A.S. NO.820 OF 2019**IN THE HIGH COURT OF JUDICATURE AT MADRAS****JUDGMENT RESERVED ON : 28 / 08 / 2025**

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JUDGMENT PRONOUNCED ON : 14 / 07 / 2026**CORAM :****THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

A.S. NO.820 OF 2019
AND
C.M.P. NO.17064 OF 2025
IN
A.S.NO.820 OF 2019

T.Sellammal

... Appellant /
Plaintiff*Versus*

1.Pichaiyammal
 2.Palaniammal
 3.Ganesan
 4.G.Selvam
 5.A.Madhiyalagan
 6.A.Selvaraj
 7.Sarasu

... Respondents /
Defendants

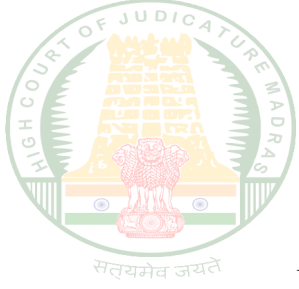
PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated February 25, 2016 passed in O.S. No.209 of 2014 by the learned III Additional District Judge, Salem.

For Appellant : Mr.V.Subramanian
for M/s.S.P.Yuaraj

For Respondents : Mr.P.Jagadeesan
1, 2, 6 and 7

For Respondents : Served – No appearance
3 to 5

* * *



JUDGMENT

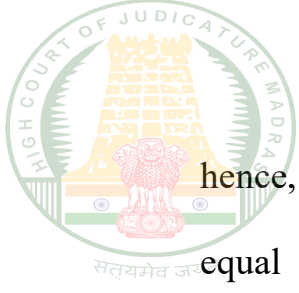
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Feeling aggrieved by the Judgment and Decree dated February 25, 2016 passed in O.S. No.209 of 2014 by 'the III Additional District Court, Salem' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['C.P.C.' for short].

2.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3.Appavu Asari and the first defendant are husband and wife. Plaintiff, defendants 2, 5, 6 & 7 and one Vasanthi are their children. Appavu Asari passed away intestate on May 10, 2004. Vasanthi passed away in or about 1991 leaving behind defendants 3 and 4 as her legal heirs. Suit properties are the ancestral & joint family properties of the plaintiff and the defendants. According to the plaintiff, in the suit properties, she is entitled to 1/7 share and the defendants 1,2,5,6 and 7 are each entitled to 1/7 share and the defendants 3 and 4 are together entitled to 1/7 share. The plaintiff is in joint possession and enjoyment of the suit properties. The plaintiff is not in a position to enjoy the suit properties in common and

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hence, she demanded the defendants to divide the suit properties into 7 equal shares by metes and bounds and allot one such share to her.

However, the defendants were giving evasive replies.

3.1.On August 6, 2014, the plaintiff demanded partition of her 1/7 share. Since the defendants did not respond to her demand, the plaintiff issued a legal notice on August 11, 2014 to the defendants calling upon them to divide the suit properties into 7 equal shares and allot one such share to her and put her in separate possession thereof. Defendants 2,3,5,6 and 7 received the notice. The defendants 1 and 4 managed to return the notice sent to them. According to the plaintiff, the defendants are making arrangements to alienate or encumber the suit properties including the plaintiff's share to the third parties with a view to defeat and defraud the plaintiff's lawful share therein. Therefore, the plaintiff has filed the Suit for partition and separate possession.

FIFTH DEFENDANT'S CASE

4.The fifth defendant filed written statement denying the allegations made by the plaintiff in the plaint. The relationship between the plaintiff and the defendants as stated in the plaint is admitted. The suit properties are in actual and physical possession of the fifth defendant alone. The

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avermnt that the plaintiff is in joint possession and enjoyment of the suit properties with the defendants is denied. There is no cause of action for the Suit. According to the fifth defendants, the Suit is filed by the plaintiff with an intention to threaten the defendants in order to create nuisance in the family. Stating so, the fifth defendant sought to dismiss the Suit.

CASE OF DEFENDANTS 1, 2, 6 AND 7

5.The sixth defendant filed written statement denying the allegations made by the plaintiff in the plaint and the same was adopted by the defendants 1, 2 and 7. The relationship between the plaintiff and the defendants as stated in the plaint is admitted. According to these defendants, one of their sister namely Vasanthi, pre-deceased their father - Appavu Asari. Hence, her husband and children, who are the third and fourth defendants in the Suit, are not entitled to any share in the suit properties and they are unnecessary parties to the Suit proceedings.

5.1.It is further averred that on June 9, 1992, a partition of ancestral properties took place among Appavu Asari and his brothers through a registered Partition Deed, wherein and whereby 'B' Schedule Properties described therein including the suit properties were allotted to the share of Appavu Asari. On the date of allotment between the joint owners, Appavu



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Asari had two sons namely fifth defendant - A.Madhiyalagan and sixth defendant - A.Selvaraj. Therefore, defendants 5 and 6 by birth became co-parceners to the properties allotted in favour of Appavu Asari in the aforesaid partition and thereby, each of them were entitled to 1/3 share in the suit properties.

5.2.After the demise of their father Appavu Asari, his 1/3 share devolved upon the plaintiff, defendants 1, 2, 5, 6 and 7 equally, whereas his two sons namely defendants 5 and 6 *qua* co-parceners continued to retain the remaining 2/3 share in the suit properties. On the aforesaid basis, the plaintiff is entitled to only 1/18 share. There is no cause of action for the Suit. Stating so, the defendants 1, 2, 6 and 7 sought to dismiss the Suit.

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

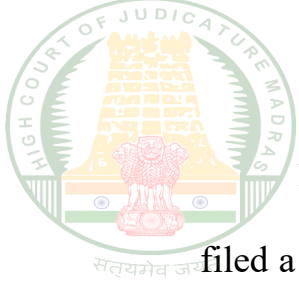
- '1.Whether the plaintiff is entitled to 1/7 share in the Suit Property?*
- 2.Whether the plaintiff is entitled to get preliminary decree as prayed for?*
- 3.To what other relief?'*

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7. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.10 were marked. On the side of the defendants, neither any witness was examined nor any document was marked.

8. After full-fledged trial, the Trial Court held that the defendants 5 and 6 were born and alive on the date of Ex-A.1 - Partition Deed viz., June 9, 1992 and hence, they acquired 1/3 share each in the properties allotted to their father under Ex-A.1 by birth. Further held that, since plaintiff's marriage took place in the year 1976, she cannot claim benefit under Tamil Nadu Act No.1 of 1990. Further held that since Appavu Asari passed away on May 10, 2004 i.e., before commencement of Central Act No.39 of 2005, plaintiff cannot claim benefit under it. Accepting the contention of the defendants that the plaintiff is entitled to a share in father Appavu Asari's 1/3 share, the Trial Court held that the plaintiff is entitled only to 1/18 share in the suit properties. Accordingly, the Trial Court held that the plaintiff is not entitled to 1/7 share as prayed for but she is entitled to 1/18 share in the suit properties and passed a preliminary decree to that effect and thereby, decreed the Suit in-part.

9. Feeling aggrieved, the plaintiff has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of C.P.C.

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10. During the pendency of the Appeal Suit, the appellant / plaintiff filed a Petition under Order XLI Rule 27 of the C.P.C. in C.M.P. No.17064 of 2025. In the affidavit filed in support of the Petition, it has been stated that the documents sought to be received were in the custody of the defendants 3 and 4, who did not chose to contest the Suit during trial and hence were set *ex-parte*. In these circumstances, the plaintiff could not produce the documents before the Trial Court. Only now the plaintiff could obtain the documents from the fourth defendant. The documents are necessary to prove the fact that the marriage between third defendant - Ganesan and the plaintiff's sister - Vasanthi took place in the year 1982 and the fact that their son - fourth defendant born on June 10, 1985. The plaintiff attempts to prove these facts to ultimately prove that the plaintiff's sister - Vasanthi's marriage took place before commencement of Tamil Nadu Act No.1 of 1990 *i.e.*, before March 25, 1989. The documents are necessary for the disposal of the matter. Accordingly, the plaintiff who is the petitioner in the Civil Miscellaneous Petition prays to allow it and receive the document.

11. *Per contra*, Mr.P.Jagadeesan, learned Counsel appearing for the Respondents 1, 2, 6 & 7 submits that the documents sought to be received are not relevant to decide the matter. Further, the plaint is silent about

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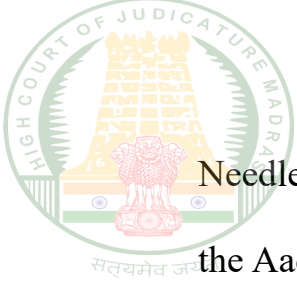
Vasanthi's marriage date. Further, no justifiable reason was assigned for non-production of the document before the Trial Court. Accordingly, he prays to dismiss the Civil Miscellaneous Petition.

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12.This Court has considered both sides' submissions on the Civil Miscellaneous Petition and perused the affidavit filed in support thereof.

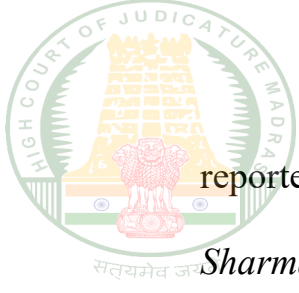
13.Admittedly, the defendants 3 and 4 did not choose to contest the Suit. Hence, they were set *ex-parte* before the Trial Court. In the Appeal Suit, notice was duly sent to the defendants 3 and 4. Despite notice, they did not appear and contest the First Appeal.

14.The first document sought to be received is a Marriage Greeting Card, wherein it is stated that the marriage between the third defendant - Ganesan and the plaintiff's sister - Vasanthi took place in the month of November, 1982. To be noted, it is a photocopy and its original was not annexed. No averments in the affidavit with regard to the original and its whereabouts. In absence of the original and in the absence of foundational averments therefor, a photocopy cannot be received as an additional evidence. As far as the Document No.2 is concerned, it is a photocopy of fourth defendant's Aadhar Card. In the affidavit it has been stated that the plaintiff obtained a copy of the Aadhar Card from the fourth defendant.

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Needless to mention that it is a statutory document. It could be seen from the Aadhar Card that the fourth defendant was born on June 10, 1985. The said Aadhar Card was issued on December 02, 2012. This Court is of the view that the date of marriage of Vasanthi is material to decide the dispute on hand. Hence, this Court is inclined to receive the Document No.2 and mark the same. To be noted, in the plaint pleadings, the age of the fourth defendant is said to be 26 Years. The plaint date being September 5, 2014, it means that the fourth defendant was born in the year 1988. The defendants did not deny the age of the fourth defendant stated in the plaint. In the Civil Miscellaneous Petition as well, there is no serious dispute against the second document. No counter was filed on behalf of the defendants in the Civil Miscellaneous Petition. In these circumstances, this Court is of the view that resort to Order XLI Rule 28 of C.P.C. is not necessary. In result, the Civil Miscellaneous Petition is partly allowed. The Aadhar Card of the fourth defendant is received as an additional evidence and marked as Ex-A.11.

15.Now coming back to the main appeal, Mr.V.Subramanian appearing on behalf of Mr.S.P.Yuaraj, learned Counsel on record for the appellant / plaintiff submits that the Trial Court's decision was rendered before the pronouncement of *Vineetha Sharma -vs- Rakesh Sharma*



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reported in (2020) 9 SCC 1. The Hon'ble Supreme Court in *Vineetha*

Sharma's Case has authoritatively settled the law that the daughter is

entitled to claim equal share as that of the son. The Hon'ble Supreme Court

further held that the father need not be alive on the date of commencement

of the Hindu Succession (Amendment) Act, 2005 (Central Act No.39 of

2005) i.e., September 9, 2005. It was further held in *Vineetha Sharma's*

Case that irrespective of date of marriage, the daughter is entitled to claim

equal share under Central Act 39 of 2005. The Trial Court without

appreciating the Central Act 39 of 2005 in a proper and right perspective,

granted only 1/18 share which is not in tune with law. Accordingly, he

prays to allow this Appeal Suit and set aside the Judgment and Decree of

the Trial Court and modify the same declaring the plaintiff's share as per

law.

16.*Per Contra*, Mr.P.Jagadeesan, learned Counsel appearing for the

respondents 1, 2 6 & 7 / defendants 1, 2, 6 & 7 submits that the suit

properties were ancestral and joint family properties in the hands of

Appavu Asari. On the date of Ex-A.1 - Partition Deed, Appavu Asari and

his sons - defendants 5 & 6 were the *co-parceners*; the plaintiff and her

sisters were not *co-parceners* on the date of Ex-A.1. Hence, Appavu Asari

and defendants 5 & 6 are each entitled to each 1/3 share in the suit

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properties. Further, the marriages of Appavu Asari's daughters namely the plaintiff, seventh defendant and late Vasanthi took place before March 25, 1989 *i.e.*, before commencement of Tamil Nadu Act No.1 of 1990. Vasanthi passed away in the year 1991. The plaintiff, seventh defendant and late Vasanthi as daughters are not entitled to the benefit under Tamil Nadu Act No.1 of 1990. Further, Appavu Asari passed away as an intestate leaving behind his 1/3 share in suit properties, on May 10, 2004 *i.e.*, before the commencement of Central Act 39 of 2005. As Succession opened on May 10, 2004, the daughters are not entitled to the benefit of Central Act 39 of 2005 and they are entitled only to the 1/3 share left behind by their father under Section 8 of the Hindu Succession Act, 1956. The Trial Court rightly appreciated the law and granted 1/18 share in favour of the plaintiff. There is no warrant to interfere with it. Accordingly, he prays to dismiss the Appeal and sustain the Judgment and Decree of the Trial Court.

17.This Court has considered both sides' submission and perused the materials available on record.

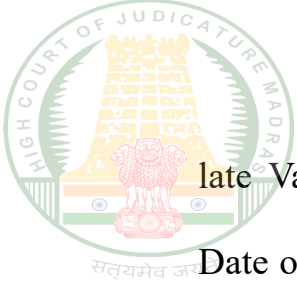
18.The Plaintiff and the Defendants 2 to 7 and one late Vasanthi are the children of Appavu Asari and first defendant. Admittedly, the suit properties were allotted to Appavu Asari *vide* Ex-A.1-Partition Deed dated

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June 09, 1992 which was executed among Appavu Asari and his brothers.

In Ex-A.1, it has been clearly stated that the suit properties are ancestral and joint family properties. Admittedly, Appavu Asari passed away intestate on May 10, 2004 and his death certificate has been marked as Ex-A.2.

19.It is an admitted fact that the marriage of the plaintiff took place in the year 1976. There is no dispute with the fact that the plaintiff's marriage as well as the marriage of her sister seventh defendant were held before the commencement of Tamil Nadu Act No.1 of 1990. There is also no serious dispute with the fact that plaintiff's sister Vasanthi passed away in the year 1991. Originally, both sides did not adduce any evidence with regard to the marriage date of late Vasanthi. However, the Aadhar Card of her son - fourth defendant has been produced as additional evidence and the same has been received and marked as Ex-A.11 as stated *supra*. Ex-A.11 shows the date of birth of fourth defendant as June 10, 1985, which means that the marriage between Vasanthi and third defendant - Ganesan probably happened 10 months or a year before June 10, 1985. Further, the long cause title of the plaint shows that the age of the fourth defendant as on the date of plaint is 26 Years. The said fact has not been controverted by the contesting defendants. Defendants 3 and 4 who are the legal heirs of



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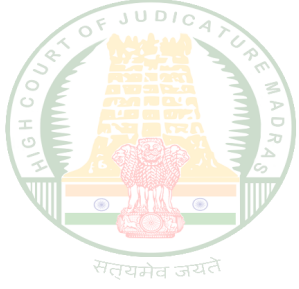
late Vasanthi remained *ex-parte* before the Trial Court as well as here.

Date of plaint being September 5, 2014, it shows that the fourth defendant was born in or around 1988. From this fact coupled with the additional evidence marked as Ex-A.11, it could be safely concluded that the marriage between late Vasanthi and third defendant was solemnized before the commencement of Tamil Nadu Act No.1 of 1990 *i.e.*, before March 25, 1989. Thus, none of the daughters / deceased daughter's legal heirs are entitled to the benefit of Tamil Nadu Act No.1 of 1990.

20. Admittedly, the suit properties are ancestral and joint family properties and no partition took place between the *co-parceners* namely Appavu Asari and his two sons - defendants 5 and 6. When the Central Act No.39 of 2005 came into force, the daughters became co-parceners by birth with their coparcenary rights enforceable from September 9, 2005. As rightly pointed out by the learned Counsel for the appellant / plaintiff, the Hon'ble Supreme Court in *Vineetha Sharma's Case* [cited *supra*], has held that father need not be alive on the date of commencement of Central Act No.39 of 2005 for enforcement of coparcenary rights of the daughter(s).

Relevant extracts from *Vineetha Sharma's Case* read thus:

"78. It was vehemently argued 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



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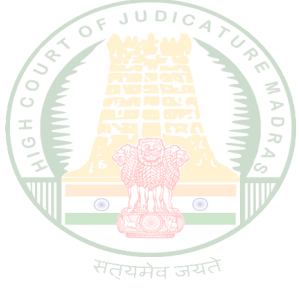
the law, uncertainty would be caused. In our opinion, no uncertainty is brought about by the provisions of Section 6 as the law of Mitakshara coparcenary makes the share of surviving coparceners uncertain till actual partition takes place. Uncertainty in the right of share in a Mitakshara coparcenary is inhered in its underlying principles, and there is no question of upturning it when the daughter is treated like a son and is given the right by birth; to be exercised from a particular date i.e. 9-9-2005. It is not to resurrect the past but recognising an antecedent event for conferral of rights, prospectively. There is no doubt about it that advancement brings about the enlargement of the size of the coparcenary and disabling it from treating the daughter unequally. Even otherwise, its size could be enlarged by the birth of a son also. By applying Section 8, the joint possession was not repudiated by the fact that a female, whether a wife or daughter, inherited the share of coparcener under the proviso to original Section 6. She was an equal member of the joint Hindu family and deemed statutory partition did not bring disruption of the coparcenary.

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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



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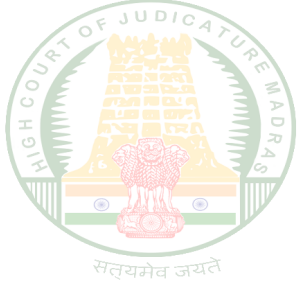
coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of “living coparcener”, as laid down in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 :(2016) 1 SCC (Civ) 549]. In our opinion, the daughters should be living on 9-9-2005. In substituted Section 6, the expression “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 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.

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107. Once the constitution of coparcenary changes by birth or death, shares have to be worked out at the time of actual partition. The shares will have to be determined in changed scenario. The severance of status cannot come in the way to give effect to statutory provision and change by subsequent event. The statutory fiction of partition is far short of actual partition, it does not bring about the disruption of the joint family or that of coparcenary is a settled proposition of law. For the reasons mentioned above, we are also of the opinion that mere severance of status by way of filing a suit does not bring about the partition and till the date of the final



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decree, change in law, and changes due to the subsequent event can be taken into consideration.

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137. Resultantly, we answer the reference as under:

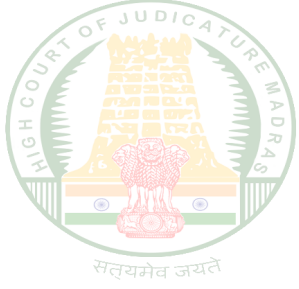
137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

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 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



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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 effected (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."

[Emphasis supplied by this Court]

21.In view of the authoritative pronouncement, it is immaterial whether father was alive on September 9, 2005 or not. The concept of notional partition would not disrupt the coparcenary. In this case, in the absence of actual partition before December 20, 2004, the plaintiff and seventh defendant would be entitled to equal share in the coparcenary with that of the sons, which means the plaintiff, defendants 2, 5 to 7 and Appavu Asari would have constituted a coparcenary and each of them would be entitled to 1/6 share in the suit properties. As Vasanthi was not alive on September 9, 2005, she cannot be considered as a *co-parcener*; nonetheless, fourth defendant *qua* pre-deceased daughter's son would be entitled to a share in the share left behind by Appavu Asari as per Section 8 of the Hindu Succession Act, 1956. Appavu Asari passed away intestate on May 10, 2004 leaving behind his 1/6 share in the suit properties. His wife -

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first defendant; daughters - plaintiff, defendants 2 and 7; sons - defendants

5 and 6; and pre-deceased daughter's son - fourth defendant are his legal

heirs as per Section 8 of the Hindu Succession Act, 1956 and thus, each of

them would be entitled to the 1/6 share left behind by Appavu Asari, which

means each of them would be entitled to 1/42 share in the suit properties.

Accordingly, the plaintiff in addition to her share as a coparcener, will be

entitled to 1/42 share, entitling her to totally 8/42 share ($1/6 + 1/42$) in the

suit properties.

22.The details of share entitlement are as follows:

- (a).The plaintiff is entitled to 8/42 share.
- (b).The first defendant is entitled to 1/42 share.
- (c).The second defendant is entitled to 8/42 share.
- (d).The fourth defendant is entitled to 1/42 share.
- (e).The fifth defendant is entitled to 8/42 share.
- (f).The sixth defendant is entitled to 8/42 share.
- (g).The seventh defendant is entitled to 8/42 share.

23.In the result, the Appeal Suit is partly allowed. The Civil Miscellaneous Petition in C.M.P.No.17064 of 2025 is partly allowed. The



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Plaintiff is entitled to 8/42 share in the suit properties and to that extent, the

Judgment and Decree of the Trial Court is modified and a Preliminary

Decree is passed to that effect. Considering the facts and circumstances,

there shall be no order as to costs.

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<u>ADDITIONAL DOCUMENTS MARKED</u>			
<i>S.No.</i>	<i>Date of issue</i>	<i>Description of the document</i>	<i>Marked as Exhibit</i>
1.	December 02, 2012	Photocopy of Aadhar Card of fourth defendant (Aadhar No. XXXX XXXX 1064)	Ex-A.11

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Index : Yes / No

Speaking Order : Yes / No

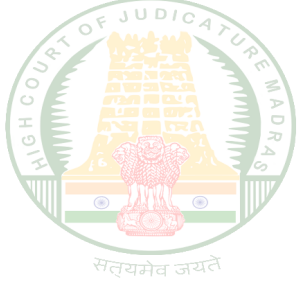
Neutral Citation : Yes / No

TK/PAM

To

The Third Additional District Judge

Salem.



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R. SAKTHIVEL, J.

TK/PAM

PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.820 OF 2019

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