

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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A.S. No.660 of 2006

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JUDGMENT: (per Hon'ble Sri Justice M. Seetharama Murti)

The plaintiffs, who are partly aggrieved of the preliminary decree in so far as it related to the allotment of smaller extents of shares in the plaint 'A' and 'B' schedule properties, had preferred this appeal against the said preliminary decree and the judgment dated 30.06.2006 of the learned V Additional District Judge (Judge, Fast Track Court), Ranga Reddy District passed in O.S.No.140 of 2003.

2. We have heard the submissions of the learned counsel for the appellants/plaintiffs. The respondents 2 and 3 are stated to be not necessary parties. Though the 1st respondent and the respondents 4 to 6 had put in appearance and are represented by their respective counsel, none appeared and no arguments were advanced on behalf of the said respondents, despite listing the matter for hearing the arguments on the side of the said respondents.

3. In this appeal suit, the parties shall hereinafter be referred to as 'appellants/plaintiffs' and 'respondents/defendants' for convenience and clarity.

4. This Court of first appeal being the last court of fact, it is necessary to refer to the pleadings and the chronology of events leading to the filing of this first appeal by the plaintiffs, who are partly successful before the trial court.

5. The plaint averments, which are relevant for consideration, in brief, are as follows: 'The 1st plaintiff is the wife of late M. Bhupathi Reddy. The plaintiffs 2 and 3 are the daughters; and the 1st defendant is the son, of the said Bhupathi Reddy. The said Bhupathi Reddy died intestate on 10.07.1999 leaving behind him the plaintiffs and the 1st defendant. The plaint 'A' schedule properties are the self acquired separate properties of Bhupathi Reddy and therefore, the plaintiffs and the 1st defendant are entitled to a 1/4th share each in the plaint 'A' schedule properties. The plaint 'B' schedule properties are the ancestral properties, and hence, the 1st defendant and late Bhupathi Reddy had a 50% share each in the said properties. On the intestate death of Bhupathi Reddy, the plaintiffs and the 1st defendant have become entitled to a share each in the half share of Bhupathi Reddy in the plaint 'B' schedule properties. Thus, in the plaint 'B' schedule properties, which are ancestral properties, the plaintiffs 1 to 3 are entitled to a 1/8th share each and the 1st defendant is entitled to the remaining 5/8th share. The 1st defendant had wilfully denied the shares of the plaintiffs in the plaint 'A' and 'B' schedule properties. Taking into consideration his attitude and as it has become apparent that he is not going to partition the properties and deliver the legally entitled shares to the plaintiffs, the plaintiffs had called upon the 1st defendant on 25.09.2003 and 28.09.2003 to partition the properties in the presence of family elders. However, the 1st defendant had flatly refused to entertain even a discussion in that regard. Hence, the plaintiffs are constrained to file the suit for partition against the 1st defendant. The defendants 2 and 3 were impleaded as they are the tenants in some of the properties, i.e., in the flats constructed over 'A' schedule property after it was given for development.'

6. The 1st defendant in his written statement while admitting the relationship had *inter alia* contended as follows: 'His father purchased the plaint 'A' schedule properties also with the income derived from the ancestral lands and undivided family funds for the benefit of the coparcenary. Bhupathi Reddy, the father of the plaintiffs 2 and 3, had performed their marriages during his life

time and they were also given cash and jewellery at the time of their marriages. They both are well settled. The 2nd plaintiff had acquired citizenship of the United States of America and the 3rd plaintiff is a Green Card holder and is expecting to acquire U.S. Citizenship shortly. The material benefits given to the plaintiffs 2 and 3 were pooled up from out of the joint family assets. Bhupathi Reddy became sick on account of sudden kidney failure and since the plaintiffs 2 and 3 are well placed in life, he had wished to give his interest in the properties to the 1st plaintiff and the 1st defendant. Accordingly, Bhupathi Reddy relinquished his rights in his share of property in favour of the 1st plaintiff and the 1st defendant by oral arrangement/partition in the year 1998 when he came over to USA along with the 1st plaintiff. The plaintiffs 2 and 3 were also present at that time. Thus, the 1st defendant is having 75% share and the 1st plaintiff is having remaining 25% share; and the properties were in joint possession of the 1st defendant and the 1st plaintiff, who is his mother. On the death of the father on 10.07.1999, the 1st defendant got both 'A' and 'B' schedule properties. The plaintiffs never demanded for partition of the properties. The portions of 'A' schedule properties were let out recently. The plaintiffs 2 and 3 having managed to gain the confidence of the 1st plaintiff had filed the present suit with a view to knock away the property. The plaintiffs 2 and 3 have no right in the suit schedule properties.'

7. The tenants, who are the defendants 2 and 3, had filed written statements pleading about their possession of some of the properties in 'A' schedule, i.e., flats, as tenants. Therefore, their defence is not much of relevance for determination of the issues involved in the suit for partition amongst the family members of Bhupathi Reddy.

8. Basing on the pleadings, the following issues were framed for trial:

1. Whether the family arrangement pleaded by Defendant No.1 is true, valid and binding on the parties?
2. Whether the plaintiffs are entitled to seek partition of the properties and allotment of one-fourth (1/4th) share to each of them?

3. To what relief?

During the course of trial before the trial Court, the 1st plaintiff and the husband of the 3rd plaintiff were examined as PWs 1 and 2 and exhibits A1 to A20 were marked on the side of the plaintiffs. The 1st defendant was examined as DW1 and exhibits B1 to B6 were marked on his side. On merits, the trial court held that both 'A' and 'B' schedule properties are ancestral properties and that the plaintiffs 1 to 3 are entitled to a 1/8th share each and that the 1st defendant is entitled to the remaining 5/8th share in the said properties.

9. To begin with, it is pertinent to mention that all the three plaintiffs, who are the mother and sisters of the 1st defendant, had claimed a 1/4th share each in the plaint 'A' schedule properties stating that the same are the separate properties of late Bhupathi Reddy and a 1/8th share each in the plaint 'B' schedule properties stating that the same are the ancestral properties. However, the trial Court had granted a preliminary decree against the 1st defendant and had directed for the partition of both the said 'A' and 'B' schedule properties into eight equal shares and allotment of one such share each, i.e., total three shares to the three plaintiffs and the remaining five shares to the 1st defendant. Thus, the trial court had held that both 'A' and 'B' schedule properties are ancestral properties. Aggrieved of the lesser shares allotted to them in the plaint schedule properties, the plaintiffs had preferred this first appeal suit. No appeal or cross appeal is preferred by the 1st defendant. The defendants 2 and 3, as already noted, are the tenants of flats in 'A' schedule properties. During the pendency of this appeal, the respondents 4 to 6, who are tenants in some of the properties, are also impleaded. Be that as it may, the learned counsel for the plaintiffs/ appellants while submitting that the plaintiffs/ appellants are now not assailing the findings of the trial court that plaint 'A' schedule properties are also ancestral property had further contended *inter alia* that even if the plaint 'A' and 'B' schedule properties are ancestral properties still the plaintiffs are entitled to larger shares than granted by the court below in view of the amendment to Section 6 in Chapter II of the Hindu Succession Act, 1956 dealing with devolution of interest in coparcenary property, which came

into force with effect from 09.09.2005. Placing reliance on the said new provision of law of Section 6 as amended/substituted by Act 39 of 2005 and also on the decision in **Ganduri Koteswaramma and another v. Chakiri Yanadi and another** he had submitted that since the suit for partition is pending and as no partition by a registered deed of partition has taken place and as Bhupathi Reddy had died intestate, the daughters of Bhupathi Reddy, who are the plaintiffs 2 and 3 have become coparceners in their own right in the same manner as the son, i.e., the 1st defendant and that they are entitled to the same rights in the coparcenary property as they would have had if they had been sons and that therefore, the rights of the plaintiffs 2 and 3 are on par with the rights of the 1st defendant in the coparcenary and that in view of the substantive right in favour of the plaintiffs 2 and 3, they are entitled to larger shares equally along with the 1st defendant, who is their brother.

10. In view of the facts and the submissions, the points for determination in this appeal suit are --

- (1) Whether the plaintiffs 2 and 3 are entitled to equal shares along with the 1st defendant in the plaint 'A' and 'B' schedule ancestral properties in view of the existing Section 6 of the Hindu Succession Act, which the Parliament had introduced in the year 2005 and which came into force with effect from 09.09.2005?**
- (2) What are the shares to which the plaintiffs 1 to 3 and the 1st defendant are entitled to in the plaint 'A' and 'B' schedule properties?**
- (3) Whether the decree and judgment of the trial court need modification in respect of the shares of the plaintiffs 1 to 3 and the 1st defendant in the plaint 'A' and 'B' schedule properties?**
- (4) To what relief?**

11. POINTS 1 to 3:

11. (a) The facts leading to the present stage of the matter are already stated supra, in detail. The 1st plaintiff is the wife of Bhupathi Reddy. The 1st defendant is the son; and the plaintiffs 2 and 3 are the married daughters of the said Bhupathi Reddy. The 1st defendant's defence is that the plaint 'A' and 'B' schedule properties are the ancestral properties of the family. The trial court had held that even 'A' schedule properties are ancestral properties. On careful examination of the evidence on record on this aspect, we are of the well considered view that the evidence on record is sufficient to accept the defence of the 1st defendant that the plaint 'A' schedule properties are also ancestral properties and therefore, the plaintiffs' contention that the said 'A' schedule property is separate property of late Bhupathi Reddy is devoid of merit. The plaintiffs are now not disputing the said contention of the 1st defendant and the finding of the trial court on this aspect and are conceding that both plaint 'A' and 'B' schedule properties are ancestral properties.

11. (b) The defence of the 1st defendant that his father orally relinquished his share in the ancestral immovable properties in his favour and in favour of his mother and that as per the said arrangement/oral partition, he is entitled to 75% share and that his mother is entitled to 25% share in the plaint 'A' and 'B' schedule properties and that on the death of his father he has got the 'A' and 'B' schedule properties, is untenable and cannot be countenanced as any relinquishment of a right in immovable property, the value of which exceeds hundred rupees cannot be oral and in the absence of any registered document, such a contention cannot be upheld in a court of law. The further contention of the 1st defendant which was advanced before the trial Court that since the daughters/plaintiffs 2 and 3 were sufficiently provided with cash and jewellery at the time of their marriages and that they are well settled and that as material benefits that were given to them were pooled up from and out of joint family assets, they are not entitled to a share in the ancestral properties also cannot be countenanced in a court of law. Further, the defence that the father had

divided the properties orally during his visit along with the 1st plaintiff to the USA in the year 1988 and that every family member has accepted the same also cannot be countenanced in the absence of any reliable evidence except the self-serving statement in the evidence of the 1st defendant. The 1st plaintiff, who is the mother of the 1st defendant, in her evidence, had denied the oral partition and also family arrangement and the defence of the 1st defendant. Therefore, the trial Court had rightly disbelieved the defence of the 1st defendant and had held that the plaint 'A' and 'B' schedule properties which are ancestral properties are liable for partition. Having gone through the evidence of PW1 and DW1 in juxtaposition and keeping in view the legal position we do not find any reason to disagree with the findings of the trial court recorded against the 1st defendant. Further, the trial Court had disbelieved and negatived the defence of the 1st defendant and had held that the plaint schedule properties are liable for partition. The 1st defendant having not preferred an appeal or cross appeal against the preliminary decree is not entitled to seek reversal of the preliminary decree, which is granted against him and in favour of the plaintiffs and hence, the defence of the defendant which was advanced before the trial Court need not be countenanced by this Court.

11. (c) Now, the next question is as to what are the shares to which all the four sharers, namely, the plaintiffs 1 to 3 and the 1st defendant are entitled to in the plaint 'A' and 'B' schedule properties. Admittedly, there is no partition by way of a registered partition deed and Bhupathi Reddy had died intestate on 10.07.1999 leaving behind him the plaintiffs and the 1st defendant. Now, the plaintiffs 2 and 3, the daughters of Bhupathi Reddy, are making claims for larger shares in the plaint 'A' and 'B' ancestral properties. And, their claims are based on the new/substituted Section 6 of the Hindu Succession Act, 1956. Therefore, it is necessary to refer to infra the said provision of law.

11. (d) Section 6 of the Hindu Succession Act, 1956 ('the principal Act', for brevity) as amended/substituted by the Parliament by the Amendment Act, 2005 (Act 39 of 2005) reads as follows:

"6. Devolution of interest in coparcenary property:--

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,--

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a 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 in, as property capable of being disposed of by her by testamentary disposition.

(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.

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.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect---

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.--For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation. --For the purposes of this section "partition" means any partition made by execution of a deed of partition duly

registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a Court."

The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. A plain reading of this provision shows that the legislature has conferred substantive right in favour of the daughters. According to this new Section, the daughter of a coparcener shall by birth become a coparcener in her own rights and liabilities in the same manner as the son.

11. (e) The incidental question before us is – ‘Whether the provision of Section 6 of the principal Act as substituted by the Amendment Act 2005 inures for the benefit of the plaintiffs 2 and 3, who are the daughters of late Bhupathi Reddy?’ For answering this question it is advantageous to refer to the decision in **Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari**. A Full Bench of the High Court of Bombay was constituted on a reference made by a learned Single Judge of that court to give its opinion on the following questions of law referred to it:

“(a) Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 is prospective or retrospective in operation?

(b) Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act 2005 applies to daughters born prior to 17.6.1956?

(c) Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies to daughters born after 17.6.1956 and prior to 9.9.2005?

(d) Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies only to daughters born after 9.9.2005?

(e) Whether the decision of the Division Bench in the case of Vaishali Ganorkar is per in curium of Gandori Koteshwaramma and others?”

The primary issue before the learned Single Judge of that Court was whether

Section 6 of the Hindu Succession Act, 1956 (the Principal Act) substituted by Section 3 of the Hindu Succession (Amendment) Act, 2005 (the Amendment Act) is prospective or retrospective in operation. The Full Bench of the Bombay High Court having considered the aspects of old Hindu law, the relevant provisions of the Principal Act and the reasons that led to the making of the Amendment Act, the statement of objects and reasons for amending the Principal Act, the decisions of the Supreme Court in Ganduri Koteshwaramma (1 supra) and other cited decisions including the decisions in G.Sekhar's case [(2009) 6 SCC 99] and in Sheeladevi's case [(2006) 8 SCC 581], had answered the questions as follows:

Question (a):

“In view of above discussion, in our view the correct legal position is that Section 6 as amended by the 2005 Amendment Act is retroactive in nature meaning thereby the rights under Section 6(1)(b) and (c) and under sub-Rule (2) are available to all daughters living on the date of coming into force of the 2005 Amendment Act i.e. on 9 September 2005, though born prior to 9 September 2005. Obviously, the daughters born on or after 9 September 2005 are entitled to get the benefits of Amended Section 6 of the Act under clause (a) of sub section (1). In other words, the heirs of daughters who died before 9 September 2005 do not get the benefits of amended Section 6.”

Question (b), (c) and (d):

In the above view of the matter, so far as questions (b), (c) and (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 9 September 2005. There is no dispute between the parties that the Amendment Act applies to daughters born on or after 9 September 2005.

While answering the question (e), the Full Bench of the Bombay High Court had referred to the ratio in the decision of Ganduri Koteshwaramma (1 supra), wherein the Supreme Court held that the amended Section 6 will apply where final decree was not passed before the date of commencement of the Amended

Act 2005 and had held as under:

“We are, therefore, of the view that the binding force of the Supreme Court in Ganduri Koteswaramma (supra): (2011)9 SCC-788 is not weakened by non-consideration of the Supreme Court decisions in G.Sekhar’s case (supra): (2009) 6- SCC-99 and in Sheeladevi’s case (supra): (2006) 8 –SCC-581. We, therefore, answer question (e) in the affirmative that is to say, the decision of the Division Bench in Vaishali Ganorkar’s case (supra): 2012(5)-Bom C.R-210 is per incuriam the Supreme Court decision in Ganduri Koteswaramma (supra): (2011) 9-SCC -788.”

Having gone through the Full Bench decision of the Bombay High Court, though it is of persuasive value, we find ourselves in respectful agreement with the findings recorded by the Full Bench of the Bombay High Court.

11. (f) Before reverting back to the facts of the instant case, it is to be noted that new Section 6 of the Principal Act extracted supra brings uniformity in the country. Although the Central Act 39 of 2005 has not expressly repealed Section 29A, which was introduced in the Hindu Succession Act by the A P State Amendment Act 13 of 1986, the said State Law is void to the extent it is repugnant to, or inconsistent with, the Central Law. In the decision in **Damalanka Gangaraju and Others v. Nandipati Vijaya Lakshmi and others** this Court has held that the State amendment is deemed to be repealed as the Parliament and the State Legislature made laws related to the same concurrent subject and as a conflict arises between the two enactments. This Court also held that the conflict is resolved by Article 254 (1) of the Constitution of India, which provided that in such cases of conflict the State Law shall be void to the extent it is repugnant to, or inconsistent with, the Central Law. It was, therefore, held by this Court that all the daughters have to be treated as coparceners entitled to equal shares, irrespective of the fact whether they are majors or minors or their marriages were performed before 05.09.1985 or subsequent thereto. Hence, the new provision of Section 6, which is now on the Statute Book, would inure to the benefit of the plaintiffs 2 and 3, the daughters. Thus, on and from 9th September 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son. Thus, the right

which accrued to the daughter by virtue of this new provision is an absolute right insofar as the property of a joint Hindu family governed by Mitakshara law. It is also to be noted that the present case of the plaintiffs 2 and 3 does not fall in anyone of the exceptions provided in the proviso appended to sub-section (1) of Section 6. Only two categories are excepted from application of the new Section 6 of the Act. The said two categories are (i) where disposition or alienation including any partition has taken place before 20th December 2004; and (ii) where testamentary disposition of property has been made before 20th December 2004. For the purpose of the new Section, partition means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a Court. Now that a preliminary decree is passed by the trial court on 30.06.2006, it cannot be said that the preliminary decree in the suit granted by the trial court deprived the appellants/plaintiffs 2 and 3 of claiming the benefits of 2005 Amendment Act, more particularly, when their suit was instituted in the year 2003 and when no final decree has been passed and as the suit continues until the final decree is passed and the preliminary decree can be amended, in case the amendment of the preliminary decree is necessary in the light of any changed circumstances.

11. (g) The view of this court finds support from the ratio in the decision in **Ganduri Koteswaramma** (1 supra). In this cited case, the question that fell for consideration before the Supreme Court was – ‘Whether the benefits of the Hindu Succession Act are available to the appellants therein’. The facts of the cited case are as follows: ‘The appellants and the respondents are siblings being daughters and sons of one Ch. Venkata Swamy. The 1st respondent filed a suit for partition impleading his father (D1), his brother (D2) and his two sisters (the appellants-D3 and D4). The ‘A’, ‘C’, and ‘D’ schedule properties are coparcenary property. The plaintiff claimed 1/3rd share for him and the defendants 1 and 2 (his father and brother). The preliminary decree granted in March 1999 declared that the plaintiff has got 1/3rd share in the said properties. Before passing the final decree, by 2005 Amendment Act, Section 6 of the Hindu Succession Act, 1956 was substituted. The appellants (D3 and D4) made an application for passing preliminary decree in their favour for partition of ‘A’, ‘C’ and ‘D’ coparcenary properties into four equal shares and allotment of one

such share each to them as the 1st defendant died during the pendency of the suit. The said application was contested by the plaintiff. The trial Court by its order dated 15.06.2009 allowed the application of the appellants (D3 and D4) and had held that they were entitled for re-allotment of shares in the preliminary decree, i.e., they are entitled to 1/4th share each and separate possession in 'A', 'C' and 'D' schedule properties. The said order was challenged before this Court in an appeal. A learned single Judge of this court allowed the appeal and had set aside the order of the trial court. The appellants (D3 and D4) preferred an appeal by Special Leave before the Hon'ble Supreme Court. While answering the question as to whether the preliminary decree passed by the trial court deprived the appellants/daughters of the benefits of 2005 Amendment Act although final decree for partition has not yet been passed, the Hon'ble Supreme Court had held in favour of the daughters and had set aside the orders of this Court and had restored the order of the trial court.

11. (h) The ratio in the decision squarely applies to the facts of the case on hand. Therefore, in the plaint 'A' and 'B' schedule properties which are ancestral joint family coparcenary properties, the two daughters of Bhupathi Reddy i.e., the plaintiffs 2 and 3, whose cases are not covered by the excepted categories, are entitled, along with their brother-the 1st defendant, to an equal share each as the right accrued to the daughters/the plaintiffs 2 and 3 in the property of a joint Hindu family governed by Mitakshara law by virtue of Section 6 of the Act is absolute. As held by the Hon'ble Supreme Court, the declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property/ancestral property as she would have been a son is unambiguous and unequivocal and thus, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son. Therefore, the findings of the trial Court in the instant suit that the son/the 1st defendant is entitled to 5/8th share and that the daughters i.e., the plaintiffs 2 and 3 are entitled to 1/8th share each along with the 1st plaintiff, the mother, are not correct as the trial court had failed to take note of the amended new provision of Section 6 of the Act. Probably this aspect was not brought to the notice of the trial Court. Therefore, if partition of

plaint 'A' and 'B' schedule ancestral properties is to be effected as per the law now obtaining and applicable, the plaintiffs 2 and 3, who are daughters of late Bhupathi Reddy, are to be placed on par with the 1st defendant, who is the son of late Bhupathi Reddy. Accordingly, the shares to which the plaintiffs and the 1st defendant would be entitled to in the plaint 'A' and 'B' schedule properties are to be worked out as follows:

The plaint 'A' and 'B' schedule properties should be partitioned first into four shares by allotting one such share notionally to the deceased Bhupathi Reddy also. A $\frac{1}{4}^{th}$ share each out of four such shares is allottable to each of the plaintiffs 2 and 3, who are the daughters and the 1st defendant, who is the son. The remaining $\frac{1}{4}^{th}$ share notionally allotted to Bhupathi Reddy is to be again partitioned amongst his wife, the two daughters and the son. Therefore, the wife would be entitled to a $\frac{1}{4}^{th}$ share in the said $\frac{1}{4}^{th}$ share. Thus, the wife of Bhupathi Reddy, the 1st plaintiff, would be entitled to $\frac{1}{16}^{th}$ share in the plaint 'A' and 'B' schedule properties and the daughters and the son of late Bhupathi Reddy, i.e., the plaintiffs 2 and 3 and the 1st defendant would be entitled to a $\frac{1}{4}^{th} + \frac{1}{16}^{th}$ share each in the plaint 'A' and 'B' schedule properties, in view of the settled legal position obtaining and applicable to the facts of the case.

The points are accordingly answered holding that the 1st plaintiff who is the wife of Bhupathi Reddy is entitled to $\frac{1}{16}^{th}$ share in the plaint 'A' and 'B' schedule properties and that the plaintiffs 2 and 3, who are the daughters and the 1st defendant, who is the Son, of Bhupathi Reddy are entitled to $\frac{1}{4}^{th} + \frac{1}{16}^{th}$ share each ($\frac{5}{16}^{th}$ share each) in plaint 'A' and 'B' schedule properties. As a sequel, it must be held that the preliminary decree granted by the trial Court is to be modified accordingly in respect of the shares of the plaintiffs and the 1st defendant. The points are accordingly answered in favour of the plaintiffs/appellants.

12. POINT NO.4:

In the result, the appeal is allowed in part and the preliminary decree passed by the trial Court insofar as it related to determination of shares of the sharers is set aside by holding that the plaintiffs 2 and 3 and the 1st defendant are entitled to a 5/16th share each and that the 1st plaintiff is entitled to a 1/16th share in both the plaint 'A' and 'B' schedule properties. Accordingly, a preliminary decree is passed in favour of the plaintiffs and against the 1st defendant for partition of plaint 'A' and 'B' schedule properties into sixteen (16) equal and equitable shares by metes and bounds and according to good and bad qualities and for allotment of a 5/16th share each to the plaintiffs 2 and 3 and the 1st defendant and the remaining 1/16th share to the 1st plaintiff. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

01st April 2015

Note: L.R copy to be marked

(B/o)

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