

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH**

SECOND APPEAL No.322 OF 2011

Between:

Daka Audemma

... Appellant.

And

Inaganti Venkateswara Reddy and 4 others.

... Respondents.

JUDGMENT PRONOUNCED ON 31.08.2016

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

- 
1. Whether Reporters of Local newspapers may be allowed to see the Judgments? -No-
 2. Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

*** THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ SECOND APPEAL No.322 of 2011

% 31.08.2016

Daka Audemma.

....Appellant

v.

\$ Inaganti Venkateswara Reddy and 4 others.

.... Respondents

! Counsel for the Appellant: Sri D.Krishna Murthy.

Counsel for Respondents: Sri Y.V.Ravi Prasad.

<Gist :

>Head Note:

? Cases referred:

1. AIR 1986 Supreme Court 1753
2. AIR 2009 SC 2649
3. 2015 (4) ALT 273 (D.B.)
4. 2015 (5) ALT 383 (D.B.)
5. (2006) 8 SCC 581
6. (2016) 2 SCC 36
7. AIR 2001 SC page 1203
8. AIR 2000 SCW page 2037
9. 1991(4) SCC page 139
10. (2011) 2 SCC page 132
11. AIR 1960 SC 936
12. AIR 1964 SC page 1511
13. AIR 1989 SC PAGE 1247
14. AIR 1970 SC page 789
15. AIR 1946 PC 173
16. ILR 1936 Lahore 124
17. AIR 1966 SC 1879
18. 2014(5) Bom CR 481
19. AIR 2012 BOMBAY 101
20. 2012 (1) ALT 29 (SC) = 2012(1) SCJ 272
21. 1995 (1) ALT 814
22. AIR 1955 Madras 705
23. 2014 (5) ALT 473

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO.322 OF 2011

JUDGMENT:

The plaintiff in O.S.No.175 of 2003 on the file of the Principal Senior Civil Judge, Ongole, who is the appellant in A.S.No.34 of 2009 on the file of the II Additional District Judge (Fast Track Court) Ongole preferred this appeal under Section 100 of Code of Civil Procedure (for short, hereinafter, referred to as "CPC") challenging the dismissal of the suit by the Trial Court and affirmed by the 1st appellate Court.

For the sake of convenience, the parties to the appeal will be referred hereinafter throughout the judgment as arrayed before the trial Court.

Plaintiff filed the suit for partition of Plaint A & B schedule property into three equal shares and to allot 1/3rd share to the plaintiff declaring that the sale deed dated 04.12.2002 executed by the 1st defendant in favour of the 2nd defendant is nominal, collusive, sham and not binding on the plaintiff's 1/3rd share in the Plaint B schedule property and for future profits alleging that the plaintiff and 3rd defendants are daughters of the 1st defendant and Setharavamma. Plaintiff's elder sister is the wife of 2nd defendant and her marriage was performed long prior to 1985. Plaintiff's marriage was performed on 15.11.1985 with Daka Chimpiri Reddy of Rap village, whereas the marriage of the 3rd daughter was performed in the year 1989. Since the marriages of the plaintiff and 3rd defendant have taken place

subsequent to the advent of A.P.Act No.13/1986 both of them are entitled to claim 1/3rd share in the plaint schedule property, which are fully described in the plaint. The 1st defendant being the kartha and manager of the joint family is in possession and enjoyment of the same except the property covered by the sale deed referred supra on account of sale.

The family of the 1st defendant own and possessed lands, tobacco barns, residential house and vacant site i.e. schedule property. The entire property is in continuous possession and enjoyment of the 1st defendant. The plaintiff and 3rd defendant being the co-sharers are deemed to be in joint and constructive possession of joint family property with the 1st defendant.

Taking advantage of the fact that the 2nd defendant and his wife Venkata Subbamma are living in the house of 1st defendant, they had prevailed upon the 1st defendant in bringing into existence a registered sale deed dated 04.12.2002 in favour of 2nd defendant conveying B schedule property as if the property was sold to 2nd defendant. The said sale deed was created to defeat and delay the claim of the plaintiff and it is against the interest of the plaintiff in the schedule property. The plaintiff having come to know about the factum of execution of registered sale deed, she got issued a legal notice to the 4th defendant not to mutate the name of the 2nd defendant in the revenue records and not to issue Pattadar Passbooks. Plaint A and B schedule property is

fertile land and the 1st defendant used to raise varieties of crops realising huge income. Since the 1st defendant did not cooperate for partition, the plaintiff got issued a legal notice dated 14.12.2002 demanding partition of plaintiff schedule property into 3 equal shares and to allot one such share to the plaintiff, but the defendant Nos.1 and 2 got issued a reply with false averments denying the right of the plaintiff.

It is specifically contended that the property devolved upon the 1st defendant is the ancestral property and other items of the property was acquired with the income derived from agricultural land. The plaintiff A and B schedule property is liable for partition into three equal shares and the plaintiff is entitled to one such share. The sale deed dated 04.12.2002 executed by the 1st defendant in favour of 2nd defendant is sham and nominal, hence the plaintiff sought to declare the same as null and void and divide the B schedule property along with A schedule property into three equal shares. Since the 1st defendant is in possession and enjoyment of the property deriving huge income from agriculture is liable to pay future profits towards share of the plaintiff. Hence, the suit.

The 1st defendant resisted the claim on various grounds by filing written statement while denying the nature of property, admitted the relationship between the plaintiff and 1st defendant. He further contended that the marriage of plaintiff was not performed on 15.11.1985, but it was much

earlier to 1982. Therefore, the plaintiff is not entitled to claim benefits under Hindu Succession (Andhra Pradesh) Amendment Act, 13 of 1986 (for short, hereinafter, referred to as “the Act 13 of 1986”).

The schedule property is the self acquired property of the 1st defendant, the plaintiff or the 3rd defendant are not entitled to claim any share in the property.

The 2nd defendant is no other than the brother-in-law of the 1st defendant, who married Venkata Subbamma, living with the 1st defendant from the beginning and extending necessary help in the agricultural operations and he own Ac.2.00 cents and cultivating Ac.3.00 cents on lease. With the income derived from the agriculture, 1st defendant purchased Ac.2.16 cents from Inaganti Audemma. The 1st defendant used to earn sufficient income from the property, which he has spent for improvement of the property. In fact, he purchased the property at cheaper rate, but improved by his hard labour. Therefore, the property is exclusive property of the 1st defendant and the plaintiff is not entitled to claim any share therein. For development of the land and to perform the marriage to 3rd daughter, the 1st defendant borrowed Rs.70,000/- and to discharge those liabilities, the 1st defendant sold the B schedule property to the 2nd defendant. Thus, the sale transaction in favour of 2nd defendant is true, valid, genuine and not intended to defeat the claim of the plaintiff. Since the plaintiff is not a

coparcener, she is not entitled to claim any share in the plaint A and B schedule property.

The plaintiff resorted to vexatious litigation and she did not visit the 1st defendant while he was undergoing treatment as inpatient in hospital. But the plaintiff and her husband used to visit the hospital and pester him to convey his property to the plaintiff, for which the 1st defendant did not agree and refused to settle any property in their favour or in favour of Venkata Subbamma, as they have no right. The 1st defendant denied his possession over the B schedule property while contending that it is in exclusive possession of 2nd defendant as he purchased the same on 04.12.2002.

The specific contention of the 1st defendant is that the marriage of the plaintiff was performed prior to 1982. She blessed with a female child at Machavaram in the house of the 1st defendant, but within short time the female child lost her breath and later she was blessed with a son, who is named as Srinivasa Reddy and studying Intermediate at Ongole. Therefore, the allegation that the marriage of the plaintiff took place on 15.11.1985 is false and it is invented to claim benefit under the Act 13 of 1986. Consequently, she is not entitled to claim relief of partition and other reliefs stated supra.

The 1st defendant did not possess any coparcenary property, he is in possession of property of Ac.0.59 ½ cts which devolved upon him from his father and allotted to his

share in the partition between himself and his brother. Therefore, the self acquired property of the father of the 1st defendant, which devolved upon him will become the self acquired property of the 1st defendant and the same is not liable for partition. Since the acquisition of right in the property is not by survivorship, the plaintiff is not entitled to claim any right in the property.

The 2nd defendant filed written statement while admitting purchase of B schedule property under the registered sale deed dated 04.12.2002 and contended that he is continuously living with the 1st defendant from the age of 12 years, virtually he was taken into the family of 1st defendant. He own Ac.2.00 cents of land and obtained another Ac.3.00 cents of land on lease. The 2nd defendant has been cultivating his own land besides the land of the 1st defendant. With the income derived from agriculture, he purchased B schedule property from the 1st defendant under a registered sale deed. He almost reiterated the contentions raised by the 1st defendant in his written statement and totally supported the pleas raised by the 1st defendant. Therefore, I need not repeat the specific contentions raised by the 2nd defendant.

Based on the above pleadings, the trial court framed the following four issues for trial:

(1) Whether the plaintiff's marriage took place on 15.11.1985?

- (2) Whether plaint schedule properties are self-acquired properties of D1?**
- (3) Whether the plaintiff is entitled for partition and separate possession?**
- (4) To what relief?**

During trial, on behalf of the plaintiff P.Ws.1 to 4 were examined and marked Exs.A.1 to A.6. On behalf of the defendants, D.Ws.1 to 10 were examined and marked Exs.B.1 to B.11. Husband of the plaintiff was examined as Court Witness No.1 (C.W.1). Ex.C.1 was marked, through D.W.9 Ex.X.1 was also marked.

Upon hearing argument of both the counsel, the trial Court based on the principle laid down in “**Commissioner of Wealth Tax, Kanpur etc., v. Chander Sen and others**”¹ concluded that the property devolved upon the 1st defendant from his father is deemed to be self acquired property. The plaintiff, who is claiming right as a coparcener, is not entitled to claim any share in the property since no coparcenary property was available. The trial Court further held that as the marriage of the plaintiff took place long prior to commencement of Act 13 of 1986, she is not entitled to claim any right as a coparcener.

Aggrieved by the decree and judgment of the trial Court, the plaintiff before the trial Court preferred the Appeal Suit No.34 of 2009 on the file of II Additional District Judge (Fast

¹ AIR 1986 Supreme Court 1753

Track Court) Ongole, which ended in dismissal by judgment dated 21.12.2010 affirming the findings recorded by the trial Court. Thus, both the trial Court and the appellate Court recorded concurrent findings as to the nature of the property and right of the plaintiff to claim share in the property and declined to pass a decree in her favour.

The plaintiff being unsuccessful throughout, both in trial Court and appellate court, preferred the present Second Appeal on various grounds pointing out the finding recorded by the trial Court as to the nature of the property is not in accordance with law, since the property devolved upon the 1st defendant from his father is deemed to be the ancestral property and the same is liable for partition and the plaintiff is entitled to 1/3rd share as she was unmarried by the date of commencement of Act 13 of 1986, but the trial Court and the appellate Court did not consider the nature of schedule property and acquisition of various items of the property with the income derived from the ancestral property. It is also contended that even otherwise the plaintiff is entitled to claim share by virtue of Central Amendment to Hindu Succession Act i.e. Act 39 of 2005 irrespective of her marriage.

The following are the substantial questions formulated by this Court at the time of hearing.

- (1) Whether the plaintiff (appellant herein) is entitled to claim partition in view of amendment to Section 6 of

Hindu Succession Act (amended by Central Act 39 of 2005) though the suit was filed long prior to commencement of Central Act 39 of 2005?

- (2) Whether the self acquired property of father of the 1st defendant devolved upon him and his brother and allotted to his share consequent upon his father's death is the self acquired property of the 1st defendant, if not whether the plaintiff claiming to be the coparcener of Hindu undivided coparcenary entitled to 1/3rd share?
- (3) Whether the sale deed dated 04.12.2002 is sham, nominal and not binding on the defendant's share, if so, whether the transaction be declared as null and void?

P O I N T No.1:

The plaintiff is the daughter of the 1st defendant. The property of Ac.01.19 cents devolved upon the 1st defendant and his brother after the demise of their father, and thereafter, a partition took place between them and Ac.0.59 ½ cents was allotted to the share of 1st defendant. Plaintiff taking advantage of the Act 13 of 1986 (amendment to Hindu Succession Act, 1956) filed the suit claiming share in the property, which devolved upon the 1st defendant allotted to his share in the partition between himself and his brother. But the trial Court and the appellate Court concluded that the marriage of the plaintiff was performed much prior to

commencement of Act 13 of 1986 and dismissed her claim for partition of schedule property.

During hearing Sri D.Krishna Murthy, learned counsel for the appellant, mainly contended that even if the plaintiff is disentitled to claim partition in terms of the Act 13 of 1986, she is entitled to claim share being a coparcener in terms of Hindu Succession Act, 1956 amended by Central Act 39 of 2005 and prayed to pass a decree for partition of schedule property in favour of the plaintiff since the plaintiff is one of the coparcener entitled to claim share in the ancestral property i.e. coparcenary property devolved upon the 1st defendant from his father along with his brother and allotted to his share. In support of his contentions, he placed reliance on a judgment of the Apex Court in “**G.Sekar v. Geetha and others**”², another judgment rendered in “**M.Sujatha and others v. M.Surender Reddy and others**”³ and in “**B.Chandrakala v. A.Anuradha and another**”⁴.

Sri Y.V.Ravi Prasad, learned counsel for the respondents, would contend that the provisions of Hindu Succession Act, 1956 amended by Central Act 39 of 2005 has no retrospective effect and it has only prospective effect, thereby the plaintiff is not entitled to claim benefits of Act 39 of 2005 and he placed reliance on a judgment of the Apex Court rendered in “**Sheela Devi and others v. Lal Chand**

² AIR 2009 SC 2649

³ 2015 (4) ALT 273 (D.B.)

⁴ 2015 (5) ALT 383 (D.B.)

and another*⁵** and “Prakash and others v. Phulavati and others*⁶**”

Admittedly, plaint ‘A’ schedule property belongs to father of the 1st defendant purchased under Ex.B.5 sale deed dated 25.10.1945, it was his self acquired property, whereas the other items of ‘B’ schedule were purchased by 1st defendant with his self earnings. The contention of the plaintiff is that the ‘B’ schedule property was purchased with the ancestral nucleus, but whereas the 1st defendant contended that the income from ‘A’ schedule property is not sufficient to acquire various items of ‘B’ schedule property, thereby ‘B’ schedule property would not form part of coparcenary property. When the plaintiff is claiming that ‘B’ schedule property was acquired by 1st defendant with the income derived from Ac.0.59 ½ cents i.e. ‘A’ schedule property, which devolved upon 1st defendant and his brother from their father, allotted to his share, it is for her to establish that 1st defendant possessed joint family property and with the income derived thereon, he purchased the ‘B’ schedule property; in the absence of proof, it is difficult to hold that the ‘B’ schedule property is part and parcel of coparcenary property. In fact, father of 1st defendant purchased only Ac.01.19 cents under Ex.B.5 sale deed dated 25.10.1945 but not Ac.05.00 cts., as contended, both the trial

⁵ (2006) 8 SCC 581

⁶ (2016) 2 SCC 36

Court and the appellate Court confirmed the extent of Ac.01.19 cts covered by Ex.B.5.

Undisputedly, property covered by Ex.B.5 was acquired by the father of 1st defendant, who died long back and the same was devolved upon the 1st defendant and his brother. The 1st defendant contended that when the property is devolved upon him under Section 8 of Hindu Succession Act, the same can be treated as separate property and not coparcenary by the date of death of father of 1st defendant, grandfather of plaintiff. The law which governs the succession among Hindu is the un-amended Hindu Succession Act. According to which, the plaintiff was not a coparcener and thereby not entitled to claim any share in the 'A' schedule property i.e. Ac.0.59 ½ cts., since she was not coparcener prior to Act 13 of 1986 subject to other requirements. She became a coparcener immediately after A.P. Act 13 of 1986 came into force subject to the conditions laid down under Section 29-A of the Hindu Succession Act. It is apposite to extract Section 29-A of the Hindu Succession Act for better appreciation of rival contention of both parties, which runs as follows:

“Section 29-A. Equal rights to daughter in coparcenary property :- Notwithstanding anything contained in Section 6 of this Act:

(i) in a Joint Hindu family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same

rights in the coparcenary property as she would have had if she had been a son, inclusive of the rights to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son:

Provided that the share which a predeceased son or predeceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such predeceased son or of such predeceased daughter;

Provided further that the share allottable to the predeceased child of a predeceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the predeceased son or of the pre-deceased daughter as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) 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 will or other testamentary disposition.

(iv) Nothing in clause (ii) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986. “

One of the requirements to claim share by a daughter of Hindu, who became coparcener after passing of the Act, is that her marriage must have taken place after the commencement of amended Hindu Succession Act. In the present case, the marriage of the plaintiff has taken place prior to the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act 13 of 1986. Hence she is not

entitled to claim right in the property as a coparcener. Both the trial Court and the appellate Court recorded a concurrent finding that the marriage of the plaintiff had taken place much prior to the date fixed under Sub-Section IV of Section 29-A of the Act 13 of 1986. Therefore, the finding recorded by the trial Court, affirmed by the appellate Court cannot be disturbed while exercising power under Section 100 of CPC as it is limited to substantial question of law. If the date of marriage of the plaintiff as held by both the trial Court and the appellate Court is accepted, she is not entitled to claim benefit under Section 29-A of the amended Act 13 of 1986, but taking advantage of subsequent Central Amendment to Hindu Succession Act i.e. Act 39 of 2005, she is contended that she is entitled to a share in the coparcenary property.

By the date of devolution of property on 1st defendant, the plaintiff was not a coparcener. But by virtue of amended Act 13 of 1986 she became entitled to right subject to satisfying the conditions laid down in Section 29-A of the Act. To claim share in the coparcenary property, the nature of property held by 1st defendant is in dispute. At this stage, it is not relevant to decide the nature of property since it is covered by 2nd substantial question of law.

Assuming for a moment, that the property devolved upon 1st defendant from his father is a coparcenary property i.e. 'A' schedule property i.e. Ac.0.59 ½ cts, still she is not entitled to claim benefit under Section 29-A of the amended

Act 13 of 1986, in view of Sub-Section IV of Section 29-A of the Act. Therefore, the trial Court and the appellate Court rightly rejected her claim as per A.P.Act 13 of 1986.

Turning around, the plaintiff started claiming right by virtue of Section 6 of Central Amendment to Hindu Succession Act i.e. Act 39 of 2005 and it was never her case in the plaint that she is entitled to claim benefit under Central Amendment to Hindu Succession Act i.e. Act 39 of 2005, but consistently pleaded that she became a coparcener in view of Act 13 of 1986. Suddenly, plaintiff changed her version during hearing of second appeal before this Court. In those circumstances, it is the duty of this Court to decide what is the exact date of opening of succession? According to 1st defendant and plaintiff, the father of the 1st defendant and grandfather died long ago and immediately the property was devolved upon the 1st defendant and his brother and they partitioned, in the said partition Ac.0.59 ½ cts, was allotted to 1st defendant i.e. 'A' schedule. Therefore, the day when the death of grandfather of plaintiff took place is the date when succession opened and from that day the plaintiff became coparcener. Even otherwise, she is entitled to claim share as a coparcener on the date of commencement of Amended Act 13 of 1986 subject to satisfying the requirements laid down in Section 29-A of the Act, as such on the day when the Act came into force, she is entitled to claim partition of property subject to proof that the property is a coparcenary property.

Therefore, succession opened on the date of commencement of the amended Act 13 of 1986. In such case, the law prevailing on the date of opening of succession alone is applicable and Central Amendment to Hindu Succession Act i.e. Act 39 of 2005 cannot be given retrospective effect to claim right in the schedule property as coparcener.

One of the contentions raised, during hearing the appeal, by the learned counsel for the plaintiff is that if for any reason the Court holds that the plaintiff is not entitled to claim share since the plaintiff failed to establish that the suit schedule property is the self acquired property of 1st defendant, is entitled to claim benefit under Section 6 of Hindu Succession Act (amended by Central Act 39 of 2005) and she is entitled to claim share as coparcener. In support of his contention, he placed reliance on a Judgment of this Court in **M. Sujatha's** case referred supra. By applying the principle laid down in **M. Sujatha's** case referred above, requested this court to pass a decree for partition of schedule property as Section 23 of Hindu Succession Act, 1956 was repealed, entitling the daughter to claim share even in the property removing the disability on daughter.

Per contra, learned counsel for the defendants, contended that the Judgment in **M. Sujatha's** case is totally in conflict with the Judgment of Coordinate Bench in **B. Chandrakala's** case referred supra, which was decided earlier

in point of time and the subsequent Coordinate Bench came to a different conclusion than the law declared by the earlier Coordinate Bench. The option left open to the subsequent Coordinate Bench is to refer the matter to the Full Bench, but instead of resorting to such procedure, the Division Bench in **M. Sujatha's** case referred supra came to a different conclusion holding that Section 6 of Hindu Succession Act (amended by Central Act 39 of 2005) is retroactive. Therefore, the subsequent Judgment is not applicable to the present facts of the case as Section 6 of Hindu Succession Act (amended by Central Act 39 of 2005) has no retrospective effect, but it has prospective effect, placed reliance on a Judgment in **G. Sekar's** case and **B. Chandrakala's** case referred supra.

He further contended that the decision in **M. Sujatha's** case was an *ex parte* judgment as the case was decided in the absence of the respondents in the said appeal and none raised such contention about retroactive effect of Section 6 of Hindu Succession Act (amended by Central Act 39 of 2005), as such the judgment of the Division Bench in **M. Sujatha's** case is **sub silentio** and placed reliance on judgments reported in "**M/S. A-One Granites V. State Of U.P. and others⁷**", "**Arnit Das V. State Of Bihar⁸**", "**State of U.P. and another Versus Synthetics and**

⁷ AIR 2001 SC page 1203

⁸ AIR 2000 SCW page 2037

Chemicals Ltd⁹, **“Shanker Raju vs Union Of India¹⁰”**, in support of his contention.

In view of rival contentions, it is for this Court to decide whether the amended Section 6 of Hindu Succession Act is retroactive or retrospective in operation. The Legislation enacted by the Central Government amending Section 6 of Hindu Succession Act is declaratory in nature and it is dealing with a substantive, vested rights governed by Hindu Law. In other words, it is an amendment of a Statute regulating the succession among Hindus. No doubt, Section 6 of Hindu Succession Act was amended with a view to remove disabilities of women to succeed the estate of the deceased father in the ancestral property and to elevate the status of women to higher pedestal so as to claim equal share on par with a son based on gender justice. Therefore any provision amended subsequent to the Act come into force which is declaratory in nature has to be construed based on the language used in the provision. The ordinary principles of interpretation of any statute is that regarding its applicability either prospectively or retrospectively depends upon the language used in the amended provision. As a general rule, a statute is deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a

⁹ 1991(4) SCC page 139

¹⁰ (2011) 2 SCC page 132

new disability in respect of transactions or considerations already passed.

But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing or that a prospective benefit is in certain cases to be measured by or depends on antecedent facts. (***vide Construction of Deeds and Statutes by Odgers 5th edition page 281***)

The principles that have to be applied for interpretation of statutory provisions of this nature are well-established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words, or by necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise

to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary, even by modification of the language used (**Mahadeolal Kanodia vs The Administrator-General of West Bengal¹¹**).

In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, the Court ought to add that retroactive operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur (**Rafiquennessa vs. Lal bahadur chetri (dead) through his representatives¹²**)

Retrospective operation is, therefore, not to be given to a statute so as to impair existing right or obligation, otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. Before applying a statute retrospectively the Court

¹¹ AIR 1960 SC 936

¹² AIR 1964 SC page 1511

has to be satisfied that the statute is in fact retrospective. The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively, would prejudicially affect vested rights or the illegality of the past transactions, or impair contracts, or impose new duty or attach new disability in respect of past transactions or consideration already passed. However, a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing. The general scope and purview of the statute and at the remedy sought to be applied must be looked into and what was the former State of Law and what the legislation contemplated has to be considered. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individuals and the community as a whole, as in this case, may relate to a time antecedent to their commencement. The presumption against retrospectivity may in such cases be rebutted by necessary implications from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the legislature

may be said to have so expressed its intention. **(Mithilesh Kumari & Anr vs Prem Behari Khare¹³)**

From the law laid down by the Apex Court, it is for this Court to decide whether a particular amended provision in the statute takes away the vested right or substantive right and creates a new obligation. The pre amended and post amended provisions have to be looked into besides the intention of the Legislature in the present case. For better appreciation, the pre-amended provision and amended provision i.e. Section 6 of Hindu Succession Act are extracted hereunder:

Pre amended provision: (Section 6 of Hindu Succession Act, 1956)

6. Devolution of interest in coparcenary property – When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Amended provision: (Section 6 of Hindu Succession Act 1956 as amended by Act 39 of 2005)

[6 Devolution of interest in coparcenary property. —

¹³ AIR 1989 SC PAGE 1247

(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 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 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.]

A bare reading of the amended provision and pre amended provision in juxtaposition, it is clear that the amended provision intend to confer certain benefit on a

woman as a coparcener to claim share in the ancestral property on par with the son, but subject to certain limitations contained therein. In such case, basing on the language used in Section 6 after amendment, would give rise to the presumption that it operates prospectively for the reason that the words **“On and from the commencement of the Hindu Succession (Amendment) Act, 2005”** the devolution of interest in coparcenary property. From these words used “on and from the commencement of Hindu Succession (Amendment) Act, 2005” indicates the intention of the legislature that the amended provision operates prospectively not retrospectively. In such case, based on the language used, the Court has to construe the amended provision which takes away the substantial rights vested on the parties based on the law existing then. If such Rule is applied, the amended Section 6 has to be given prospective effect not retrospective.

On the other hand while interpreting the statutes enacted in regulating the succession, the Court has to follow certain guidelines referred above and the law declared by the Apex Court in **Fateh Bibi Etc vs Charan Dass**¹⁴. A similar question came up for consideration before the Apex Court, the Full Bench of the Apex Court relying on the earlier judgment of the Privy Council in **Lala Duni Chand v.**

¹⁴ AIR 1970 SC page 789

Mt.Anar Kali and others¹⁵ wherein the Privy Council held as follows:

“The Act which altered the order of succession of certain persons mentioned therein and which came into operation on February 21, 1929 applies not only to the case of a Hindu male dying intestate on or after February 21, 1929 but also to the case of such a male dying intestate before that date if he was succeeded by a female heir who died after that date. The Judicial Committee, has further held that succession in such cases to the estate of the last Hindu male who died intestate did not open until the death of the life-estate holder, the reversioners in Hindu Law have no vested interest in the estate and that they have a mere spes successionis.”

The Privy Council relied on the earlier Judgment of Lahore High Court reported in “**Sm.Shakuntla Devi v. Kaushalya Devi**¹⁶” and basing on the principles laid down and the law declared by the Privy Council and Lahore High Court, the Apex Court held as follows:

“Succession in such cases to the estate of the last Hindu male who died intestate did not open until the death of the life-estate holder. During the life time of estate holder, the reversioner in Hindu Law has no vested right in the estate and they have a mere spes successionis. The point of time for the applicability of the Act is when the succession opens, viz., when the life estate terminates. In consequence, the questions as who is the nearest reversionary heir, or what is the class of reversionary heirs will fall to be settled at the date of the expiry of the ownership for life or lives. The death of a Hindu Female life estate holder opens the inheritance to the reversioners and the one most nearly related at the time to the last full owner becomes entitled to the estate.”

¹⁵ AIR 1946 PC 173

¹⁶ ILR 1936 Lahore 124

Similarly in “**Erramma v. Veerupana and others**¹⁷” a similar question of interpretation of Sections 6 and 8 of Hindu Succession Act came up before the Apex Court, held as follows:

“Section 6 applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. The language of Section 8 must be construed in the context of Section 6 of the Act. The words “The property of a male Hindu dying intestate” and the words “shall devolve” occurring in Section 8 makes it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of this Act. The provisions of Section 8 are, therefore, not retrospective in operation and where a male Hindu died before the Act came into force”

By applying the principles laid down in the above Judgments, it is undoubtedly clear that the Law governing to Hindus on the date of opening of Succession alone is applicable to such Hindus, not the law which came into force subsequent opening of succession. A similar question came up before the Apex Court in **Sheela Devi’s** case referred supra, wherein the Apex Court held that the law existing on the date of opening succession alone is applicable.

In view of the principle laid down in **Sheela Devi’s** case by the date of filing the present suit i.e. in the year 1986, Section 6 of Hindu Succession Act, 1956 was not amended. But the Court can take note of the subsequent change in law,

¹⁷ AIR 1966 SC 1879

however, subject to the restrictions contained in Section 6 of the Hindu Succession Act as amended. There are conflict decisions by various High Courts, about applicability of the amended Section 6 of Hindu Succession Act prospectively or retrospectively, but reference of Law declared by various High Courts is not necessary.

In **Badrinarayan Shankar Bhandari and others v. Omprakash Shankar Bhandari**¹⁸ the Full Bench of Bombay High Court held that the amended provision of Section 6 of Hindu Succession Act is retroactive in operation. In brief:

Clause (a) of sub-section (1) of amended Section 6 is prospective in operation;

Clauses (b) and (c) and other parts of sub-section (1) as well as sub-section (2) of amended Section 6 are retroactive in operation, as indicated therein.

It is further held that Amended Section 6 applies to daughters born prior to 17 June 1956 or thereafter (between 17 June 1956 and 8 September 2005), provided they are alive on 9 September 2005 that is on the date when the Amendment Act 39 of 2005 came into force. Admittedly amended Section 6 applies to daughters born on or after 9 September 2005.

The Full Bench of the Bombay High Court held that the decision rendered in “**Ms.Vaishali Satish Ganorkar and**

¹⁸ 2014(5) Bom CR 481

another v. Satish Keshorao Ganorkar and others¹⁹ is *per incuriam* in view of the decision in “**Ganduri Koteswaramma and another v. Chakiri Yanadi and another²⁰**”. But the counsel for the defendant placed reliance on **Ms. Vaishali Satish Ganorkar’s** case. The principle laid down in the said judgment has no application in view of later judgment of the Full Bench of Bombay High Court. The Division Bench of this Court in **M. Sujatha’s** case referred above took a part of the view of the Full Bench of the Bombay High Court placing reliance on **Ganduri Koteswaramma’s** case. But **Ganduri Koteswaramma’s** case is later in point of time than **Sheela Devi’s** case referred supra. In **Ganduri Koteswaramma’s** case, the Apex Court not noted the principle laid down in **Sheela Devi’s** case though it is judgment of the Coordinate Bench. But in **M. Sujatha’s** case referring the **Sheela Devi’s** case referred supra, while answering the question in para 11(e), by following the principle laid down in **Ganduri Koteswaramma’s** case and **Sheela Devi’s** case held that the amended provision of Section 6 of Hindu Succession Act is retroactive in effect. The Judgment of Division Bench in **M. Sujatha’s** case is totally contrary to the principle laid down by the coordinate Bench in **B. Chandrakala’s** case, wherein the earlier Division Bench took a view that amended provision

¹⁹ AIR 2012 BOMBAY 101

²⁰ 2012 (1) ALT 29 (SC) = 2012(1) SCJ 272

of Section 6 is prospective effect not retroactive or retrospective.

In the later Judgment of the Apex Court in **Prakash and others v. Phulavati and others** (referred supra) considering the law declared by various High Courts and Apex Court held as follows:

“The proviso to Section 6(1) and Sub-section (5) of Section 6 clearly intend to exclude the transactions referred to therein which may have taken place prior to 20th December, 2004 on which date the Bill was introduced. Explanation cannot permit reopening of partitions which were valid when effected. Object of giving finality to transactions prior to 20th December, 2004 is not to make the main provision retrospective in any manner. The object is that by fake transactions available property at the introduction of the Bill is not taken away and remains available as and when right conferred by the statute becomes available and is to be enforced. Main provision of the Amendment in Section 6(1) and (3) is not in any manner intended to be affected but strengthened in this way. Settled principles governing such transactions relied upon by the Appellants are not intended to be done away with for period prior to 20th December, 2004. In no case statutory notional partition even after 20th December, 2004 could be covered by the Explanation or the proviso in question. The rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.”

Thus the Apex Court upheld the view taken in **Sheela Devi's** case, however, in the same judgment, the Apex Court

distinguished the principles laid down in various judgments including **G. Sekar's** case.

In view of the law declared by the Apex Court in latest perspective pronouncement in **Phulavati's** case and in **Sheela devi's** case referred supra, the law that is applicable on the date of opening succession alone governs the rights of succession of Hindus.

In the present facts of the case, the property originally belongs to grandfather of the plaintiff and it was his self acquired property, but after his death the property was devolved on the 1st defendant and his brother, who divided the same and only Ac.0.59 ½ cts., was allotted to 1st defendant's share. Thus, it is clear that the property devolved on the 1st defendant is the ancestral property but not coparcenary property. By virtue of A.P. amendment to Hindu Succession Act i.e. Act 13 of 1986, succession was opened, as discussed above, on the date of commencement of the amended Hindu Succession Act 13 of 1986 i.e. 05.09.1985 for the reason that the plaintiff became a coparcener on par with son, only by virtue of A.P. Act 13 of 1986, which came into force on 05.09.1985. As such on the date of the commencement of the Act 13 of 1986 she became a coparcener and her rights are accrued on the same day to claim share in the property subject to other conditions prescribed under the Act. But the marriage of the plaintiff

was performed long prior to commencement of A.P. Act. 13 of 1986 i.e. Section 29-A and 29-B of Hindu Succession Act. In such case, the law that governs the Succession among Hindus in the State of Andhra Pradesh alone is applicable but not the subsequent Central amendment to Hindu Succession Act.

In those circumstances, without disturbing the fact finding recorded by the trial Court and the appellate Court regarding marriage of plaintiff that took place before commencement of the Act, I hold that Hindu Succession Act 1956 as amended by A.P. Act 13 of 1986 alone applicable and not the Central amendment to Succession Act i.e. Act 39 of 2005. Accordingly, the point is held.

P O I N T Nos.2 and 3:

The main contention of the learned counsel for the plaintiff/appellant is that the property inherited (intestate succession) upon the 1st defendant and his brother from their father. Such property would be ancestral property for all practical purposes and grandchildren are entitled to claim share in the property by virtue of amendment to Section 6 of Hindu Succession Act by Central Act 39 of 2005.

Learned counsel for the respondent while drawing the attention of this Court to a judgment of Apex Court in "**Commissioner of Wealth Tax, Kanpur and others v. Chander Sen and Others**" (referred supra) and a judgment of this Court rendered in "**Musini Leela Prasad v. Musini**

Bhavani and others²¹” contended that the property devolved on the son after the death of his father shall be treated as his separate property and son born to him is not entitled to a share by birth since the property was devolved under Section 8 of the Hindu Succession Act and it cannot be treated as coparcenary property.

In view of the rival contentions, it is appropriate to advert to pre-amended Section 6 and Section 8 of Hindu Succession Act.

According to Section 6 of the Act, when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. It further provides that if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship. As per explanation (1) 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

²¹ 1995 (1) ALT 814

whether he was entitled to claim partition or not. Thus, Section 6 deals with succession by the surviving member of the coparcenary when a Hindu male died after commencement of the Act and not in accordance with this Act.

According to Section 8 of the Act the property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

To claim benefits under Section 6 of Hindu Succession Act, the death of a male shall take place after commencement of this Act and that he must have interest in coparcenary property, but in the present case father of 1st defendant died intestate leaving behind him 1st defendant and his brother, who succeeded the estate of their deceased father.

Father of the 1st defendant purchased only Ac.1.19 cts of land covered by Ex.B.5 Sale deed dated 25.10.1945, except that no other property was acquired and devolved upon 1st

defendant and his brother. In the partition between the 1st defendant and his brother, it was divided into two shares allotting Ac.0.59 ½ cts., to each of them. Thus, the property devolved upon 1st defendant and his brother was only self acquired property of their father but not an interest in coparcenary. In such case, the rule governing succession is only Section 8 but not Section 6 of Hindu Succession Act.

In the present facts, undisputedly grandfather of the plaintiff died after commencement of this Act, but the property which he own and possessed was his self acquired property. In such case, he was not a coparcener of Hindu Mitakshara coparcenary in the absence of any coparcenary property. Therefore, application of Section 6 of the Act does not arise in the present facts of the case, since there was no coparcenary at all. Moreover, Section 8 deals with devolution of separate property on the heirs after the death of a male person, which took place after commencement of the Act. It deals with intestate succession of the property of a Hindu male without reference to Mitakshara coparcenary.

As discussed above, the property devolved upon the 1st defendant was only by virtue of Section 8 of Hindu Succession Act and therefore, the property cannot be termed as coparcenary property for any purpose. Madras High Court in “**Sivaramakrishnan v. Kaveri Ammal and**

others²²” held that under Mitakshara Law, the share of coparcenary property allotted to any member on partition becomes coparcenary property as regards his issue, whether such issues were or were not born, at the time of the partition. Their Lordships held that property obtained by a coparcener on partition is ancestral joint family property in which sons, born or adopted subsequently, have rights, notwithstanding that at the date of the partition, the dividing member was a sole coparcener.

The principle enunciated by the Madras High Court was reiterated by this Court in “**Agina Chandra Mouli (died) per L.Rs. v. Agina Vamma and another**”²³. In **Sivaramakrishnan v. Kaveri Ammal and others** (referred supra) the law governs Hindu prior to 1956 was applied and arrived at such conclusion, even otherwise a share in coparcenary property was allotted in partition to any other coparcener, but no such coparcenary property was available, however the law declared by the Madras High Court or this Court is not applicable to the present facts of the case.

Under the Hindu Law the son would inherit the property of his father as karta of his own family. But the Hindu Succession Act has modified the rule of succession. The Act lays down the general rules of succession in the case of

²² AIR 1955 Madras 705

²³ 2014 (5) ALT 473

males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and Class I of the Schedule provides that if there is a male heir of Class I then upon the heirs mentioned in Class 1 of the Schedule. In interpreting provisions of Act it is necessary to bear in mind the Preamble to the Hindu Succession Act. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus. In view of the Preamble to the Act i.e., that to modify where necessary and to codify the law, 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. If a contrary view is taken it 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 be applying the old Hindu Law get a right by birth of the said property contrary to the scheme outlined in Section 8. Further more 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 that the property which devolved on a Hindu Under Section 8 of the Hindu Succession Act 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. The express words of Section 8 of the Hindu Succession Act cannot be ignored and must prevail. The Preamble to the Act is, inter alia, to 'amend' the law. With that background the express language which excludes son's son but included son of predeceased son cannot be ignored as held by the Supreme Court in **Commissioner of Wealth Tax, Kanpur etc., v. Chander Sen and others** (referred supra).

The same principle is reiterated by the learned Single Judge of this Court in “**Musini Leela Prasad v. Musini Bhavani and others**” (referred supra). Therefore, by applying the principles laid down in the above two judgments, it can safely be concluded that the property inherited by 1st defendant from his father is his self acquired property since his father did not succeed any coparcenary property and whatever 1st defendant succeeded from his father was only his father's exclusive self acquired property purchased under registered sale deed marked as Ex.B.5 dated 25.10.1945.

In view of the law declared by the Apex Court and this Court, suit 'A' schedule property i.e. Ac.0.59 ½ cents (half of Ac.01.19 cents vide Ex.B.5 was the self acquired property of

the grandfather of the plaintiff, which 1st defendant succeeded and it would not acquire the status of coparcenary property and it is only a separate property of 1st defendant as the death of father of 1st defendant took place after the commencement of the Hindu Succession Act, 1956. As the 1st defendant acquired 'B' schedule property after the death of his father without aid of ancestral nucleus and he was allotted Ac.0.59 ½ cents i.e. half of Ac.01.19 cts., covered by Ex.B.5, sale of 'B' schedule property to 2nd defendant i.e. self acquired property of 1st defendant is valid, not fraudulent and as such sale deed dated 04.12.2002 cannot be declared as null and void. Hence, the point Nos.2 and 3 are held in favour of the defendant and against the plaintiff, consequently, the plaintiff is not entitled to claim any share in the property of 1st defendant either by virtue of A.P. Act 13 of 1985 or by Central Act 39 of 2005. Accordingly, these points are held against the plaintiff and in favour of the defendant.

In the result, the appeal is dismissed without costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:31.08.2016

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