

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2015

CORAM:

THE HON'BLE MR. JUSTICE P.R.SHIVAKUMAR

Second Appeal No.968 of 2000
and
C.M.P.No.639 of 2009

A.Saraswathy

...Appellant/Plaintiff

Vs

1. Thangamuthu
2. Lakshmi
3. Vasanthi
4. Puspa
5. Banumathy
6. Gowri
7. Gomathi
8. Pavathal

...Respondents/Defendants

SECOND APPEAL filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree, dated 24.08.1999 made in A.S.No.87 of 1999 on the file of the Principal District Judge, Erode reversing the Judgment in O.S.No.727 of 1996 dated 08.12.1998 on the file of Principal District Munsif Court, Erode.

For Appellant : Mr.G.Rajan

For Respondents : Mr. T.Gandhi for R1 - NA
Mr.Sundaravadanam for
Mr. V.Bharathidasan for R2 to R7
Mr.D.Rajasekar for R8- NA

J U D G M E N T

This Second Appeal has arisen out of the Judgment and Decree of the Learned Principal District Judge, Erode dated 24.08.1999 made in A.S.No.87 of 1999.

2. A.Saraswathi, the appellant in the second appeal filed the suit O.S.No.727/1996 on the file of the Principal District Munsif, Erode for partition and separation of her 1/4th share in the suit property, a house property in Erode Town. She claimed that the said property was the separate property of her father Kuppanna Gounder, who died intestate about 35 years prior to the filing of the suit and that by virtue of the rule of succession provided under the Hindu Succession Act, 1956 she became entitled to a share in the suit property as one of the legal heirs of Kuppanna Gounder. Kuppanna Gounder left behind him according to the appellant/plaintiff two daughters, namely the plaintiff Saraswathi and the 8th defendant Pavathal and two sons by names Ponnusamy and Thangamuthu besides his widow Chinnammal and all of them became entitled to an equal share in the property left by Kuppanna Gounder. Thus on the death of her father Kuppanna Gounder, the appellant/plaintiff became entitled to 1/5th share. Subsequently, Chinnammal, the widow of Kuppanna Gounder died and his 1/4th share devolved equally among her sons and daughters. Thus the share of all the four persons (two sons and two daughters of Kuppanna Gounder) got increased to 1/4th each. Out of the two sons of Kuppanna Gounder, Ponnusamy is no more and his legal heirs (wife and daughter) are respondents 2 to 7/defendants 2 to 7. The other son of Kuppanna Gounder, namely Thangamuthu is the first respondent/first defendant. Based on the above said contentions, the appellant/plaintiff prayed for a decree directing partition of the suit property into four equal shares and allotment of one such share to her and for separate possession of such share allotted to her.

3. The respondents 1 and 8/defendants 1 and 8 (Thangamuthu and Pavathal) did not resist the claim of the appellant/plaintiff. On the other hand, they supported the claim of the appellant/plaintiff. The first respondent/first defendant Thangamuthu not only supported the case of the appellant/plaintiff but also prayed for separate allotment of 1/4th share and paid necessary court fee for such allotment. Out of the six legal heirs of Ponnusamy, namely respondents 2 to 7/defendants 2 to 7, the second respondent/second defendant alone contested the case and the others remained ex-parte before the trial court. According to the contention raised by the second respondent/second defendant, the suit property was not the self acquired property of Kuppanna Gounder and on the other hand, the same was the joint family property in which her

husband Ponnusamy, her husband's brother Thangamuthu (first respondent/first defendant) and her father in law Kuppanna Gounder alone were entitled to shares as coparceners. She contended further Kuppanna Gounder died prior to the enforcement of Hindu Succession Act, 1956 and on his death, the interest held by the Kuppanna Gounder in the suit property devolved on his sons Ponnusamy and Thangamuthu as surviving coparceners and that therefore neither the appellant/plaintiff nor the 8th respondent/8th defendant could make claim defendant shares in the property left by Kuppanna Gounder. It was her further contention that even if the property could be assumed to be the self-acquired property of Kuppanna Gounder since Kuppanna Gounder died prior to the Hindu Succession Act, 1956 coming into force both the appellant/plaintiff nor the 8th respondent/8th defendant stood excluded from inheriting the property of Kuppanna Gounder.

4. Based on the above said contentions, necessary issues were framed by the Trial Court and the trial was conducted. The learned Trial Judge, on appreciation of evidence, held that the plaintiff's case that Kuppanna Gounder died 35 years prior to the filing of the suit was proved by preponderance of probabilities and on the other hand, the contention of the 2nd Respondent/2nd Defendant that the death of Kuppanna Gounder took place prior to the Hindu Succession Act, 1956 coming into force was not substantiated and that therefore, the appellant/plaintiff was not excluded from seeking a share in the property of Kuppanna Gounder on his death. The learned Trial Judge further held that it was not proved that the suit property was purchased out of joint family nucleus and that it was proved by preponderance of probabilities that the suit property was the self-acquired separate property of Kuppanna Gounder; that even if it is assumed for arguments sake that Kuppanna Gounder died between 1948 and 1956, the mother of the plaintiff would have been entitled to the widow's share, which would have been enlarged into an absolute title on advent of Hindu Succession Act, 1956; and that only in order to deny the same, the 2nd respondent/2nd defendant took a stand that the Chinnammal, wife of Kuppanna Gounder orally relinquished her share in the property in favour of her sons Thangamuthu and Ponnusamy, but there was no proof of the said contention. It is also pertinent to note that till the filing of the suit, the records relating to house tax assessment in respect of the suit property was not changed in the names of the Kuppanna Gounder's sons alone. If at all Kuppanna Gounder had died prior to 1956, his sons would have

chosen to get the assessment changed in their names. The very fact that they had not chosen to do so will make it clear that Kuppanna Gounder died only after 1956 and the same was the reason why the assessment was not changed in the names of Thangamuthu and Ponnusamy.

5. The Learned Trial Judge also held that the contention of the 2nd respondent/2nd defendant that the suit property was purchased using the funds raised by selling the ancestral properties was not proved by the 2nd respondent/2nd defendant even by preponderance of probabilities. Accordingly, the Trial Judge held that the suit property was the separate property of Kuppanna Gounder. In line with the above said findings, the learned Trial Judge accepted the case of the appellant/plaintiff and granted the preliminary decree declaring that defendant had got undivided 1/4th share in the suit property and directing division of the same.

6. The said Preliminary Decree passed by the Trial Court dated 08.12.1998 was challenged by the 2nd respondent herein/ 2nd defendant in A.S.No.87 of 1999 on the file of the Lower Appellate Court (Court of the Principal District Judge, Erode). Though the learned Trial Judge framed necessary issues as to whether the suit property was a self acquired property of the Kuppanna Gounder and whether the said property was purchased out of joint ancestral nucleus and decided the issues in favour of the Appellant herein/plaintiff, the learned Lower Appellate Judge did not advert to the said aspects. The learned Lower Appellate Judge, though narrated the contentions raised by the 2nd respondent/2nd defendant regarding the above said aspects, failed to render a finding as to whether the suit property was a separate property of Kuppanna Gounder or Joint family property and whether joint family nucleus was used for purchasing the same. However, the Learned Lower Appellate Judge chose to hold that the Appellant herein/Plaintiff failed to substantiate her contention regarding the period of death of Kuppanna Gounder, ie., subsequent to the Hindu Succession Act, 1956 coming into force. Apart from the said finding, the learned Lower Appellate Judge also allowed the 2nd Respondent/2nd Defendant to raise an additional plea of defence relying upon Section 23 of the Hindu Succession Act, 1956 to the effect that the suit property being a residential house, the Appellant herein/plaintiff could not seek partition unless and until the other male members of the family would decide to effect a partition. Besides allowing such an additional plea to be raised, the learned Lower

Appellate Judge held that the appellant was not entitled to seek partition of the dwelling house till the other male members of the family would decide to effect partition. Consequently, the learned Lower Appellate Judge allowed the appeal, set aside the preliminary decree passed by the trial court and dismissed the suit filed by the appellant herein/plaintiff in its entirety. As against the said Decree of the Lower Appellate Court dated 24.08.1999, the present Second Appeal came to be filed.

7. The Second Appeal was admitted on 05.07.2000 noticing the following question to be the substantial question of law involved in the Second Appeal:-

"Whether the suit for partition by a female class-I heir over the joint family property viz., a dwelling house is a bar at the instance of the deceased brother's wife under Section 23 of the Hindu Succession Act, when one remaining brother agreed for a partition by metes and bounds?"

8. The said question has not been happily worded and it needs reformulation. In addition, the appellant has also filed C.M.P.No.639/2009 seeking the leave of the court to raise additional substantial question of law. In all, the following three substantial questions are identified as the substantial questions of law involved in the second appeal:-

" 1. Whether the suit for partition filed by the Appellant herein, who is a female Class-I heir in respect of the suit property, a dwelling house, is barred by Section 23 of the Hindu Succession Act, 1956, from seeking partition, when the surviving brother of the appellant/defendant has not only supported the case of the appellant/plaintiff, but also has come forward with a prayer for allotment of a share in her favour?

2. Is not the omission of Section 23 of the Hindu Succession Act, 1956 by reason of Hindu Succession Amendment Act 2005 would also enure to the benefit of appellant/female heir to the pending proceedings of the second appeal and enable her to enforce the partition as prayed in the suit?

3. Whether the finding of the trial court

that the suit property was not proved to be purchased by Kuppanna Gounder out of the joint family nucleus which finding was not disturbed by the lower appellate court can be said to be perverse?"

9. The arguments advanced by Mr.G.Rajan, learned counsel for the appellant, by Mr.T.Gandhi, learned counsel for the 1st respondent, by Mr.Sundaravadanam, learned counsel appearing for Mr.V.Bharathidasan, counsel on record for respondents 2 to 7 and by Mr.D.Rajasekar, learned counsel for the 8th respondent are heard. The materials available on record are also taken into consideration.

10. At this juncture, it shall be appropriate to mention that though the respondents 3 to 7/ defendants 3 to 7 remained exparte in both the courts below, they have chosen to join with their mother in this Second Appeal in opposing the Second Appeal and they are also represented by the very same counsel, who represents the 2nd respondent/2nd defendant.

11. The case of the Appellant / plaintiff is very simple. According to her, the suit property was the self acquired property of her father Kuppanna Gounder and he died intestate somewhere in 1960. It is her clear contention that her father Kuppanna Gounder died 35 years prior to the filing of the suit, which would take us to 1960 or 1961. On the other hand, the case of the 2nd Respondent/2nd defendant is that Kuppanna Gounder died prior to the Hindu Succession Act, 1956 coming into force. The relevant portion of the written statement of the 2nd respondent/2nd defendant reads as follows:-

"Kuppanna Gounder, the father of the plaintiff and defendants 1 to 8 herein died 45 years back i.e., before the Hindu Succession Act, 1956 came into force".

From the pleadings made by the parties, it is quite obvious that none of the contesting parties came forward with a clear plea as to the year in which Kuppanna Gounder died. According to the Appellant/Plaintiff, Kuppanna Gounder died 35 years prior to the filing of the suit. According to the 2nd Respondent/2nd defendant, Kuppanna Gounder died 45 years prior to the filing of the written statement. The suit was filed by presenting the plaint originally on 14.08.1995. Hence as per the plaintiff's plea, Kuppanna Gounder should have died in the year 1960. In this regard, plaintiff as P.W.1 and one Chinniyapa Gounder as P.W.2

deposed uniformly that Kuppanna Gounder died about 35 years prior to their examination as witnesses before the trial court. On the other hand, the evidence of D.W.1, in this regard, is only hearsay and for a number of questions put to her in the cross examination, she pleaded absence of knowledge. However she made an assertion that as per the information furnished by the relatives, her father-in-law died before 55 years prior to HER examination as D.W.1. If the same is taken into account, it will take us to 1945 as the year in which Kuppanna Gounder died.

12. The evidence of D.W.1, in this regard, seems to be quite contrary to the plea made in the written statement. The said contradiction will make it clear that the 2nd Respondent/2nd defendant was determined to say anything and everything in support of her contention that her father-in-law died prior to the Hindu Succession Act, 1956 coming into force, even though she was not aware of the exact year or period of death of her father-in-law. In support of her contention that her father-in-law died prior to the Hindu Succession Act coming into force, she examined one Muthusamy as D.W.2. D.W.2 also was not in a position to give the exact year or period in which Kuppanna Gounder died. He was examined to state that he came down to Erode from Chitthode in the year 1953 and at that point of time, Kuppanna Gounder was no more. The evidence of D.W.2, if considered in its totality, will make it clear that he was not telling the truth and he was simply called upon to support the case of the 2nd respondent/2nd Defendant. Though he would state that he was employed as a Peon in Kalaimagal School at Erode after he moved to Erode in 1953, not even a scrap of paper was produced by him to show that he was employed as a Peon in the said school in 1953. Further more, it is a clear admission made by D.W.2 that he was just aged about 13 or 14 years in 1953. Hence it is quite improbable that he would have been employed as a Peon in the above said school in 1953. His evidence regarding the number of elections in which he voted would also falsify his testimony that he was there at Erode from 1953 and that in 1953 Kuppanna Gounder was not alive.

13. Though such rival pleas have been taken by the appellant/plaintiff and the 2nd respondent/2nd defendant regarding the year / period of death of Kuppanna Gounder, none of them has chosen to produce any document in this regard. Neither the Death Register extract, nor the invitation for the ceremonies after death came to be produced on either side. Some notes could have been prepared regarding the ceremonies, which would have been

available with the son of the deceased. The same was also not produced. It is the categorical assertion made by the appellant/plaintiff that, when she searched for an entry in the Death Register maintained by the Municipality, she found no entry and the same was the reason why she was not in a position to produce Death Register Extract. The said contention was sought to be refuted by the 2nd respondent herein/2nd defendant, by putting a suggestion to her that she was burking the document and falsely contenting that there was no entry in the Death Register, apprehending that the production of the document would falsify her case. The said suggestion implies that the 2nd respondent/2nd defendant was sure that there was an entry in the Death Register and a copy of the same could be obtained. When she was of such a view, she could have very well obtained a Death Register Extract and produced the same to show that Kuppanna Gounder died either in 1954 or somewhere prior to the Hindu Succession Act, 1956 coming into force. She herself has not chosen to produce such document. On the other hand her evidence is to the effect that her father-in-law died at 53 years prior to her examination as D.W.1. It takes us to 1945, in which year, admittedly, Kuppanna Gounder was very much alive and the suit property itself came to be purchased three years later i.e. in 1948. The same will make it clear that the 2nd respondent/2nd defendant miserably failed to prove her contention that her father-in-law died prior to the Hindu Succession Act coming into force and that on the other hand, the evidence adduced on the side of the plaintiff are enough to prove her contention that Kuppanna Gounder died in or about 1960 and in any event, after the Hindu Succession Act, 1956 coming into force. The learned Trial Judge, on a proper appreciation of evidence, rendered a correct finding of fact that the appellant/plaintiff proved her case that her father died 35 years prior to the filing of the suit and in any event after the Hindu Succession Act, 1956 coming into force. Such a clear finding of fact was unnecessarily and unjustifiably interfered with by the Lower Appellate Court. Without proper re-appreciation of evidence and simply holding that the burden of proof stood cast upon the plaintiff and the same was not discharged, the Lower Appellate Judge reversed the finding of the Trial Court. This Court, after perusing the records discussed above, comes to the conclusion that the Lower Appellate Court's finding in this regard is perverse, as it is not based on reliable evidence. Hence, this Court holds that the above said finding of the Lower Appellate Court deserves to be reversed and the finding of the Trial Court to the effect

that Kuppanna Gounder died around 1960 i.e., after the Hindu Succession Act, 1956 coming into force, should be restored and confirmed. Second substantial question of law is answered accordingly.

14. So far as the nature of the property in the hands of Kuppanna Gounder is concerned, it is the contention of the Appellant/Plaintiff that the same was the self acquisition made by her father Kuppanna Gounder. It is not in dispute that the suit property was acquired by Kuppanna Gounder in 1948 by purchase under Ex.A.1-Sale Deed. However, the 2nd respondent/2nd defendant has taken a plea that joint family nucleus was used for the acquisition of the property in question, and hence the suit property was also a joint family property in which Kuppanna Gounder and his sons alone had shares as co-parceners. It is the contention of the 2nd respondent/2nd defendant that Kuppanna Gounder had got some properties at Avalpoonthurai and that the same were sold and the sale proceeds were used for the purchase of the suit property. It is the settled principle of Law that though there was a joint family, there can be no presumption that the joint family owned properties and though the joint family had properties, there can be no presumption that it yielded income and the income was sufficient for the maintenance of the family. Unless all the above said aspects are proved by the person who claims that the purchase was made on behalf of the joint family, there shall be no presumption that the purchase made in the name of one of the members of the family is a joint family acquisition.

15. In this case, the 2nd respondent/2nd defendant contends that some properties owned by Kuppanna Gounder at Avalpoonthurai were sold and the sale proceeds were used for the purchase of the suit property. The particulars of the property owned by Kuppanna Gounder at Avalpoonthurai have not been furnished. When those properties were sold has not been stated. DW1, ie., 2nd respondent came to the family several years after the suit property was purchased and several years after Kuppanna Gounder died. She cannot have any first hand knowledge about the sale of properties at Avalpoonthurai by Kuppanna Gounder. Hence her evidence shall not help her to substantiate her case that ancestral properties were sold and the sale proceeds were used for the purchase of the suit property. Excepting the interested testimony of DW1, there is no other evidence to show that there was such joint family nucleus and the same was used for the purchase of the suit property. D.W.2 does not speak about such

joint family nucleus and the use of joint family nucleus for the acquisition of property in question.

16. In fact, the learned Lower Appellate Judge has not chosen to consider the above said aspect and the finding of the trial court in this regard was not disturbed by the Lower Appellate Court. According to the contention raised on behalf of the appellant, the said finding of the trial court shall be deemed to have been accepted and confirmed by the Lower Appellate Court. Of course, no cross objection has been taken by the contesting respondents. However, the learned counsel for the contesting respondents contend that in case this Court may take the absence of discussion by the Lower Appellate Court regarding the contention of the contesting defendants that the suit property was acquired using the joint family nucleus for confirming the finding of the trial court, since decree of the Lower Appellate court is in favour of the contesting respondents / defendants 2 to 7, they can very well contend that the said finding rendered against them is wrong and that the said issue should have been decided in favour of the contesting respondents for supporting the decree passed by the Lower Appellate Court. Moreover, when a finding on an issue has not been made the basis of the decree, the person against whom such finding has been rendered, cannot file an appeal and even present a cross objection, because an appeal can be filed or cross objection can be taken only against the decree or part of the decree and not against the finding which has not been made the basis of the decree.

17. Order 41 Rule 2 of the Civil Procedure Code reads as follows:-

Grounds which may be taken in appeal - The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

The explanation is to the effect that if the respondent in the Appeal is aggrieved by a finding of the Court in the judgment on which the decree appealed against is based, he/she may file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding the fact that by reason of the decision of the Court on any other issue which is sufficient for the decision of the suit, the decree, is wholly or in part in favour of the respondent. The main part of sub-section (1) states that any respondent, though he may not have appealed from any part of the decree, may not only support the decree but also contend that a finding against him in the court below in respect of any issue ought to have been in his favour. It further proceeds to state he may also take any cross objection to the decree. If the contents of the said provision is applied in stricto-sensu, it can be said without hesitation that no appeal or cross objection will lie against a finding on which the decree appealed against is not based and that on the other hand such finding can be contended to be erroneous by the respondent in an appeal, while supporting the decree in his favour which is challenged in the appeal. Hence there cannot be any valid objection for allowing the contesting respondents from contending that the finding of the Trial Court, which was not disturbed by the Lower Appellate Court, is erroneous and the finding should have been given in favour of the respondents.

18. According to the submission made by the learned counsel for the contesting respondents, the admission made by P.W.1 that her father-in-law hailed from Avalpoonthurai was enough to probabalise the case of contesting defendants that Kuppanna Gounder owned some property at Avalpoonthurai; that the same was alienated and that the sale proceeds were used for the purchase of the property in question namely, the suit property. In this regard, it shall be a futile exercise to contend that the mere admission that Kuppanna Gounder hailed from Avalpoonthurai would amount to an admission that Kuppanna Gounder had some properties at Avalpoonthurai; that the same were sold and that the sale proceeds were for the acquisition of the property in question. In the absence of unequivocal admission that there were such ancestral properties and the same were sold and that the sale proceeds were used for the acquisition of the property in question, he/she, who asserts that the property in question was purchased using the joint family nucleus should prove the existence of the joint family nucleus by reliable and sufficient evidence.

19. Moreover, D.W.1 pleaded absence of knowledge as to the particulars of the property, if any, owned by Kuppanna Gounder in Avalpoonthurai Village. She is also not in a position to state what was the amount for which the properties were sold and when such sale / sales took place. Even if the 2nd defendant was able to prove that Kuppanna Gounder did have some properties at Avalpoonthurai and he sold them, unless she proves that there was proximity of time between the selling of those properties and the purchase of the suit property, it cannot be assumed that sale proceeds obtained by the sale of the ancestral properties were used for the acquisition of the property in question. In the absence of any reliable evidence to show that Kuppanna Gounder did have ancestral properties in Avalpoonthurai and there was proximity of time between the sale of those properties and the purchase of the suit property, the finding of the trial court which was not disturbed by the Lower Appellate Court has to be held to be correct and there shall be no justification for interfering with the same. Hence the above said contention raised on behalf of the respondents 2 to 8 deserves rejection as untenable.

20. So far as the disability caused on the female members under the erstwhile Section 23 of the Hindu Succession Act, 1956 is concerned, such a plea was not raised by the contesting defendants before the trial court. Only in the Appeal before the Lower Appellate Court, it was raised as an additional plea. Even then, the 2nd Respondent/2nd defendant, who alone contested the proceedings before the trial court and the Lower Appellate Court, miserably failed to substantiate her contention that the male members of the family had not decided to divide the property. The bar under Section 23 of the Hindu Succession Act was provided only in respect of the dwelling house, that too till the male members decide to divide the property. Once they decide to divide the property, automatically, the female members become entitled to claim their shares and separation of their share.

21. In the case on hand, on the death of Kuppanna Gounder the property devolved upon his two sons - Thangamuthu and Ponnusamy and three female heirs namely, wife and two daughters. Out of the two sons, Ponnusamy passed away long back. The surviving son namely, Thangamuthu, (1st respondent/1st defendant) expressed his desire to enforce his right of partition. He not only supported the claim of the appellant, but also sought

separation of his share from the rest and separate allotment of his share. He also paid court fee for the said purpose. Though the Section had been couched in such terms that the female heirs cannot enforce their right of partition till the male heirs choose to divide their respective shares, capable of implying that there should be consensus among the male heirs for partition, the intention of the legislature cannot be the same. Once a male heir chooses to enforce his right of partition, automatically the female heir also will become entitled to enforce their right of partition. So the Section should be understood to mean, for the female heirs to seek partition the dwelling house, the male heirs should have decided to divide their respective shares either by consensus or one or some of the male heirs should have exercised his/their right of partition.

22. In this case though before the filing of the suit the 1st respondent did not exercise his right of partition, he came forward not only to give consent for partition but also to enforce his right of partition after the filing of the suit, by seeking allotment of separate share to him. Hence the finding of the Lower Appellate Court that the suit filed by the appellant herein/plaintiff for partition was barred under the erstwhile Section 23 of the Hindu Succession Act, 1956 has got to be set aside as an erroneous finding on a question of law. Accordingly, the first substantial question of law is answered in favour of the appellant/plaintiff and against the contesting respondents.

23. The question of the attraction of the bar provided under the erstwhile Section 23 of the Hindu Succession Act, 1956 is only academic, because the said bar has been removed by the Hindu Succession Amendment Act, 2005. In fact, the said section itself has been repealed. Of course, there is a possibility of contending that there was a bar at the time of filing of the suit and the bar came to be raised only during the pendency of the Second Appeal. Even then, it shall be undesirable to relegate the parties to go for one more round of litigation based on the amendment. Changes in Law and other subsequent events should also be taken into consideration by this Court and complete justice could be rendered provided the materials available on record are enough to do so. In the case on hand the materials available on record are more than sufficient to dispose of the Second Appeal on merits taking into account the change in Law also. During the pendency of the Second Appeal, a

change in Law occurred due to the passing of Hindu Succession Amendment Act, 2005 (Act 36 of 2005) removing Section 23 from the said Act. In view of the change in Law, it is the contention raised on behalf of the Appellant that the bar provided under the erst while Section 23 of the Hindu Succession Act is no longer applicable to the suit property and that subsequent events should also be taken into consideration by this Court to render complete justice in this Second Appeal itself, without driving the parties to go for another round of litigation. The third substantial question of law is answered accordingly.

24. For all the reasons stated above, this Court comes to the conclusion that the Judgment and Decree of the Lower Appellate Court cannot stand the scrutiny of this Court and the decree of the Lower Appellate Court deserves to be set aside, with the result that the preliminary decree passed by the trial court declaring the appellant's/plaintiff's 1/4th share and directing partition deserves to be restored and confirmed.

In the result, the Second Appeal is allowed. The decree of the Lower Appellate Court dated 24.08.1999 in A.S.No.87 of 1999 is set aside. The Preliminary Decree passed by the Trial Court dated 08.12.1998 made in O.S.No 727 of 1996 is restored and confirmed. Consequently, C.M.P.No.639 of 2009 is also allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd/asr

To

1. The Principal District Judge,
Erode.

WEB COPY

2. The Principal District Munsif,
Erode.

1 CC to Mr.G.Rajan, Advocate SR.No. 45016

1 CC to Mr.V.Bharathidasan, Advocate SR.No. 44937

Second Appeal No.968 of 2000 and
C.M.P.No.639 of 2009

UG (CO)
PSI (26.10.2015)



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