normal working of the law, uncertainty would be caused. To address the argument, the Hon'ble Supreme Court has clearly held that there is no uncertainty caused when the daughter is treated like a son and is given the right by birth to be exercised from a particular date, i.e., 09.09.2005. It is further held that it is not to resurrect the past but recognising an

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antecedent event for conferral of rights, prospectively. The said finding makes it clear that, though the conferment was given retroactively, the enforcement of the right is given only prospectively.

30.Further, even in Para No.76 in *Vineeta Sharma's case*, the Hon'ble Supreme Court has clearly held that a daughter can assert the right on and from 09.09.2005 and the proviso saves from invalidation of the above transactions.

31.From a combined reading of ***Para Nos.76, 78 and 80 in Vineeta Sharma's case***, it is clear that the Hon'ble Supreme Court has held that, though the daughters are treated as coparceners by birth, whether born before or after the amendment, such right has to be exercised only from a particular date, i.e., on 09.09.2005 and conferral of such right by birth whether born before or after amendment is not to resurrect the past but to recognise the antecedent event for conferral of rights, prospectively. By holding so, in Para No.80, the Hon'ble Supreme Court ultimately did not agree with the concept of “living coparcener” as held in *Prakash v. Phulavathi (supra)* and clearly held that the daughter should be living on

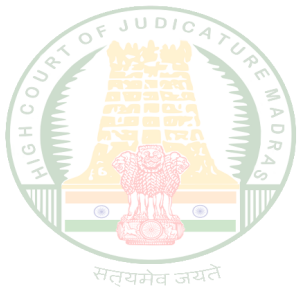


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09.09.2005.

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32.In **Para No.85** in *Vineeta Sharma's case*, the Hon'ble Supreme Court has held that 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 with effect from 09.09.2005, which is a vital change brought about by the Statute. By holding so, in **Para No.114**, while rejecting the effect of statutory fiction of the proviso to Section 6 as discussed in *Prakash v. Phulavathi (supra)* and *Danamma's case (supra)*, the Hon'ble Supreme Court has held that, if a daughter is alive on the date of enforcement of the Amendment Act, she becomes a coparcener with effect from the date of the Amendment Act, irrespective of the date of birth earlier in point of time. By the said finding, the Hon'ble Supreme Court has made it clear that, though the amendment is retroactive, such right could be enforced only from 09.09.2005 and that the daughter should be alive on the date of enforcement of the Amendment Act, irrespective of the date of birth earlier in point of time.



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33.In ***Para No.61*** in *Vineeta Sharma's case*, the Hon'ble Supreme Court has clarified that a retroactive Statute is the one that does not operate retrospectively, but it operates in *futuro*.

34.A combined reading of the paragraphs referred above in *Vineeta Sharma's case* makes it clear that the daughter would step into the coparcenary as that of a son by taking birth before or after the Act, however, the daughter born before can claim these rights only with effect from the date of the amendment, i.e., 09.09.2005 with saving of the past transactions as provided in the proviso to Section 6(1) read with Section 6(5). The very object of conferring coparcenary right on a female is not to resurrect the past, but only to recognise an antecedent event, prospectively. Therefore, it makes it clear that, to claim equal right as that of son, the daughter should be alive as on 09.09.2005.

35.It is also relevant to note that such a view has already been taken as early as in the year 2014 by the Full Bench of the Bombay High Court in *Badrinarayan Shankar Bhandari's case (supra)*. The Full Bench of the



Bombay High Court considered the issue as to whether the daughter must be alive as on 09.09.2005 to enjoy the benefit of the amendment to Section 6, and held as follows :

“40.A bare perusal of sub-section (1) of Section 6, would, thus, clearly show that the legislative intent in enacting Clause (a) is prospective i.e. daughter born on or after 9th September, 2005 will become a Coparcener by birth, but the legislative intent in enacting Clauses (b) & (c) is retroactive, because rights in the Coparcenary property are conferred by Clause (b) on the daughter, who was already born before the amendment, and, who is alive on the date of Amendment coming into force. Hence, if a daughter of a Coparcener had died before 9th September, 2005, since she would not have acquired any rights in the Coparcenary property, her heirs would have no right in the Coparcenary property. Since Section 6(1), expressly confers right on daughter only on and with effect from the date of coming into force of the Amendment Act, it is not possible to take the view being canvassed by learned Counsel for the Appellants that heirs of such a deceased daughter can also claim benefits of the amendment.

...

42.Two conditions necessary for applicability of amended Section 6(1), are:

(i) The daughter of the Coparcener (daughter claiming



benefit of amended Section 6) should be alive on the date of amendment coming into force;

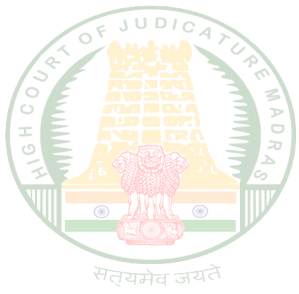
(ii) The property in question must be available on the date of the commencement of the Act as Coparcenary property.

...

*45. Thus, for the amended Section 6, to apply, **not only the daughter should be alive on the date of commencement of the Amendment Act,** but also the property should be Coparcenary property on the date of the commencement of the Act i.e. 9th September, 2005 or atleast on 20th December, 2004, when the Amendment Bill was introduced in Rajya Sabha.*

...

*57. We have considered the rival submissions. On an examination of amended Section 6 of the Principal Act and bearing in mind the words 'on and from commencement of the Hindu Succession Amendment Act, 2005' found in Section 6, it must follow that the rights under the amended Section 6, can be exercised by a daughter of a Coparcener only after the commencement of the Amendment Act, 2005. **Therefore, it is imperative that the daughter, who seeks to exercise such a right must herself be alive at the time when the Amendment Act, 2005 was brought into force.** It would not matter whether the daughter concerned is born before 1956 or after 1956. This is for the simple reason that the Hindu Succession Act, 1956*



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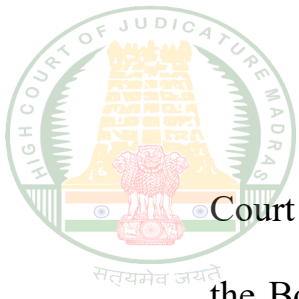
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when it came into force applied to all Hindus in the country irrespective of their date of birth. The date of birth was not a criterion for application of the Principal Act. The only requirement is that when the Act is being sought to be applied, the person concerned must be in existence/living. The Parliament has specifically used the word “on and from the commencement of Hindu Succession (Amendment) Act, 2005” so as to ensure that rights which are already settled are not disturbed by virtue of a person claiming as an heir to a daughter, who had passed away before the Amendment Act came into force.

60.In the above view of the matter, so far as questions (b), (c) & (d) are concerned, we hold that the Amendment Act applies to daughters born any time provided the daughters born prior to 9th September, 2005 are alive on the date of coming into force of the Amendment Act i.e. on 9th September, 2005. There is no dispute between the parties that the Amendment Act applies to daughters born on or after 9th September, 2005.”

(emphasis supplied)

36.It is also relevant to note that the above judgment of the Full Bench of the Bombay High Court was also considered by the Hon'ble Supreme



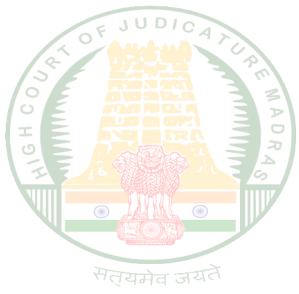
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Court in *Vineeta Sharma's case*. In fact, the decision of the Full Bench of the Bombay High Court in *Badrinarayan Shankar Bhandari's case (supra)* has not been overruled by the Hon'ble Supreme Court in *Vineeta Sharma's case*. Though the Hon'ble Supreme Court in *Vineeta Sharma's case* considered the finding that the daughter should be alive on the date of the Amendment Act coming into force, the same is not even touched.

37.It is also relevant to note that, in *Muthulakshmi's case (supra)*, a learned Single Judge has held that any daughter who seeks the benefit of Section 6 of the Hindu Succession Act, 1956, must be alive as on the date when the amended Act came into force.

38.Similar view has been taken by a learned Single Judge of the Bombay High Court in *Kamlakar's case (supra)*, wherein, it is held as follows :

“42.The dictum of the Apex Court as noted from the decision of Vineeta Sharma (supra) is that the daughter acquires interest in the coparcenary by birth and the rights can be claimed with effect from 9th September, 2005. The provisions were held to be of retroactive application as they confer



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*benefits based on an antecedent event, the antecedent event being birth of daughter. The Apex Court was answering the reference concerning interpretation of section 6 of Hindu Succession Act, 1956 as amended by the Amendment Act of 2005. The Apex Court while answering the reference has categorically observed that the right can be asserted by the daughter on and from 9th September, 2005 although the right is acquired by birth. **It can thus be concluded that as assertion of the right is from 9th September, 2005 the daughter should be living as on 9th September, 2005.** In the process of answering the reference, the Apex Court has touched upon every aspect of the right of the daughter vis-a-vis the amendment of the year 2005 to section 6 of Hindu Succession Act, 1956. The Apex Court has categorically observed that the daughter can assert the right on and from 9th September, 2005 which right is given by birth and is to be exercised from the particular date i.e. 9th September, 2005. As the exercise of the right is from 9th September, 2005, the Apex Court has opined in paragraph 80 that the daughters should be living on 9th September, 2005 and has held in paragraph 114 that if a daughter is alive on the date of enforcement of the Amendment Act, she becomes a coparcener with effect from date of the Amendment Act.”*

(emphasis supplied)



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39.Further, submissions were made on the interpretation of the provisions of Section 6 of the Hindu Succession (Amendment) Act, 2005.

Much emphasis was placed on Sub-Clauses (b) and (c) of Sub-Section (3) of Section 6. Section 6(3) is relevant and extracted hereunder :

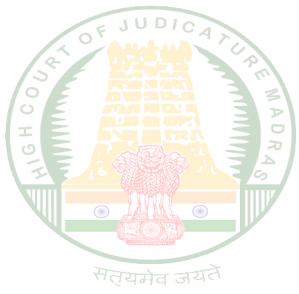
“6.Devolution of interest in coparcenary property :

... (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.



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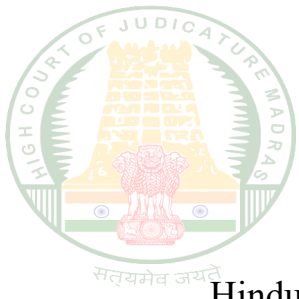


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Explanation — *For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.”*

40. Section 6(3)(c) of amended Act states that the share of the predeceased child of a predeceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of partition, shall be allotted to the child of such predeceased child of the predeceased son or a predeceased daughter, as the case may be.

41. Sub-Section (2) of Section 6 stipulates that the property to which any female Hindu becomes entitled by virtue of Sub-Section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

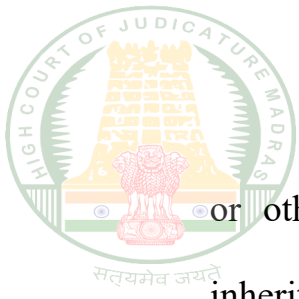


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42. Whereas, Sub-Section (3) of Section 6 deals with the death of the

Hindu who dies after the commencement of the Act. Therefore, when after the commencement of the Act any Hindu dies, the Sub-Clauses (b) and (c) takes care of the distribution of the interest in the property of a joint Hindu family. Therefore, Section 6(3) can be applied only when the Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005. Therefore, the distribution of his interest to his legal heirs, as stated in Sub-Clauses (b) and (c), cannot be applied in the case of daughter who died prior the Amendment Act.

43. In **Para No.69** in *Vineeta Sharma's case*, the Hon'ble Supreme Court has held that the effect of amendment is that a daughter is made coparcener with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 09.09.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father



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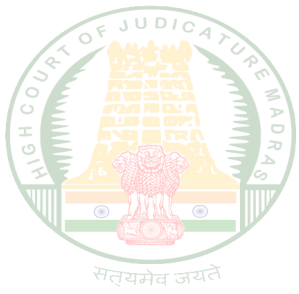
or other coparcener. In case living coparcener dies after 09.09.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).

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44. Therefore, the above dictum in Para No.69 will apply to the distribution of the interest of the coparcener only when he/she after dies after 09.09.2005. Therefore, the contention of Mr.S.Parthasarathy and Mr.N.Manokaran, learned *Amici Curiae* that Section 6(3) has to be taken note of, has no relevance at all. Whereas, Section 6(3) will apply to the death of the Hindu only after the commencement of the Act. As per the Hon'ble Supreme Court, coparcenary must exist on 09.09.2005 to enable the daughters of the coparcener to enjoy the rights conferred on her.

45. In *Prasanta Kumar Sahoo's case*, the Hon'ble Supreme Court, in Para No.71, has laid down the propositions that flow from the decision in *Vineeta Sharma's case* :

“71. The following propositions, amongst others, follow from the abovequoted paragraphs of the decision in Vineeta Sharma [Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 : (2021) 1 SCC (Civ) 119] :



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71.1.Sub-section (1) of the substituted Section 6 of the Hindu Succession Act, 1956 recognises a joint Hindu family governed by Mitakshara law.

71.2.The coparcenary must exist on 9-9-2005 i.e. the date of commencement of the 2005 Amendment Act.

...

71.5.Though the daughter would step into the coparcenary as that of a son by birth whether the daughter is born before the commencement of the 2005 Amendment Act or after the commencement of the 2005 Amendment Act, but the daughter born before the commencement of the 2005 Amendment Act can claim coparcenary rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).”

(emphasis supplied)

46.The above proposition makes it clear that, though the daughter was born before the commencement of the Amendment Act, she can claim coparcenary right only from the date of amendment, i.e., 09.09.2005 with saving of the past transactions as provided in the proviso to Section 6(1) read with Section 6(5). In case a coparcener living on the date of commencement of the 2005 Amendment Act, i.e., 09.09.2005, dies after 09.09.2005,



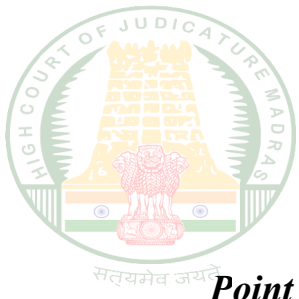
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inheritance is not by survivorship but by intestate or testamentary succession

as provided in substituted Section 6(3). Therefore, the amended Section 6(3) will apply only to the Hindu who dies after the commencement of the amended Act. The proviso cannot be applied to the daughter who was not alive on the date of 09.09.2005 to distribute her interest to her legal heirs.

47.Though much emphasis has been placed that there is a discrimination, we are of the view that the discrimination which was in existence till Amendment Act 39 of 2005, was removed for the first time in the year 2005 and new benefits have been conferred, which has to be exercised only from a particular date. As rightly pointed by Mr.G.Masilamani, learned Senior Counsel, we cannot put the clock back on time. The Legislature, in its wisdom, has fixed a cut off date for conferring certain benefit. Though such right has been conferred retroactively, it has to be exercised only from a particular date, i.e., 09.09.2005.

48.In view of the narrative *supra*, we are of the view that the daughter should be alive as on 09.09.2005 for asserting her right. ***Accordingly, Point No.(i) is answered.***



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Point No.(ii) :
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49.In the given case, admittedly, one of the daughters of Murugesa Gounder, namely Anbazhagi, died on 03.03.1998, prior to the commencement of the Hindu Succession (Amendment) Act, 2005. This fact is not in dispute. The 4th plaintiff is the daughter of the deceased Anbazhagi. The relationship of the parties is not in dispute. The character of the properties is also not in dispute.

50.After the commencement of the Hindu Succession (Amendment) Act, 2005, with effect from 09.09.2005, (i) the father Murugesa Gounder (ii) 1st defendant (son) (iii) 5th plaintiff Kalavathi (daughter) (iv) 6th plaintiff Sivagami (daughter) and (v) Sundari (daughter) became entitled to 1/5 share in the coparcenary properties. Since one of the daughters Anbazhagi died on 03.03.1998 prior to commencement of the Amendment Act 39 of 2005, in view of the discussion in the foregoing paragraphs, no coparcenary right can be conferred on her as on the date of Amendment Act coming into force, i.e., on 09.09.2005, so also her legal heirs.



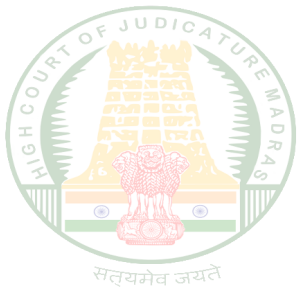
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51.The father Murugesa Gounder died in the year 2007. One of the daughters Sundari died in the year 2019. These facts are also not in dispute. The plaintiffs 1 to 3 are the legal heirs of the deceased Sundari. Therefore, after the death of Murugesa Gounder, his 1/5 share will be divided among all his legal heirs.

52.Accordingly, the parties are entitled to their respective shares as follows :

Iyyanar (1 st defendant – son)	:	$1/5 + 1/25$	=	$6/25$
Kalavathi (5 th plaintiff – daughter)	:	$1/5 + 1/25$	=	$6/25$
Sivagami (6 th plaintiff – daughter)	:	$1/5 + 1/25$	=	$6/25$
Sundari's (daughter) branch [Plaintiffs 1 to 3]	:	$1/5 + 1/25$	=	$6/25$
Anbazhagi's (daughter) branch [4 th plaintiff]	:	$1/25$	=	$1/25$

53.In fine, the plaintiffs 1 to 3, 5 and 6 and the 1st defendant are each entitled to 6/25 share in the Item Nos.4 to 25 of the suit properties. The 4th plaintiff is entitled to 1/25 share in the Item Nos.4 to 25 of the suit properties.



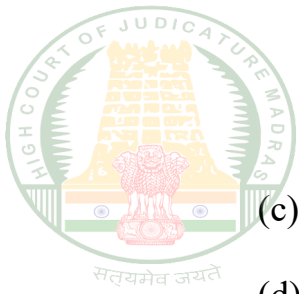
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54.As far as the suit Item Nos.1 to 3 are concerned, as per Exs.A8 and A9, the said properties stand in the name of Murugesu Gounder and his brothers and during partition with his brothers, Murugesu Gounder had acquired 1/5 share which has not been mutated in the records. Therefore, Murugesu Gounder will be entitled only for 1/5 share in the total extent. The said fact is not in dispute. Therefore, insofar as Item Nos.1 to 3 of the suit properties are concerned, after the death of the Murugesu Gounder, his 1/5 share will be equally divided among his legal heirs.

55.As a result, this **Appeal is partly allowed** and the impugned judgment and decree of the trial Court is modified to the extent as follows :

- (a)the plaintiffs 1 to 3, 5 and 6 and the 1st defendant are each entitled to 6/25 share; and the 4th plaintiff is entitled to 1/25 share in respect of Item Nos.4 to 25 of the suit properties.
- (b)the plaintiffs 1 to 3, 4, 5 and 6 and the 1st defendant are each entitled to 1/25 share in respect of Item Nos.1 to 3 of the suit properties.



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(c) Rest of the judgment remains intact.

(d) No costs.

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(N.S.K., J.) (M.J.R., J.)
24.07.2026

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Index : Yes / No

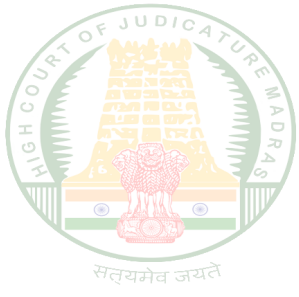
Speaking Order

Neutral Citation : Yes

To

1.The I Additional District Judge,
Tindivanam.

2.The Section Officer,
VR Section,
High Court, Madras.



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A.S.No.540 of 2024

N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.

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Judgment in
A.S.No.540 of 2024

24.07.2026