



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2016

Coram:

THE HONOURABLE Ms.JUSTICE R.MALA

S.A(MD)Nos.768 and 525 of 2015

and

M.P(MD)No.2 of 2015

1.S.A(MD)No.768 of 2015:-

1.Dhamayanthi
2.Dhayalu
3.Indiragandhi
4.Mutharasan .. Appellants/Appellants/Defendants 1 to 4

vs.

1.Kasiammal .. 1st Respondent/1st Respondent/Plaintiff
2.The Sub-Registrar,
Kumbakonam Town and Munsif.
3.The District Registrar,
Kumbakonam Town and Munsif.
4.Government of Tamil Nadu,
Rep. By its District Collector,
Collectorate, Court Road,
Thanjavur Town and Munsif.
.. Respondents 2 to 4/Respondents 2 to 4/
Defendants 5 to 7

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree made in A.S.No.72 of 2012, dated 11.11.2014 on the file of the II Additional District and Sessions Court, Thanjavur, modifying the Judgment and Decree made in O.S.No.115 of 2004, dated 23.08.2012 on the file of the Principal Sub Court, Kumbakonam.

For Appellants : Mr.P.Arun Jayatram
For R - 1 : Mr.K.Sekar

2.S.A(MD)No.525 of 2015:-

<https://hcservices.courts.gov.in/hcservices/>

.. Appellant/Respondent/Plaintiff

vs.



- 1.Dhamayanthi
- 2.Dhayalu
- 3.Indiragandhi
- 4.Mutharasan

.. Respondents 1 to 4/Appellants/
Defendants 1 to 4

WEB COPY

- 5.The Sub-Registrar,
Kumbakonam,
Kumbakonam Town.

- 6.The District Registrar,
Kumbakonam,
Kumbakonam Town.

- 7.State of Tamil Nadu,
Rep. By District Collector,
Collectorate, Court Road,
Thanjavur Town.

.. Respondents 5 to 7/Respondents 5 to 7/
Defendants 5 to 7

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree made in A.S.No.72 of 2012, dated 11.11.2014 on the file of the II Additional District and Sessions Court, Thanjavur, partly modifying the Judgment and Decree made in O.S.No.115 of 2004, dated 23.08.2012 on the file of the Principal Sub Court, Kumbakonam.

For Appellant	: Mr.K.Sekar
For RR 1 to 4	: Mr.P.Arun Jayatram

COMMON JUDGMENT

S.A(MD)No.768 of 2015 has been filed by the defendants 1 to 4 and S.A.No.525 of 2015 has been filed by the plaintiff and both the appeals have been arisen out of the Decree and Judgment passed in A.S.No.72 of 2012, dated 11.11.2014 by the II Additional District and Sessions Court, Thanjavur, by modifying the Decree and Judgment made in O.S.No.115 of 2004, dated 23.08.2012 by the Principal Sub Court, Kumbakonam.

2. Already S.A(MD)No.525 of 2015 has been admitted and the following substantial questions of law have been settled for consideration:-

"1. Whether the first Appellate Court is correct in ignoring the proviso of Section 6 of the Hindu Succession Act, 1956?

<https://hcservices.ecourts.gov.in/hcservices/>

2. Whether the first Appellate Court is correct



by allotting only 1/4th share in favour of the plaintiff by following the explanation given in Section 6 of the Hindu Succession Act, 1956?"

3. So, both the appeals were heard together since the same substantial questions of law have also arisen in S.A(M)No.768 of 2015.

4. The appellant in S.A(MD)No.525 of 2015 has filed a suit for partition and separate possession of 1/2 share of her father's properties stating that her father has got the suit properties by way of partition between himself and his brother Natesan. Her father died intestate on 09.02.1983 leaving behind herself and his brother Gurusamy. The said Gurusamy also died intestate leaving behind defendants 1 to 4 on 01.04.2000, since she is entitled to half share in the suit properties. In spite of repeated demand, the defendants 1 to 4 are not willing to give her 1/2 share in the properties. Hence, she has constrained to file a suit for partition and separate possession of 1/2 share of her father's properties.

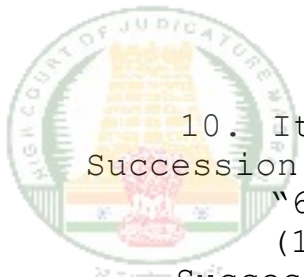
5. A defence was raised in the written statement, stating that the properties are ancestral properties. The plaintiff/appellant herein in S.A(MD)No.525 of 2015 has got married in the year 1964. Her father died on 09.02.1983. She is not a coparcener and she is not entitled to get any share in the properties. They have also raised the plea of non-joinder of necessary parties.

6. The trial Court has granted preliminary decree of half share in the suit properties. Against which, the defendants 1 to 4 preferred an appeal in A.S.No.72 of 2012, wherein, the first Appellate Court has held that the plaintiff/appellant in S.A(MD)No.525 of 2015 is not a coparcener and she is only entitled to get 1/4th share in the properties and granted preliminary decree for partition of 1/4th share in respect of all the items of the properties. Against which, the plaintiff has preferred a Second Appeal in S.A(MD)No.525 of 2015 and the defendants 1 to 4 have preferred a Second Appeal in S.A(MD)No.768 of 2015.

7. Heard both sides.

8. It is an admitted fact that as per the pleadings, the suit properties were got by the plaintiff's father in S.A(MD)No.525 of 2015 under a partition between himself and his brother Natesan. Her father died on 09.02.1983. But, she got married in the year 1964.

9. The only point that has to be decided is whether the plaintiff in S.A(MD)No.525 of 2015 is a co-parcener or not, as enumerated in Section 6 of the Hindu Succession Act.



10. It is appropriate to incorporate Section 6 of the Hindu Succession Act:-

"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.

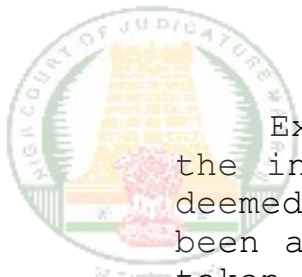
2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed 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 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 recognise 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

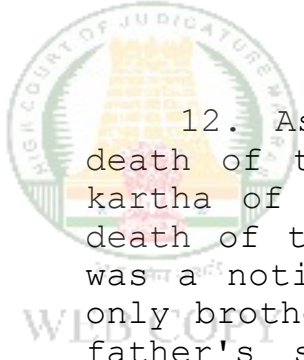
b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been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

11. The amendment Act came into existence on 20th December, 2004, but succession opens on the date of death of the plaintiff's father-Chinnathambi on 09.02.1983 and that the amendment Act has not given any retrospective effect on the date of death of the father of the plaintiff, and when succession open, the plaintiff is not a co-parcener. Hence, she is not entitled to share as a co-



12. As per the Hindu Succession Act, 1956, on the date of death of the father, there was a notional partition between the kartha of the family and other co-parceners. So, on the date of death of the plaintiff's father-Chinnathambi on 09.02.1983, there was a notional partition between her father-Chinnathambi and his only brother Gurusamy, each entitled to half share. In respect of father's share, the plaintiff is entitled to her half share. Hence, she is entitled only half share in half share, namely 1/4th share, in the suit properties. Accordingly, the first Appellate Court has granted preliminary decree of partition of 1/4th share in the suit properties. So, the Decree and Judgment of the first Appellate Court does not warrant any interference and the substantial questions of law 1 and 2 are answered accordingly.

13. Accordingly, both the Second Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1.The II Additional District and Sessions Court,
Thanjavur.

2.The Principal Sub Court,
Kumbakonam.

+1 CC to Mr.P.ARUN JAYATRAM, Advocate, SR No.29243

+1 CC to Mr.K.SEKAR, Advocate, SR No.28816

Copy to:

The Section Officer,
V.R.Section,

Madurai Bench of Madras High Court, Madurai.

S.A(MD)Nos.768 & 525 of 2015 and

M.P(MD)No.1 of 2015

07.06.2016

ps

SH/DB:27.07.2016:6P/6C