

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.732 of 2008
& CMP Nos.959 of 2016 and 1 of 2008

N.R.Chenniappan Appellant/3rd Defendant

Vs

1.Minor Rikthu Anupama
rep.by mother& Guardian C.sumathi...1st Respondent/Plaintiff

2. N.R.Duraisamy
3. N.Ramathal
4. C.Rangasamy
5. K.Saraswathy
6. P.Uma
7. R.Saminathan
8. S.Senthilkumar
9. P.Rajalakshmi
- 10.P.Mahalakshmi
11. The Executive Officer
Karumathampatty Panchayat
Karumathampatty
Somanur
Palladam Taluk

12. P.Neelamani
13. R.Radhamani
14. S.M.Nataraj
15. R.Nataraj
16. G.Muralidharan
17. M.Sivakumar
18. K.Rajendran
19. G.Poongodi

(Respondents 5,7, 8, 10, 11, 13, 16 & 17
are being set ex parte. Hence given up.) .. Respondents 2 to
19/ Defendants 2, 4 to 20

Prayer:- Appeal suit filed under Section 96 and Order
XLI Rule 1 of CPC against the judgment and decree, dated
10.3.2008 in O.S.No.5 of 2005 on the file of Additional
District and Sessions Judge, Fast Track Court No.V, Coimbatore
at Tiruppur.

For Appellant :Mr.A.Thiyagarajan

For Respondents :Mrs.Hema Sampath,
Senior Counsel for
Mr.S.Gunalan for R1
Mr.R.Marudhachalamurthy
for R3
Mr.K.Govi Ganesan
for R9, R12, R15, R18 & R19

No appearance for R2, R4 & R14
Notice dispensed with for R6, as
per order dated 24.6.2016.
R5, R7, R8, R10, R11,
R13, R16 and R 17 are given up

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This appeal suit has been directed against the judgment and decree dated 10th March, 2008 passed in Original Suit No.5 of 2005 by the Additional District and Sessions Court, Fast Track No.V, Coimbatore at Tiruppur.

2. The first respondent herein, as plaintiff, has instituted Original Suit No.5 of 2005 on the file of the trial court praying to pass a preliminary decree of partition in respect of her share in the suit properties, wherein the present appellant and the remaining respondents have been arrayed as defendants.

3. The material averments made in the plaint are that the suit item Nos.1 and 2 have been purchased by one Rasa Gounder, by virtue of a Sale Deed dated 17.8.1921 and after his demise, his two sons, viz., Kaliappa Gounder and Chennimalai Gounder have effected a partition by way of a registered Partition Deed dated 29.9.1951. After the demise of Kaliappa Gounder, his three sons, namely Rangasamy, Natarajan and Ramasamy have effected a partition by virtue of a registered Partition Deed dated 25.3.1991, wherein the suit item Nos.1 and 2 have been allotted to the share of Natarajan. The said Natarajan is none other than the first defendant and his two sons, namely Duraisamy and Chenniappan have been arrayed as defendants 2 and 3 and the wife of Natarajan has been arrayed as fourth defendant. The plaintiff is none other than the daughter of the third defendant by name Chenniappan. The plaintiff has got birth on 23.2.2000. The remaining suit items are also joint family properties. Since the plaintiff has got birth on 23.2.2000 as a joint family member, she is having right of partition. The third defendant, father of the plaintiff, has failed to look after the plaintiff. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

4. In the written statement filed on the side of the defendants 2 to 4, it is averred that the suit item Nos.1 and 2 have been purchased by virtue of a Sale Deed dated 17.8.1921 by one Rasa Gounder, who is none other than the paternal grandfather of the first defendant. After his demise, a partition has been effected on 29.9.1951 amongst his two sons, namely Kaliappa Gounder and Chennimalai Gounder, wherein the suit item Nos.1 and 2 have been allotted to the share of Kaliappa Gounder. The said Kaliappa Gounder has passed away, leaving behind him three sons, namely Rangasamy, Natarajan (first defendant) and Ramasamy. On 25.3.1991, a registered partition has taken place amongst three sons of the said Kaliappa Gounder, wherein the suit item Nos.1 and 2 have been allotted to the share of the first defendant, viz., Natarajan. Therefore, the suit item Nos.1 and 2 are the separate properties of the first defendant and during his life time, the plaintiff is totally precluded from claiming partition. The suit remaining items are not the joint family properties and therefore, the entire suit is liable to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial court has framed necessary issues and after contemplating both the oral and documentary evidence, has decreed the suit in respect of suit item Nos.1 and 2 by way of passing a preliminary decree. The judgment and decree passed by the trial court are being challenged in the present appeal suit by the third defendant as appellant.

6. Before contemplating the rival submissions made on either side, it would be apposite to look into the character of the suit item Nos.1 and 2. It is an admitted fact that the suit item Nos.1 and 2 have been purchased by virtue of Ex.B.1 dated 17.8.1921 by one Rasa Gounder, who is none other than the paternal grandfather of the first defendant and after his demise, his two sons, namely Kaliappa Gounder and Chennimalai Gounder have partitioned the same by virtue of a registered Partition Deed dated 29.9.1951, wherein the suit item Nos.1 and 2 have been allotted to the share of Kaliappa Gounder. The said Kaliappa Gounder has passed away, leaving behind him three sons, namely Rangasamy, Natarajan (first defendant) and Ramasamy. The said three sons have effected partition by way of a registered Partition Deed dated 25.3.1991, wherein the suit item Nos.1 and 2 have been allotted to the share of the first defendant, by name Natarajan. The Partition Deed dated 25.3.1991 has been marked as Ex.A.1. The Partition Deed dated 29.9.1951, by which partition has taken place in between Kaliappa Gounder and Chennimalai Gounder, has been marked as Ex.B.3. In Ex.A.1 and Ex.B.3, it has been clearly mentioned that the properties mentioned therein are ancestral properties.

7. The main contentions put forth on the side of the plaintiff is that the suit item Nos.1 and 2 are the ancestral properties at the hands of defendants 1 to 3 and plaintiff.

8. The specific defence put forth on the side of the defendants 2 to 4 is that the suit item Nos.1 and 2 are nothing but separate properties of the first defendant and the present suit has been instituted during his life time and therefore, the same is not legally maintainable.

9. The only legal point that involves in the present appeal suit is as to whether the suit item Nos.1 and 2 are the joint family properties or the separate properties of the first defendant, viz., Natarajan?

10. It has already been pointed out that in Ex.A1 and Ex.B.3, it has been clearly mentioned that the suit item Nos.1 and 2 are the ancestral properties. It is an admitted fact that the plaintiff has got birth on 23.2.2000. Under such circumstances, the plaintiff has filed the present suit as if she is a member of joint family.

11. The learned counsel appearing for the appellant/third defendant has contended with great vehemence to the effect that since a partition has been effected amongst three sons of Kaliappa Gounder by virtue of Ex.A1, i.e., on 25.3.1991, wherein the suit item Nos.1 and 2 are allotted to the share of the first defendant, the same are nothing but his separate properties and therefore, the plaintiff cannot claim any share in it.

12. The learned counsel appearing for the first respondent/plaintiff has sparingly contended that in Ex.A.1 and Ex.B.3, it has been clinchingly mentioned that the suit items 1 and 2 are the ancestral properties and since the plaintiff has got birth on 23.2.2000, by virtue of her birth she has become one of the members of joint family and since the suit item Nos.1 and 2 are the joint family properties, the plaintiff by virtue of her birth is entitled to maintain the suit for getting the relief sought therein and the trial court, after considering the correct legal position, has rightly decreed the suit and therefore, the judgment and decree passed by the trial court are not liable to be interfered with.

13. The learned counsel appearing for the appellant/third defendant has relied upon the following decisions:

(i) In CDJ 2016 SC 219 (Uttam v. Saubhag Singh and others), the Hon'ble Supreme Court has observed as follows:

"20. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being

no hiatus merely by virtue of the fact there is a sole surviving coparcener. Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe (1988) 2 SCC 126, Sheela Devi v.

Lal Chand, (2006) 8 SCC 581, and Rohit Chauhan v. Surinder Singh (2013) 9 SCC 419, were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration 20 Page 21 of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:-

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship. 21 Page 22

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve

only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

21. Applying the law to the facts of this case, it is clear that on the death of Jagannath Singh in 1973, the joint family property which was ancestral property in the hands of Jagannath Singh and the other coparceners, devolved by succession under Section 8 of the Act. This being the case, the ancestral property ceased to be joint family property on the date of death 22 Page 23 of Jagannath Singh, and the other coparceners and his widow held the property as tenants in common and not as joint tenants. This being the case, on the date of the birth of the appellant in 1977 the said ancestral property, not being joint family property, the suit for partition of such property would not be maintainable. The appeal is consequently dismissed with no order as to costs.

(ii) In 1986 (3) SCC 567 (Commissioner of Wealth Tax, Kanpur and others vs. Chander Sen and others), the Hon'ble Supreme Court has observed as follows:

"22. In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating

two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under section 8 of the Act included widow, mother, daughter of predeceased son etc."

14. The learned counsel appearing for the first respondent/plaintiff has relied upon the following decisions:

(i) In 1983 (3) SCC 376 (Smt. Dipo v. Wassan Singh and others), the Hon'ble Supreme Court has observed as follows:

"Property inherited from paternal ancestors is, 'ancestral property' as regards the male issue of the propositus, but it is his absolute property and not ancestral property as regards other relations. If a person inheriting such property has no son, son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases. In the present case, the last male holder of the property had no male issue and no surviving member of a joint family, be it a descendant or otherwise, who could take the property by survivorship. Thus he held the property as absolute owner as regards the collaterals. According to the prevailing custom of the area, collaterals and not the sister were preferential heirs to ancestral property in the hands of a propositus, while the sister and not the collateral was a preferential heir in regard to non-ancestral property. Therefore, the appellant who is sister of the last male holder was the preferential heir of the entire plaint property described as 'ancestral property'."

(ii) AIR 1967 SC 1153 (Valliammai Achi v. Nagappa Chettiar and another), wherein the Hon'ble Supreme Court at paragraph NO.10, it is observed as follows:

"But even assuming that there was some kind of election by Pallaniappa we cannot see how the nature of the property left by Pallaniappa's father would change merely because Pallaniappa's father made a will giving the residue absolutely to Pallaniappa and Pallaniappa took out probate of the will. The property being joint family property Pallaniappa's father was not entitled to will it away and his making a will would make no difference to the nature of the property when it came into the hands of Pallaniappa. A father cannot turn joint family property into absolute

property of his son by merely making a will, thus depriving sons of the son who might be born thereafter of their right in the joint family property. It is well settled that the share which a co-sharer obtains on partition of ancestral property is ancestral property as regards his male issues. They take an interest in it by birth whether they are in existence at the time of partition or are born subsequently : [see Hindu Law by Mulla, Thirteenth Edition p. 249, para 223 (2) (4)]. If that is so and the character of the ancestral property does not change so far as -sons are concerned even after partition, we fail to see how that character can change merely because the father makes a will by which he gives the residue of the joint family property (after making certain bequests) to the son. A father in a Mitakshara family has a very limited right to make a will and Pallaniappa's father could not make the will disposing of the entire joint family property, though he gave the residue to his son. We are therefore of opinion, that merely because Pallanappa's father made the will and Pallaniappa probably as a dutiful son took out probate and carried out the wishes of his father, the nature of the property could not change and it will be joint family property in the hands of Pallaniappa so far as his male issues are concerned."

(iii) In AIR 1980 Madras 33 (P.Periasami and others. v. Periathambi and others), the Division Bench of this Court has observed as follows:

"17. Mitakshara explains the two terms Apratibandha daya and Sapatibandha daya thus -

"The wealth of the father or of the paternal grandfather becomes the Property of his sons or of his grandsons, in right of their being his sons or his grandsons; and that is an inheritance not liable to obstruction. -But property devolves on parents or uncles, brothers, or the rest, upon the demise of the owner, if there be no male issue; and thus the actual existence of a son, and the survival of the owner are impediments to the succession, and on their ceasing, the Property devolves on the successor in right of his being uncle or brother. This is an inheritance subject to obstruction."

It is undisputed, since it is not disputable, that the father in so far as his own property is concerned, has an unrestricted power to alienate the same either testamentarily or otherwise, the son can project only a right in the nature of expectancy in the fathers self-acquisitions. It is

in the nature of a spes successionis. To adopt with respect the enlightened observations of Lord Macnaghten in Raja Chelikani Venkayamma, Garu v. Raja Chelikani Venkataramanayamma (1902). 29 Ind App 156 (PC). "He is his father's son and if his father does not dispose of it, it will come to him, but is it anything more than a spes. "

The Allahabad High Court in another Full Bench decision reported in Ganesh Prasad v. Hazarilal ILR (1942) All 759, had to consider a similar question. They observed-

"On the death of a Hindu leaving self acquired property the undivided sons succeed to such property to the exclusion of the divided son under the Mitakshara law".

Two of the learned Judges expressed the view that the undivided sons of a Hindu succeed to the self-acquired property of their father by inheritance and not by survivorship. There was, of course, in the very same judgment a contrary view expressed by a learned single Judge on the above question. In fact, one of the Judges of the Allahabad High Court referred to Venkayamma Garu v. Venkataramanayamma (1902) 29 Ind App 156 (PC) and made a pointed reference to the observation -of the Law Lords in that case which reads that 'the members of a joint family who succeed to self-acquired property, take it jointly' and the learned Judge said that this is the same thing as saying that they take the property by survivorship. The observations of Lord Justice Turner in Katamanachiar v. Raja of Sivaganga (1861-6.3) 9 Moo Ind App 539 (PC) that the law of partition shows that as to the separately acquired property of one member of a Hindu family, the other members of the family have neither community of interest nor unity of possession. Though the above observation might not have been quite necessary for the decision in the above case (Katamanachiar's case), yet such observations which are in the nature of valuable propositions, though prima facie obiter dicta in nature, carry great weight. The Full Bench of the Allahabad High Court in Mt. Ramdei v. Mst. Gyarsi ILR (1949) All 160 (FB) was of the view that the self-acquired property of a Hindu father which his sons, who were joint with him, take on his death, was in their hands joint family property and as between the sons and their descendants, it was subject to all the incidents of a coparcenary is a dictum

which we, with great respect, are unable to follow having regard to the contrary view expressed by our court in Vairavan Chettiar v. Srinivasachariar (1921) ILR 44 Mad 499 (FB). With great respect, to the learned Judges, who presided over,,, the case in Mst. Ramdei v. Mst. Gyasri MR (1949) All 160 (FB), even the questions in Mitakshara referred to by them, do not fully support the conclusion. Dr. Sen who pioneered the said view accepted by the learned Judges in the Full Bench decision of Mst. Ramdei v. Mst. Gyarsi ILR (1949) All 160 is constrained to observe thus:

"My conclusion, then, is that the right which a son acquires by birth in his father's property is not limited to ancestral property alone, but extends over the entire property of the father, although the extent of the right is not everywhere the same but depends on the nature of the property".

The last portion of the opinion of Dr. Sen underlined by us creates a doubt whether the principle propounded is of universal application. Even the learned author Mayne touching on this " aspect is rather vacillating. He would say -

"The son's right by birth does not, therefore, extend to his enforcing a partition or interdicting an alienation of his father's property. The right, however, remains a real birth right, though dormant, and enables the son to succeed to the property by survivorship as Aprathibandha Daya".

With utmost respect to the learned author, we are still at pains to logically adopt the same for the reason that the son has no justiciable right over the self acquired property of his father, when he is alive to seek for a share therein or interdict the father from in any way dealing with it to his prejudice. So long as such a right of the son revolves round an air of expectancy rather than reality, we sustain the view that the undivided son's right over the self-acquired proper of his father can only be as Saprathibandha Daya and not unobstructed heritage or Aprathibandha Daya, as Aprathibandha Daya or unobstructed heritage is traceable to an existing right which in turn is relatable to the right by birth in the Hindu family. The very fact that such a right is dormant-during the

lifetime of the father, completely buttresses the same and ultimately the undivided son or sons can only inherit such self acquired properties of their father as tenants in common with no rights of survivorship inter se as between them. The principle of joint tenancy with rights inter se, survivorship, is unknown to Hindu Law except in the case of joint property of an undivided family governed by Mitakshara Law which under that law passes by survivorship. (Vide Jogeswar Narain Deo v. Ranichandra Dutt (1896) ILR 23 Cal 670 (PC), Mt. Bahurani v. Rajendra Baksh AIR 1933 PC 72 and Bhagwandayal v. Reoti Devi). It is no doubt true that if a father dies leaving separate property and also leaves sons some of whom are divided from him and some remained joint with him, the undivided sons would exclude the divided sons, in the matter of taking the self-acquired property of the father (see Nana Tawker v. Ramchandra Tawker (1909) ILP, 32 Mad 377, Narasimharao v. Narasimham. (1932) ILR 55 Mad 577: 62 Mad Li 436, Fqkirappa v. Yellappa (1898) ILR 22 Bom 101, Ganesh Prasad v. Hazarilal ILR (1942) All 759 (FB)'. But that does not necessarily mean that the undivided sons take the self-acquired Property of their father as joint tenants. A divided son severs his connection with the family and particularly, his father for all purposes. He takes his share in the ancestral property, if any, and is not mindful of the expected share of his in the self-acquisitions of the father. At the time when he left the family and divided himself he had only a right of expectancy in his father's absolute properties. He Voluntarily cut off that knot of expectancy and was prepared to surrender it, even though it was not in reality a ripe right at that time. This is the basic truth behind the accepted principle that a divided son cannot claim any right in the self-acquired property of the father along with the undivided brothers of his. This is understandable because no man can help one who does not want to help him self. The divided son cuts himself off from the family and he cannot re-enter the same merely for purposes of aggrandizing himself to the prejudice of those undivided sons who knit themselves with the father in filial bondage. We are unable to agree with Mr. M. R. Narayanaswami that as continuance in the coparcenary is the sine qua non to enable the undivided I son to take the self acquired property of the father to the exclusion of the divided son, they should

necessarily take it as coparceners and not as tenants-in-common. We have already categorically expressed that the law of succession amongst Hindus follows the nature of the particular property in question and the status of the person is immaterial, it, therefore, follows that the argument of Mr. Narayanaswami that it is only their status at the time of the father's death that would decide the character of the estate is not acceptable to us. There is nothing inconsistent in our view to say that a divided son is excluded in the matter of the share of the self acquired property of the father, whereas the undivided sons take the property not as coparceners inter se with rights of survivorship but only as tenants in common. No doubt, Varadachariar J. in Venkateswara Pattar v. Mankayammal (1935) 69 Mad LJ 410, speaking for a Division Bench took a view that according to the scheme of Mitakshara Law, the succession of sons even in respect of their father's self-acquired properties is by survivorship. Though this decision was rendered 14 years after the decision of a Full Bench of our court in Vairavan Chettiar v. Srinivasachariar (1921) ILR 44 Mad 499 (FB), yet this was not referred to. But on the other hand, A. S. Panchapakesa Ayyar J. speaking for the Division Bench in Ranganatha v. Kumarasami, adopted the dictum in the Full Bench in Vairavan Chettiar v. Srinivasachariar (1921) MR, 44 Mad 499 (FB) and observed-

"This Full Bench decision was delivered in 1921, and has never been dissented from by any decision of this court or any other Court till now much less overruled by the Supreme Court or the Privy Council. It has stood the test of 37 years and we are satisfied that it does not deserve to be referred to a fuller Bench especially as we have absolutely no doubt regarding its correctness".

What is, however, urged before us is that the decision of the Full Bench of the Allahabad High Court in Mst. Ramdei v. Mst. Gyarsi ILR (1949) All 160 followed the ancient text. As a matter of fact, Kaul J. while speaking for the Full Bench in the Allahabad High Court said -

"that the proposition that the sons of a Hindu though joint with him, acquired no interest in his self-acquired property by birth is opposed to express text of the Mitakshara and other

Hindu books".

Our answer to this is found in the forcible observations of Rajamannar C. J. in Lakshminarasamma v. Ramabrahman ILR (1950) Mad 1084, 1089 -

"'However deplorable this may be we, are at a stage when we are not free to go back to the law as enunciated and discussed in ancient books of Hindu Law, untrammelled by judicial decisions. There can be no doubt that as between the original text and a decision of the Judicial Committee we cannot choose to follow the former and refuse to be bound by the latter".

15. From a conjoint reading of the decisions referred to supra, it is made clear that if succession is opened either under section 8 or under section 6 of Hindu Succession Act, 1956, the position of law urged on the side of the appellant/3rd defendant is correct. But, in the instant case, before filing the suit, succession has not opened.

16. As adverted to earlier, the plaintiff has got birth on 23.2.2000. Further in Ex.A.1 and Ex.B.3 it has been clinchingly stated to the effect that suit item Nos.1 and 2 are ancestral properties. Since suit item Nos.1 and 2 are ancestral properties and since the third defendant, who is none other than the father of the plaintiff is also one of the sons of the first defendant, the defendants 1 to 3 and the present plaintiff are nothing but members of joint family.

17. The entire plaint has proceeded on the basis that by virtue of birth, the plaintiff has become a joint family member. Since the suit item Nos.1 and 2 are nothing but joint family properties, as stated earlier, by virtue of birth, the plaintiff is having legal right of partition.

18. The entire argument put forth on the side of the appellant/third defendant is based upon the provisions of Sections 6 and 8 of the Hindu Succession Act, 1956. As pointed out earlier, in the instant case, the question of succession either under section 8 or under section 6, does not arise. Since the plaintiff has filed the present suit by virtue of birth as one of the joint family members, since the suit item Nos.1 and 2 are joint family properties, the argument put forth on the side of the appellant/third defendant is not legally and factually correct and the same cannot be accepted.

19. The trial court, after considering the vital legal points raised on either side, has rightly found that the plaintiff is having right of partition and to that extent, passed the preliminary decree in question. In view of the discussions made earlier, this Court has not found any force in the contentions put forth on the side of the

appellant/third defendant and altogether the present appeal suit deserves to be dismissed.

In fine, this appeal suit is dismissed without cost. The judgment and decree dated 10th March, 2008 passed in Original Suit No.5 of 2005 by the Additional District and Sessions Court, Fast Track No.V, Coimbatore at Tiruppur are confirmed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court No.V, Coimbatore at Tiruppur.
 2. The Section Officer,
V.R.Section,
High Court, Madras.
- +1 cc to M/s.A.Thiagarajan, advocate,sr.43162
+1 cc to M/s.S.Gunalan, advocate,sr.43154
+1 cc to M/s.R.Marudhachalamurthy, advocate,sr.43417
+1 cc to M/s.K.goviganesan, advocate,sr.43256.

mp(co)
krd 19/8

Appeal Suit No.732 of 2008

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