



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2158 of 2015
and M.P (MD) No.1 of 2015

1.Muthathal
2.Velthuraichi
3.Sivanathal

... Petitioners/Petitioners/3rd Party

Vs.

1.Subbiah Pandian
2.Sankarapandian Thevar
Periyasamy (died)
3.Muthupandi
4.Abdul Kadher
5.Sikkanthankalikan
6.Arumugam Asari
7.Syed Masood
8.Ramalakshmi
9.Petchiammal

... Respondents/Respondents 2 to 9/Defendants

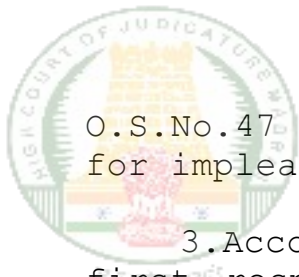
PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order, dated 30.10.2009 passed in I.A.No.49 of 2009 in I.A.No.108 of 2006 in O.S.No.47 of 1998 on the file of the Additional Sub Court, Tenkasi.

For Petitioners : Mr.G.Prabhu Rajadurai
For R - 1 : Mr.D.Nallathambi
For R - 7 : Mr.R.Subramanian

ORDER

The petitioners have filed the above Civil Revision Petition against the fair and decreetal order, dated 30.10.2009 passed in I.A.No.49 of 2009 in I.A.No.108 of 2006 in O.S.No.47 of 1998 on the file of the Additional Sub Court, Tenkasi.

2.The petitioners are the third parties to the suit. The first respondent is the plaintiff in the suit in O.S.No.47 of 1998 on the file of the learned Sub Judge, Tenkasi and the respondents 2 to 7 are the defendants 1 to 7 and one Periyasamy died and his legal heirs were arrayed as respondents 8 and 9. The petitioners filed an application in I.A.No.49 of 2009 in I.A.No.108 of 2006 in



O.S.No.47 of 1998 on the file of the Additional Sub Court, Tenkasi for impleading them as respondents 10 to 12 in I.A.No.108 of 2006.

3. According to them, the petitioners are the sisters of the first respondent, one Periyasamy and the third respondent. The respondents 1 to 3 and one Periyasamy and petitioners are co-parceners of joint family. They have 1/7th share in the suit property. The petitioners have filed a suit in O.S.No.51 of 2007 on the file of the Principal Sub Court, Tenkasi, for partition. Therefore, they are necessary party in I.A.No.108 of 2006 for passing of final decree in order to avoid contradictory Judgments in two suits.

4. The respondents 1 and 3 filed separate counter-affidavits and submitted that the petitioners are not necessary parties. The first respondent stated that the petitioners filed the application only at the instigation of the third respondent. After the death of their grandfather-Subramania Thevar, his son-second respondent and his grandchildren-respondents 1 and 3 and one Periyasamy are entitled to 1/4th share in the suit property. The petitioners father was allotted 1/4th share in the suit property. The petitioners have filed a suit in O.S.No.51 of 2007 for partition. In view of the said suit, the petitioners are not necessary parties.

5. The learned Additional Sub Judge, Tenkasi, dismissed the application holding that the petitioners have not stated on what basis they have filed a suit in O.S.No.51 of 2007 for partition and they have not stated how they are entitled to share in the suit property as per the amendment to Hindu Succession Act. In the preliminary decree, the shares of the parties in the suit had already been determined. By allowing this application, the said preliminary decree may have to be re-opened. Against that, the present Civil Revision Petition is filed.

6. The learned counsel for the petitioners submitted that as per the amendment to the Hindu Succession Act, the petitioners are entitled to share in the suit properties and partition cannot be effected denying the share of the petitioners in view of the suit filed by the petitioners in O.S.No.51 of 2007 for partition. The petitioners are necessary party in I.A.No.108 of 2006 for final decree. The preliminary decree is not binding on the petitioners as they are not parties to the suit. The learned counsel for the petitioners further submitted that the petitioners will withdraw the suit in O.S.No.51 of 2007. The learned counsel for the petitioners submitted that by introducing Section 6 in the Hindu Succession Act, the daughter becomes co-parcener by birth as and from 09.09.2005 when the amendment came into force. The daughters have same status as that of sons in Hindu Joint Family property. The learned Judge has not considered the fact that the petitioners are also co-parceners and they have 1/7 share each in suit



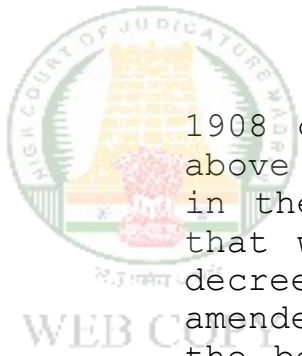
properties. The learned Judge is not correct in holding that after preliminary decree, the rights and shares of parties cannot redetermined. The learned Judge ought to have seen that more than one preliminary decree can be passed or preliminary can be amended.

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7. In support of his contention, the learned counsel for the petitioners has relied on the Judgment of the Apex Court in **Ganduri Koteswaramma and another Vs. Chakiri Yanadi and another** reported in **AIR 2012 SC 169** and the Apex Court has held in paragraph Nos.14, 15 & 17 and the same reads as follows:-

"14. The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.

15. The right accrued to a daughter in the property of a joint Hindu family governed by the Mitakshara Law, by virtue of the 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to sub-section (1) of Section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely, (i) where the disposition or alienation including any partition has taken place before December 20, 2004; and (ii) where testamentary disposition of property has been made before December 20, 2004. Sub-section (5) of Section 6 leaves no room for doubt as it provides that this Section shall not apply to the partition which has been effected before December 20, 2004. For the purposes of new Section 6 it is explained that 'partition' means any partition made by execution of a deed of partition duly registered under the Registration Act 1908 or partition effected by a decree of a court. In light of a clear provision contained in the Explanation appended to sub-section (5) of Section 6, for determining the non- applicability of the Section, what is relevant is to find out whether the partition has been effected before December 20, 2004 by deed of partition duly registered under the Registration Act,



1908 or by a decree of a court. In the backdrop of the above legal position with reference to Section 6 brought in the 1956 Act by the 2005 Amendment Act, the question that we have to answer is as to whether the preliminary decree passed by the trial court on March 19, 1999 and amended on September 27, 2003 deprives the appellants of the benefits of 2005 Amendment Act although final decree for partition has not yet been passed.

17. A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation."

8.The learned counsel appearing for the first respondent submitted that the petitioners are not entitled to any share in the properties. The petitioners have already filed a suit for partition in O.S.No.51 of 2007 and therefore, they are not necessary party in the final decree proceedings. Any decree passed in the present suit will not bind the petitioners and it will not affect the outcome of the suit in O.S.No.51 of 2007 filed by the petitioners. The shares of the parties are already determined and the petitioners' father had already been allotted $\frac{1}{4}$ share in the suit properties.

9.The learned counsel appearing for the first respondent submitted that the final decree cannot go beyond the preliminary decree and prayed for a direction to the petitioners to file an application to pass supplementary preliminary decree and submitted that the application in I.A.No.108 of 2006 may be kept in abeyance till passing of supplementary preliminary decree and also direction may be issued to the petitioners to withdraw O.S.No.51 of 2007 filed by them for partition.

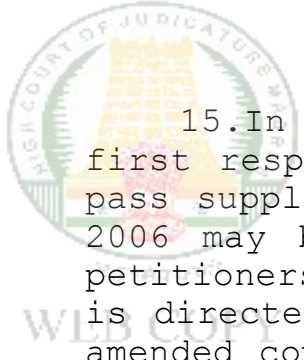
10.The learned counsel appearing for the seventh respondent submitted that the seventh respondent is a purchaser and he purchased the same for valuable consideration and the petitioners are not necessary parties to the final decree application.

11. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents 1 and 7.

12. The petitioners are daughters of the second respondent. The respondents 1 and 3 are sons of the second respondent. The first respondent filed a suit in O.S.No.47 of 1998 on the file of the Additional Sub Court, Tenkasi, for partition of suit properties claiming $\frac{1}{4}$ share in the suit properties. According to the first respondent, the suit properties are ancestral properties belonging to Hindu Joint Family consisting of the respondents 1 to 3 and one Periyasamy and are jointly enjoyed by them. A preliminary decree had been passed and the first respondent filed an application in I.A.No.108 of 2006 for passing of final decree. The petitioners filed an application I.A.No.49 of 2009 for impleading them as respondents 10 to 12 in I.A.No.108 of 2006 on the ground that as per Section 6 of the Hindu Succession Act, they have become co-parceners along with respondents 1 to 3 and Periyasamy and they have equal share in the suit properties, namely $\frac{1}{7}$ share each.

13. From the materials available on record, it is seen that it is the admitted case of the respondents 1 to 3 that the suit properties are ancestral properties belonging to Hindu Joint Family enjoyed jointly. It is also not disputed that the petitioners are daughters of the second respondent and sisters of the respondents 1 and 3. The petitioners as per Section 6 of the Hindu Succession Act, have become co-parceners along with the respondents 1 to 3 and Periyasamy. The learned Judge failed to properly appreciate the effect of Section 6 of the Act. As per this Section, the daughters are also co-parceners by birth and have same share as that of sons and are equally liable for the debts also. The conclusion of the learned Judge that the petitioners are married long back and therefore, they are not entitled to share in the suit properties is not correct. The daughter is not entitled to Joint Family only when the properties are already alienated or partitioned. Both the conditions are not present in the present case. In the suit, only a preliminary decree has been passed and application for passing of final decree is pending.

14. The learned Judge has held that preliminary decree has already been passed and if the petitioners are impleaded and the share already determined had to be altered and dismissed the application. These are not valid reasons. After passing of preliminary decree, the suit is not finally disposed but continues till a final decree is passed. A preliminary decree can be modified and more than one preliminary decree can be passed before passing a final decree. The Judgment relied on by the learned counsel for the petitioners is squarely applicable to the facts and circumstances of the present case.



15. In view of the submissions of the learned counsel for the first respondent that the petitioners can file an application to pass supplementary preliminary decree and till then I.A.No.108 of 2006 may be kept in abeyance, this Court suo motu implead the petitioners as party defendants in the suit. The first respondent is directed to take necessary steps to amend the plaint and file amended copy of the plaint. It is open to the petitioners to file application for passing preliminary decree to decide their shares in the suit properties.

16. For the above reasons, the impugned order of the learned Judge is liable to be set aside and the same is hereby set aside and I.A.No.49 of 2009 is allowed and the petitioners are impleaded as respondents 10 to 12 in I.A.No.108 of 2006 and also in O.S.No.47 of 1998.

17. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Tenkasi.

+1 cc to MR.G.Prabhu Rajadurai ADVOCATE, SR No.12215
+1 cc to MR.D.Nallathambi ADVOCATE, SR No.12187
+1 cc to MR.R.Subramanian ADVOCATE, SR No.12342

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ps

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