IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(NPD).Nos.384 and 385 of 2015
and M.P.Nos.1, 1 of 2015

Orders Reserved on	*Orders Pronounced on*
04.12.2017	19.01.2018

1.Anjalai
2.S.Saroja .. Petitioners
in C.R.P.No.384 of 2015

K.Moorthy .. Petitioner
in C.R.P.No.385 of 2015

Vs.

1.K.Rathina
2.N.Kuppusamy
3.Rani Ammal
4.K.Lalitha
5.K.Moorthy .. Respondents
in C.R.P.No.384 of 2015

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1.K.Rathina
2.N.Kuppusamy
3.Rani Ammal
4.K.Lalitha
5.Anjalai
6.S.Saroja .. Respondents
in C.R.P.No.385 of 2015

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Prayer:- Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.11.2014 made in C.M.P.No.41 of 2013 in A.S.No.240 of 2013 on the file of the XVI Additional City Civil Court (Fast Track Court No.II), Chennai.

In C.R.P.No.384 of 2015:

For Petitioners : Mr.D.Vijayakumar

For R1 : Mr.R.Murali for
Mr. N.Velayudam

For R2 and R3 : Mr.V.Venkatasamy
For R4 : Mr.R.Sivamurali

For R5 : Mr.K.Hariharan

In C.R.P.No.385 of 2015:

For Petitioner : Mr.K.Hariharan

For R1 : Mr.R.Murali for
Mr. N.Velayudam

For R2 and R3 : Mr.V.Venkatasamy
For R4 : Mr.R.Sivamurali
For R5 and R6 : Mr.D.Vijayakumar

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C O M M O N O R D E R

The Civil Revision Petitions are filed against the fair and decretal order dated 06.11.2014 made in C.M.P.No.41 of 2013 in

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A.S.No.240 of 2013 on the file of the XVI Additional City Civil Court (Fast Track Court No.II), Chennai.

2. In both the Civil Revision Petitions, the issues and the parties are one and the same and hence, they are disposed of by this common order.

C.R.P.No.384 of 2015:

3. The petitioners are third parties, first respondent is the plaintiff, respondents 2 and 3 are the defendants 1 & 2, 4th respondent is the fourth defendant and fifth respondent is the third defendant in O.S.No.2976 of 2010. Fifth respondent is the appellant and the respondents 1 to 4 are the respondents in A.S.No.240 of 2013.

C.R.P.No.385 of 2015:

4. Petitioner is the third defendant, first respondent is the plaintiff, respondents 2 to 4 are the defendants 1, 2, 4 and respondents 5 and 6 are the third parties in O.S.No.2976 of 2010. Petitioner is the appellant and respondents 1 to 4 are the respondents in A.S.No.240 of 2013.

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5. The parties are referred to as per their ranks in C.R.P.No.385 of 2014.

6. First respondent filed O.S.No.2976 of 2010 for partition against the respondents 1 to 4. After contest, the said suit was decreed by the judgment and decree dated 05.04.2013. Against the said judgment and decree, the petitioner filed A.S.No.240 of 2013. In the first appeal, the petitioner filed C.M.P.No.41 of 2013 to implead the respondents 5 and 6 as party respondents in the appeal and rank them as defendants 5 and 6 in the suit.

7. According to the petitioner, the property originally belonged to one Murugappa nadar, great grand father of the petitioner and after his death, the property devolved upon his son Natesa Nadar, grand father of the petitioner, after his death, the property devolved upon his son Kuppusamy, father of the petitioner/second respondent herein. The suit property is their ancestral property. As per amendment to Hindu Succession Act, the respondents 5 and 6 has become coparceners along with the second respondent. They are entitled to have 1/3rd share each in the suit property. Second respondent, who is father of the petitioner, respondents 1 and 4 has only 1/3rd share in the

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suit property. First respondent can claim her share only in 1/3rd share belonging to the second respondent and she is not entitled to claim any share in the entire property.

8. The second respondent filed counter affidavit for himself and third respondent. The respondents 1 and 4 filed separate counter affidavit and adopted the counter affidavit filed by the second respondent. The respondents 1 to 4 denied all the averments made in the affidavit filed in support of the above petition and submitted that Natesa Nadar, father of the respondents 2, 5 and 6 died on 19.12.1990 and on the date of death of Natesa Nadar, respondents 5 and 6 were not coparceners. The amendment to Hindu Succession Act came into effect subsequently, therefore respondents 5 and 6 do not have any share and they are not necessary parties to the appeal. The respondents 5 and 6 got married long back and they are not entitled to benefit of Amendment Act. The petitioner has not raised a plea of non joinder of parties in his written statement and therefore, he cannot raise such plea in the appeal. The respondents 5 and 6, if aggrieved, they ought to have filed an application to implead themselves as party defendants in the suit. The petitioner has no right to file a petition to implead them as parties.

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9. The respondents 5 and 6 filed counter affidavit and submitted that they inherited the suit property jointly with second respondent. There was no partition of suit property and therefore, having share in the suit property, they are necessary parties and submitted that the suit is bad for non joinder of necessary party.

10. The learned Judge considering averments made in the affidavit, counter affidavit and materials on record, dismissed the petition holding that the respondents 5 and 6 were not coparceners on the date of death of Natesa Nadar on 19.12.1990, as amendment to Hindu Succession Act came into force on 09.09.2005.

11. Against the said order of dismissal dated 06.11.2014 made in C.M.P.No.41 of 2013 in A.S.No.240 of 2013, the respondents 5 and 6 filed C.R.P.No.384 of 2015 and petitioner filed C.R.P.No.385 of 2015.

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12. The learned counsel for the petitioner contended that the Courts below failed to see that no partition had been taken place by a deed or Court proceedings. The ancestral property was available for partition at the time of filing of the suit. The suit was filed in the month

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of February 2010 and Hindu Succession Amendment Act came into effect even before filing of the suit. The Courts below having held that the alleged settlement deed in favour of the third respondent by second respondent is invalid, ought to have seen that the property originally belonged to common ancestor Natesa Nadar, father of the proposed parties/respondents 5 and 6 and the property being ancestral property, the respondents 5 and 6 have interest either by survivorship as co-parcener or by way of succession to father's estate and clause I heirs definitely have a share in the suit property. In the absence of the proposed party, there can be no suit for partition, since vested interest of the respondents 5 and 6 will alter the share of the parties. The learned Judge did not even refer to the judgment relied on by the petitioner reported in AIR 1997 Madras 226 and 100 LW 486. No material was produced about the date of death of Natesa Nadar except in the counter filed by the second respondent giving the date of death as 19.12.1990. The respondents 5 and 6 have acquired specific share in the suit property and they are necessary parties to the appeal. The merits of the case cannot be decided in the petition for impleading the respondents 5 and 6. If the respondents 5 and 6 are impleaded, they will get substantial share in the suit property. The respondents 5 and 6 acquired right in the suit property as clause I

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heirs and decision relied on by the respondents before the learned Judge reported in 2008 (4) CTC 773, 2008 (4) CTC 374 and 1991 (2) MLJ 199 do not apply to the facts of the present case. Non joinder of parties in the partition suit is fatal and suit cannot be maintained. No decree can be passed in the absence of necessary parties. Necessary party can be impleaded even at the appellate stage. There is material error apparent on the face of the impugned order and misapplication of the established legal principles, which shows that the learned Judge failed to exercise power conferred on him properly. The learned Judge erred in dismissing the petition filed by the petitioner considering the merits of the case. In support of his contention, the learned counsel relied on the following judgments:

(i) ***2004 (3) MLJ 620 (Alamelu Ammal and others v. Tamizh Chelvi and others);***

> "14. The submission of Mrs. Pushpa Sathyanarayanan, learned counsel for the appellants is that if an unmarried daughter of a Hindu is a coparcener from the date of her birth in the family, then, the section will be given retrospective effect and it would operate even prior to the date of insertion of section 29-A of the Act. We are of the view, though the section is prospective in operation, it treats an

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unmarried daughter of a Hindu as a coparcener from the date of her birth in the family and the section does not treat her as a coparcener only from the date of insertion of the Section 29-A of the Hindu Succession Act. If the submission of learned counsel for the appellants is to be accepted, it would create an anomaly in the sense that the unmarried daughter will not be a coparcener from the date of her birth till the insertion of the Section 29-A of the Hindu Succession Act and she would become a coparcener after the insertion of the section. We hold that the second plaintiff is a coparcener from the date of her birth in the family and Subramaniam cannot be regarded as a sole surviving coparcener on the date of his death and viewed from that angle also, the ancestral property held by Subramaniam on the date of his death was the coparcenary property."

(ii)***2009 (3) CTC 760 (Balamani and another v. S.Balasundaram);***

"18. A bare perusal of it would evince and project that necessary parties could be added at any stage of the proceedings. The Hon'ble Apex Court contemplated in the cited judgment that even at the appellate stage before the High Court, impleadment of necessary parties is possible. It is axiomatic that now the Second Appeal is before this High Court. "

(iii) ***AIR 1997 Madras 226 (Shanmugham and others v.***

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Saraswathi and others);

"9. There is no merit in the contentions. The question of non-joinder of necessary parties in a suit for partition can be raised at any time as it goes to the root of the matter. It is well settled that a suit for partition is not maintainable in the absence of some of the co-sharers."

(iv) ***2012 (5) LW 538 (T.P.Vadivelu v. S.Padmavathy and others);***

"12. .. .. A mere running of the eye over those excerpts would highlight and spotlight the fact that absolutely there is no embargo for a lady member to file a suit and seek for preliminary decree for carving out her share from the joint property, even though male members might be in occupation of the dwelling house."

(v) **1985 LW 941 in (T.Panchapakesan (died) and others v. Peria Thambi Naicker (died) and others);**

" .. .. We are clearly of the opinion that all the persons interested in the property should have been impleaded as parties. Though this plea of non-joinder was not raised by the defendants in their written statement it has been taken as one of the grounds in

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the appeal and we allowed this to be raised, as it is admitted by the plaintiffs themselves that there are other sharers. The question then is whether the decree granted by the trial Court can be sustained. .. ”

(vi) ***100 LW 486 in (A.Ramachandra Pillai Vs. Valliammal (died));***

“6. ... Without impleading them as parties to the suit no decree for general partition could be granted by the Court below. .. ..

“7.Though O.1, R.9 of the Code of Civil Procedure Provides that no suit shall be defeated by reason of mis-joinder or non-joinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of parties actually before it, there is a proviso which says that nothing in that rule will apply to non-joinder of necessary parties. In a suit for general partition, there could be no doubt that all the sharers are necessary parties as mentioned above. .. ..”

(vii) ***2011 (9) SCC 788 in (Ganduri Koteshwaramma and another v. Chakiriyanadi and another);***

“18. The above legal position is wholly and squarely applicable to the present case. It surprises us that the High Court was not apprised of the decisions of this Court in Phoolchand and S. Sai

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Reddy. The High Court considered the matter as follows:

"In the recent past, the Parliament amended Section 6 of the Hindu Succession Act (for short `the Act'), according status of coparceners to the female members of the family also. Basing their claim on amended Section 6 of the Act, the respondents 1 and 2 i.e., Defendants 3 and 4 filed I.A. No. 564 of 2007 under Order XX Rule 18 of C.P.C., a provision, which applies only to preparation of final decree. It hardly needs an emphasis that a final decree is always required to be in conformity with the preliminary decree. If any party wants alteration or change of preliminary decree, the only course open to him or her is to file an appeal or to seek other remedies vis-a-vis the preliminary decree. As long as the preliminary decree stands, the allotment of shares cannot be in a manner different from what is ordained in it."

13. The learned counsel for the respondents 5 and 6 (petitioners in C.R.P.No.384 of 2015) adopted the arguments of the learned counsel for the petitioner in C.R.P.No.385 of 2015.

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14. The learned counsel for the first respondent submitted that cause of action for the present suit arose on 23.02.2008 and 29.04.2008. While grand father of the first respondent died on 19.12.1990, cause of action for the respondents 5 and 6 claiming share arose only on the date of death of grand father i.e., on 19.12.1990. Both the cause of action are different and respondents 5 and 6 are not necessary parties as their father and grand father of first respondent died on 19.12.1990, while Amendment Act, 2005 came into effect only on 09.09.2005. Similarly, the respondents 5 and 6 are also not entitled to the benefits as per Section 29 A of the Hindu Succession Act, which was inserted by the Tamil Nadu Amendment Act, 1 of 1990, which came into effect from 25.03.1989 retrospectively, as respondents 5 and 6 were married long back before that date. As per Section 6(5) of the Hindu Succession Act, 1956, the respondents 5 and 6 cannot claim any share in the suit property. The petitioner has denied the right of first respondent, who claims share in the suit property. In such a case, the petitioner is not entitled to claim right for the proposed parties. The proposed parties, if have any right, have to file separate suit against the second respondent to claim their share, if any, on the date of death of their father. As per Order I Rule 10(2) of C.P.C., the Court can implead any party whose presence may be

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necessary in order to enable the Court effectively and completely adjudicate upon of the questions involved in the suit. In the present case, issue is between the first respondent and petitioner and the respondents 2 to 4. The respondents 5 and 6 are not necessary parties to the suit to decide the issue raised by the first respondent.

15. The learned counsel for the first respondent further submitted that the judgment relied on by the learned counsel for the petitioner reported in **1985 LW 941 in (T.Panchapakesan (died) and others v. Peria Thambi Naicker (died) and others)** is not applicable to the facts of the present case, as in the said case, the plaintiffs themselves admitted that there were some more persons having share in the suit property. In the present case, the respondents 1 to 4 are denying the right of the respondents 5 and 6. The petitioner cannot raise the issue of right of respondents 5 and 6 in the appeal. In support of his contention, the learned counsel relied on the following judgments:

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(i) ***2014 (2) LW 113 (K.M.Thangavel and others v. K.T.Udayakumar and another);***

"49. a) .. ..

b) .. ..

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c) .. ..

d) The death of the father (coparcener) after the Tamil Nadu Amendment and before the commencement of the Central Amendment made by Hindu Succession (Amendment) Act, 2005 shall not deprive a daughter, who remained unmarried on 25.03.1989 and had become a coparcener by virtue of the Tamil Nadu Amendment of her right by birth as coparcener.

e) Irrespective of the fact whether the daughter of a coparcener was married or unmarried as on the date of commencement of the Hindu Succession (Amendment) Act, 2005, she would have become a coparcener by birth in respect of the coparcenary property along with her father, provided her father was alive on the date of commencement of the Hindu Succession (Amendment) Act, 2005, with an exception that any disposition or alienation including any partition or testamentary disposition, which had taken place prior to 20.12.2004, would not be affected and invalidated. (The partition referred to above should have been effected by means of a duly registered partition deed or effected by a decree of a court).

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f) The death of a coparcener after 25.03.1989 and before the commencement of the Central Amendment Act made under the Hindu Succession

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(Amendment) Act, 2005 will not make the daughters, who got married prior to 25.03.1989 as coparceners."

(ii) ***1998 3 LW 722 in (The Bank of Rajasthan Limited, represented by its Chief Manager, Bhagwandas, Maruthi Complex, 325, 5th main road, Gandhi nagar, Bangalore v. Transocean Bulk Carriers Ltd., represented by Crown Shipping Co. Sena Kalyan Bhaban and others);***

> *"15. The test is whether the issue involved has any connection to the party claiming impleading or* whether his non-inclusion vitally affects his right? When the transaction between himself and respondent No. 6 constitutes a different cause of action and his claim is subject to proof of the transaction between him and the sixth respondent which can be secured by resorting to a legal remedy, he is an unnecessary party, that too, at the appellate stage.
>
> *16. .. ..* The plaintiff being the dominus litis in order to put the intervenor as a party, the proposed party must have a defined, subsisting, direct and substantive interest in the litigation which interest is either legal or equitable and which right is cognisable in law. In fact, meticulous care should be taken to avoid the adding of a party when the addition is intended merely as a ruse to ventilate certain other

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grievances of one or the other of the parties on record which is neither necessary nor expedient to be considered by the Court in the pending litigation. .. .. ”

(iii) ***AIR 1997 Karnataka 370 in (Parvathamma v. A.Muniyappa and others);***

“Held, in the circumstances that the application for impleadment filed at the appellate stage could not be entertained and was liable to be dismissed. In a suit for partition, the impleading applicant could not be a necessary party, for her position was not that of a co-sharer. Her position was that of a legatee. What the impleading applicant would have normally done is to challenge the impugned judgment and decree by way of appeal, if she is in any way aggrieved with. Having not done that it is late in the day to resort to the instant application by her before appellate Court with a prayer that the respondents be directed to implead her as co-defendant in the suit when the very suit is no more pending. According to Order I, Rule 10(2) of CPC, it is clear that the impleading either as a plaintiff or a defendant is only when the suit is pending before the Court and when that stage had totally crossed, the impleading applicant cannot resort to the instant application appellate stage. As a person interested in suit property, she might be a proper party but could not be a necessary party in the suit for partition. Certain rights have already been accrued to

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the respondents with the passing of the preliminary decree by the Court below in their favour. ”

16. The learned counsel for the respondents 2 and 3 contended that C.R.P.No.384 filed by the respondents 5 and 6 is not maintainable as they have not filed any application for impleading themselves as parties to the appeal. The petition filed by the petitioner for impleading respondents 5 and 6 is dismissed and therefore, they have no locus-standi to challenge that order unless they were brought on record in the appeal. As per Order I Rule 3 of C.P.C., only the persons have any right sought for in the same transaction can be made as parties. In the present case, first respondent is a coparcener with second respondent, who is her father. The respondents 5 and 6 are not coparceners with second respondent, who is their brother. The petitioner did not raise this issue in the written statement filed by him in the suit and also in the grounds of appeal. Therefore, petition filed by the petitioner before the learned Appellate Judge for impleading respondents 5 and 6 is devoid of merits and is not maintainable. The petitioner in the written statement admitted joint possession of first respondent in the suit property. The respondents 5 and 6 are not necessary and proper parties to the appeal.

17. The learned counsel for the fourth respondent adopted the

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arguments advanced by the learned counsel for the respondents 2 and 3.

18. The learned counsel for the petitioner in reply submitted that Section 6(3) of the Hindu Succession Act, 1956, cannot be read in isolation and it has to be read along with Section 6(1) and (2) as Amendment Act of Hindu Succession Act. Section 6(3) is an exception to Section 6(2). The petitioner has raised grounds in the appeal that the respondents 5 and 6 are necessary parties and they have share in the suit property. The petitioner also raised this issue in the proof affidavit as well as evidence and arguments before the trial Court. In reply, the learned counsel for the petitioner relied on para-36 of the judgment reported in ***2014 (2) LW 113 (K.M.Thangavel and others v. K.T.Udayakumar and another)***, which is relied on by the learned counsel for the first respondent:

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> "36. .. .. If it should be given effect to retrospectively without taking into account the date of death of the father of such daughter, all settled positions will be unsettled. Vested rights will be divested, if such indiscriminate application of the amendment is made without any reference to the fact whether the father of the such daughter was alive on

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> the crucial date. To say that a daughter of a coparcener has become a coparcener, her father should have been alive on the date on which the amendment came into force."

19. Heard the learned counsel for the petitioner, first respondent, respondents 2 and 3, fourth respondent and respondents 5 & 6 and perused the materials available on record.

20. From the materials available on record, it is seen that the petitioner is seeking to implead respondents 5 and 6 as respondents 5 and 6 in A.S.No.240 of 2013. According to the petitioner, the respondents 5 and 6 has become coparceners as per the amended Act, 2005 of Hindu Succession Act, 1956, as the suit property is ancestral property. This contention is not correct. Amendment to Section 6 of the Hindu Succession Act, by which, the daughter has also become coparcener along with the son having equal share, came into force on 09.09.2005. As per the amendment in Hindu Succession Act, on the date of amendment, there should not be any partition or alienation. The daughter can become coparcener, only when the father is alive and when the father is not alive, she cannot become a coparcener with her brother.

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21. In the present case, Natesa Nadar died on 19.12.1990 and on the date of death of Natesa Nadar, the partition and inheritance opened and the benefits given to the daughters by subsequent amendment to Hindu Succession Act, which came into force on 09.09.2005, will not be applicable to the daughters, when the father died long back before the amendment. The petitioner in A.S.No.240 of 2013 filed the present petition in C.M.P.No.41 of 2013 for impleading the respondents 5 and 6. The learned Appellate Judge dismissed the petition considering the fact that the petitioner has not taken that plea before the trial Court and the respondents 5 and 6 have not filed any application for impleading themselves and the said amendment by inserting Section 29A of the Hindu Succession (Tamil Nadu Amendment) Act (1989) and Central Amendment to Section 6 of the Hindu Succession Act, are not applicable to the respondents 5 and 6. The contention of the petitioner that the respondents 5 and 6 has become coparceners, as per the amendment to Hindu Succession Act, is devoid of merits as they were married before State amendment and their father died before Central amendment.

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22. There are two amendments to Hindu Succession Act giving equal right to the daughters along with the sons in the ancestral

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property. As per the first State amendment, by which Section 29A was inserted, it came into effect on 25.03.1989. The said amendment was not made applicable to the daughters, who were married before commencement of said amendment. The respondents 5 and 6 were married and it is not the case of the petitioner and respondents 5 and 6 that the respondents 5 and 6 were not married when the amendment Act came into force.

23. The Central Amendment to Section 6 of the Hindu Succession Act, came into force with effect from 09.09.2005. As per the said amendment, from that date onwards, daughters will be the coparceners along with the sons from their birth. The daughters can become coparceners only when the father is alive and when the father is not alive, they cannot become coparceners along with the brother. In the present case, the second respondent has stated that father of the second respondent and respondents 5 and 6 died on 19.12.1990. The petitioner and respondents 5 and 6 have not produced any contra evidence especially, no evidence was produced that Natesa Nadar was alive as on 09.09.2005.

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24. In view of the above facts, the judgment relied on by the learned counsel for the petitioner reported in ***2004 (3) MLJ 620 (Alamelu Ammal and others v. Tamizh Chelvi and others)*** is not applicable, as in the said judgment, it was held that a daughter not married as on 25.03.1989 has become a coparcener from her birth. On the other hand, the decision reported in ***2014 (2) LW 113 (K.M.Thangavel and others v. K.T.Udayakumar and another)*** relied on by the counsel for the first respondent is squarely applicable to the facts of the present case and the respondents 5 and 6 are not coparceners, when the Central Amendment to Section 6 came into effect as on 09.09.2005, as the father was not alive on that date. Para-36 of the said decision relied on by the learned counsel for the petitioner does not advance the case of the petitioner.

25. The learned counsel for the petitioner contended that the respondents 5 and 6 as daughters of Natesa Nadar are entitled to a share in the suit property. According to the petitioner, they are Clause I heirs along with the second respondent. The second respondent has admitted that the respondents 5 and 6 are his sisters. This contention of the learned counsel for petitioner has considerable force. Whether the respondents 5 and 6 have become coparceners as per

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amendments to Hindu Succession Act or whether as Clause I heirs are entitled to any share in the suit property, is an issue to be decided to arrive at the share of the first respondent as a plaintiff.

26. It is well settled that in a partition suit, question of non-joinder of parties can be raised at any time. All the parties interested in the suit must be impleaded as party. Without impleading interested parties to the suit, no decree for general partition could be granted. The petitioner has not raised the issue of non-joinder of parties in the written statement filed by him. According to the petitioner, he raised the issue in his proof affidavit and during arguments. The said contention was rejected by the Trial Court for failure on the part of the petitioner to plead the same in the written statement. The petitioner, in the grounds of First Appeal, raised these contentions in ground Nos.7 to 14, i.e. the respondents 5 and 6 are sisters of second respondent and are entitled to 1/3rd share each in the suit property as the children of Natesa Nadar. In CMP.No.41 of 2013 also, the petitioner has stated that the proposed parties/respondents 5 & 6 as children of Natesa Nadar and sisters of second respondent are entitled to a share in the suit property. The second respondent, in his counter admitted that the proposed parties/respondents 5 & 6 are his sisters and

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daughters of Natesa Nadar. In view of this admitted position, the proposed parties are necessary parties in the suit for partition as Class I heir of Natesa Nadar.

27. In the decision reported in ***1985 LW 941***, it has been held that all the parties interested should have been impleaded as parties and though plea of non-joinder was not raised by the defendant in the written statement, it has been raised in the grounds and question is whether the decree granted by the Trial Court could be sustained. In view of the decisions reported in ***2009 (3) CTC 760, AIR 1997 MAD 226, 1985 LW 941 and 100 LW 486*** referred to above, I hold that the necessary and proper party can be impleaded at any stage including in the appeal and the plea of non-joinder of parties can be raised in the appeal also. The learned Judge has failed to consider the facts and law in the proper perspective and committed an irregularity in dismissing CMP.No.41 of 2013 filed by the petitioner for impleading the proposed parties/respondents 5 and 6.

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28. In the result, the impugned order dated 06.11.2014 made in C.M.P.No.41 of 2013 in A.S.No.240 of 2013 is liable to be set aside and it is hereby set aside. Accordingly, CMP.No.41 of 2013 is allowed.

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29. The petitioner is directed to carry out the amendment within three weeks from the date of receipt of a copy of this order. On such amendment, the learned Judge is directed to proceed with the appeal and dispose of the same, as expeditiously as possible, in any event, not later than three months thereafter.

30. In the result, C.R.P.No.385 of 2015 is allowed. In view of the order passed in C.R.P.No.385 of 2015, no order is necessary in C.R.P.No.384 of 2015. Accordingly, C.R.P.No.384 of 2015 is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.01.2018

Index:Yes/No
Speaking/Non-Speaking Order

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To

XVI Additional Judge
City Civil Court
(Fast Track Court No.II), Chennai.

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V.M.VELUMANI,J.

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C.R.P(NPD).Nos.384 and 385 of 2015
and M.P.Nos.1, 1 of 2015

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