

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.10.2019	Delivered on 25.10.2019
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.273 of 2014

and MP Nos.1 & 2 of 2014

1. Govindan
2. Azhagumurugan ..Appellants/Respondents 3 &4/
Defendants 3 & 4

vs.

1. Revathi
2. Ranjith
3. Ranjini ..Respondents 1 to 3/
Appellate 1 to 3/Plaintiffs 1 to3
4. Radha
5. Mangalakshmi ...Respondents4 & 5/Respondents1&2
Defendants 1 & 2

Prayer: Second Appeal filed under Order 42 Rule 2 read with Section 100 of the Civil Procedure Code against the Judgment and Decree dated 08.11.2013 in AS No.70 of 2011 on the file of the Principal District Judge, Cuddalore District, Cuddalore by allowing the appeal and reversing the Judgment and Decree dated 30.08.2011 in OS.No.27 of 2008 on the file of the Sub-Court, Panruti and decreeing the suit for partition by preliminary decree.

For Appellants : Mr.N.Jayabalan
for A.M.Rahamath Ali

For Respondents: Mr. P.Dinesh Kumar
for D.Ravichander

J U D G E M E N T

The defendants 3 and 4 in OS No.27 of 2008, who suffered a decree for partition and separate possession of the plaintiffs 3/4th share in the suit properties at the hands of the Lower Appellate Court in AS No.70 of 2011, have come up with this Second Appeal.

2. The suit in OS No.27 of 2008, out of which the appeal in AS No.70 of 2011 arose was filed by the respondents 1 to 3 herein/plaintiffs seeking partition and separate possession of their 3/4th share in the suit properties.

3. According to the plaintiffs, the suit properties are ancestral properties of the plaintiffs and their father/the first defendant. It is claimed that the suit properties and some other properties originally belonged to one Ranganatha Kounder, paternal grandfather of the plaintiffs. After the death of Ranganatha Kounder, his sons namely, the first defendant and his brothers effected an oral partition among themselves and the suit properties were allotted to the share of the first defendant at the said oral partition. It is also claimed that the plaintiffs and the first defendant have been in joint possession of the properties till date. It is the further claim of the plaintiffs that the first defendant got addicted to bad habits and hence he had appointed the second defendant his wife as his power agent. It is the further contention of the plaintiffs that the Power of Attorney executed by the first defendant in favour of the second defendant was cancelled under cancellation deed dated 06.10.2003 prior to the execution of the Sale deed in favour of the third defendant.

4. The first defendant through the second defendant as his power agent sold some of the properties that were allotted to the first defendant at the oral partition to the third defendant on 23.12.2003, who in turn sold the properties to the fourth defendant on 08.12.2006. Contending that the said sales would not bind the share of the plaintiffs, the plaintiffs have come up with the above suit for partition.

5. Expectedly, defendants 1 and 2, the parents of the plaintiffs remained ex-parte. The defendants 3 and 4 filed a written statement contending that there was neither a joint family nor were there any joint family properties. It was claimed that the suit properties belonged to the first defendant absolutely and his children namely, the plaintiffs did not get any right by birth, inasmuch as, Ranganatha Kounder grandfather of the plaintiffs died after 1956 and the properties of Ranganatha Kounder were inherited by his sons under Section 8 of the Hindu Succession Act and as such, they are the absolute properties of the sons of Ranganatha Kounder. As a subsidiary

plea, it was claimed that the sale was in any event for family necessity and for the education of the minor children of the first defendant and therefore, the sales would bind the plaintiffs. It was also contended that the power agent had every right to execute the sale deed. It was further contended by the defendants that the cancellation of the power of attorney was not informed to the agent nor was there any publication as contemplated under Section 208 of the Indian Contract Act. Therefore, the sale by the second defendant would be valid and binding on the plaintiffs.

6. On a consideration of the evidence on record the Trial Court concluded that since the properties were admitted to be absolute properties of Ranganatha Kounder and Ranganatha Kounder having died after 1956, his properties would be inherited by his Class I heir, upon his death under Section 8 of the Hindu Succession Act. The Trial Court also further found that once the property inherited by a Hindu Male as a Class I heir under Section 8 of the Hindu succession Act, the same would be his absolute property in his hands and his son or daughter would not acquire a right by birth over the said properties. The Trial Court essentially distinguished between the devolution under Section 6 and inheritance under Section 8 of the Hindu Succession Act. The Trial Court also concluded that the cancellation of the power of attorney would not affect the right of the agent to sell the property, inasmuch as, the cancellation was not in accordance with law.

7. On the above findings, the Trial Court dismissed the suit. Aggrieved the plaintiffs preferred an Appeal before the Lower Appellate Court in AS No.70 of 2011. The Lower Appellate Court reversed the judgment of the trial Court on the ground that the properties in the hands of the first defendant would partake a character of ancestral properties, inasmuch as, they were allotted to the first defendant at a partition between Ranganatha Kounder and his sons (here the Lower Appellate Court committed an error on fact).

8. Upon the above findings, the Lower Appellate Court concluded that the properties are ancestral properties and the children of Ranganatha Kounder would acquire a right by birth and therefore, the sales made by the second defendant as the power agent of the first defendant would not be binding on the shares of the plaintiffs. On the aforesaid conclusions, the Lower Appellate Court allowed the Appeal and decreed the suit.

Aggrieved the defendants are on appeal.

9. The Lower Appellate Court, however, did not go into the cancellation of the power of attorney and its validity. Aggrieved the defendants have come forward with this second appeal.

10. The following substantial questions of law were framed at the time of admission of the Second Appeal:

- a) Whether the First Appellate Court is right in holding that Section 6 of Hindu Succession Act is applicable to the case?
- b) Whether property inherited by a son from his father could be an ancestral property in his hands and his sons will get right by birth?
- c) Whether the first appellate court is right in holding that Section 8 of Hindu Succession Act is not applicable to the case in hand?
- d) Whether the finding of the First Appellate Court regarding the cancellation of Power of Attorney is contrary to Section 208 of Indian Contract Act?
- e) Whether the grandson can claim right over the grandfather's property even while his father is alive?

11. I have heard Mr. N.Jayabalan, learned counsel appearing for M/s.A.M.Rahamath Ali, for the appellants and Mr.P.Dineshkumar, learned counsel appearing for Mr.D.Ravichander, for the respondents.

12. Mr.N.Jayabalan, learned counsel appearing for the appellants while elaborating on the questions of law would submit that the Lower Appellate Court has committed a manifest error in its interpretation of the law relating to succession particularly, the provisions of Section 6 and Section 8 of the Hindu Succession Act, 1956. According to the learned counsel, the theory in Shastric Hindu Law that the moment a son is born, he gets a share in the father's property and becomes a part of the coparcenary and the right accrues to him not on the death of the father or inheritance from the father, but with the very fact of his birth. This would mean that whenever a father gets

a property from whatever source from the grandfather or from any other source be it a separated property or not, his son would automatically get a share and it will become the part of the Joint Hindu Family of his son, grandson and other members, who formed the joint family with him, cannot be applied after the advent of the Hindu Succession Act 1956.

13. The learned counsel would submit that the position of law has changed after the enactment of the Hindu Succession Act 1956. Section 6 and Section 8 of the Hindu Succession Act 1956, make a distinction between the property that devolves on a male Hindu under Section 6 and the property that inherited by a male Hindu under Section 8. While the property that devolves on a Male Hindu under Section 6 will retain the character of joint family property and his son or his son's son would acquire a right by birth, but the same is not the case in respect of properties that inherited by a Male Hindu as a Class I heir of his father under Section 8 of the Act. In support of his submission, Mr.N.Jayabalan, would rely upon the Full Bench judgment of this Court in The Additional Commissioner of Income-Tax, Madras 1, v. P.L.Karuppan Chettiar, Karur, reported in AIR 1979 Mad 1, and the judgment of the Hon'ble Supreme Court in Commissioner of Wealth Tax, Kanpur and others v. Chander Sen and Others, reported in 1986 (3) SCC 567. He would also draw my attention to unreported judgment of the learned Single Judge of this Court in Second Appeal Nos.202, 203 and 204 of 2015 dated 26.09.2018.

14. Contending contra Mr.P.Dineshkumar, learned counsel appearing for the respondents would submit that any property inherited by a Male Hindu from his father, or his father's father, or his father's father's father, would be, in his hands, his absolute property qua third parties, but his children would get a right by birth and the properties will partake a character of joint family properties qua his children. In support of his submission the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in Shyam Narayan Prasad v. Krishna Prasad and Others, reported in 2018 (7) SCC 646, and the judgment of mine in M.Krishnamurthi v. K.Pondeepankar & others, reported in 2017 (3) CTC 170.

15. I have considered the rival submissions.

16. The following provisions of the Hindu Succession Act would have bearing on the controversy.

Section 4. Overriding effect of Act.-(1) Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

Section 6. Devolution of interest in coparcenary property.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

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

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of 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.

Section 8. General rules of succession in the case of males.-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.

A reading of the above three Key provisions of the Hindu Succession Act, would show that any text, rule or interpretation

of Hindu Law or any Custom or usage as part of that law in force immediately before the commencement of the Act, shall cease to have effect in respect of which a provision is made under the Act.

17. Section 6 of the Act makes an exception and provides for devolution of interest in coparcenary property and Section 8 provides for inheritance of a property of the Hindu, who dies intestate after the commencement of the Act, by his heirs. The heirs are divided into Class I and Class II, while Class I heirs take the property simultaneously to the exclusion of all the other heirs, as regards Class II heirs those in the first entry of Class II exclude the others. Coming to the facts of the present case, the averments in the plaint are to the effect that the suit properties belonged to Ranganatha Kounder and at a partition that took place about 20 years prior to the filing of the suit, i.e. in or about 1988, soon after the death of Ranganatha Kounder, the suit properties were allotted to the first defendant towards his share. The plaint averments in this regard read as follows:

"The suit properties and some other properties were originally belonged to one Ranganatha Kounder, who was the paternal grandfather of the plaintiffs. The suit properties are allotted to the first defendant's share in the oral partition effected between the first defendant and his brother at about 20 years back after the death of the first defendant's father." (Sic)

supplied)

(emphasis

18. In response to this plea, the defendants 3 and 4, the purchasers in their written statement had specifically pleaded that the properties are not joint family properties of the plaintiffs and the first defendant. It was further contended that the properties are owned by the first defendant as his absolute properties and he had a disposing power over the same. An alternate plea was taken to the effect that even assuming that the properties are held to be joint family properties, the sale being for legal necessities is binding on the plaintiffs. The second defendant though remained ex-parte was examined as P.W.2. She had in her evidence categorically admitted that the suit properties belonged to Ranganatha Kounder and he had even during his lifetime divided the properties amongst his sons.

This evidence is contrary to the plea in the plaint. In the proof affidavit filed by her, the second defendant namely, P.W.2 has very clearly stated that the suit properties and other properties belonged to her father-in-law Ranganatha Kounder and the suit properties were allotted to her husband/the first defendant at a partition that took place between the first defendant and his brother Krishnamoorthi about 20 years prior to the suit. This evidence of P.W.2 makes it abundantly clear that it is not the case of the plaintiffs that the suit properties were ancestral properties which were inherited by Ranganatha Kounder, the grandfather of the plaintiffs, or were purchased out of any ancestral nucleus that was available.

19. The defendants had examined one Annamalai, as P.W.3. He has specifically deposed that the properties belonged to Ranganatha Kounder, father of the first defendant. If we examine the nature of the properties in the above factual backdrop, the only possible conclusion is that the suit properties belonged to Ranganatha Kounder, who died some time in 1988 and they were allotted to the second defendant Radha at a partition that took place between him and his brother Krishnamoorthy.

20. In the absence of any plea or evidence to the effect that the properties were ancestral in nature in the hands of Ranganatha Kounder, the grandfather of the plaintiffs or the properties were acquired by Ranganatha Kounder out of any ancestral nucleus that was available, the essential conclusion is that the properties are absolute properties of Ranganatha Kounder. He having died after 1956, the properties which are absolute properties of Ranganatha Kounder would be inherited by his children on his death as his Class I heirs under Section 8 of the Hindu Succession Act. If the properties were inherited by a Hindu as a Class I heir under Section 8 of the Hindu Succession Act, his children or grandchildren will not get a right by birth over the properties. The distinction between inheritance under Section 8 and devolution under Section 6 has been pointed out by the Full Bench of this Court in The Additional Commissioner of Income-Tax, Madras 1, v. P.L.Karuppan Chettiar, reported in AIR 1979 Mad 1. The Hon'ble Full Bench while making a distinction between inheritance under Section 8 and devolution under Section 6 had held as follows:

"9. From this section, it is clear that when a male Hindu dies intestate, his property shall first devolve upon his heirs, being the relatives specified in class I of the schedule and what is said in this section and in Section 9 will show that among the heirs specified in the schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry is Class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession. The relatives specified in Class II will get a chance only if there is no heir of class I, and if there is no heir of any of the two classes, the agnates of the deceased will get the chance and lastly, if there is no agnate, the cognates of the deceased will take the property. We are not concerned in this case with the effect of succession opening to relatives specified in class II, or to agnates or cognates. There are heirs under class I and this is clear from the facts as already stated. The question is only, therefore as to how those heirs take the property under Section 8. If the mode of division provided by the section is different from that which obtained before the Hindu Succession Act came into operation, in accordance with the principles of Hindu Law in view of what is categorically stated in Section 4 of the Act, it is Section 8 of the Act that should prevail and not the principles of Hindu Law. If there is difference in the scope and effect regarding the mode of method of devolution that is provided in Section 8. It is Section 8 which should be applied and not the principles of Hindu Law. We should, therefore, try to formulate what are the principles of Hindu Law applicable in the circumstances of this case.

10. That is a case where a person who had obtained the property under partition died. His name was Palaniappa. When he died, his son Karuppan was alive. We are concerned with the property which Palaniappa had obtained in the partition. In that partition, Karuppan was also a party. We are concerned with the question of devolution of the property of Palaniappa which he obtained in the partition and which had devolved on some persons, after his death. Not only was Karuppan alive at the

time of the death of Palaniappa, but at the time of his death, Karuppan's son was also alive. In such circumstances, under the Hindu Law, the property will, devolve on the son and the grandson will also have an interest in the property; and the two together will form a Hindu undivided family (we are of course assuming that there were no female).

11. The question is whether when succession opens under Section 8, Karuppan and his son will take the property in the same manner. Clearly, this is not so. When we search for the relatives mentioned in Class I of the schedule, which is attracted by virtue of Section 8, we find no son's son are mentioned at all though the grandson of a deceased son is mentioned. What would be the effect when such a grandson comes into the picture need not be dealt with in this case. But where the son as well as his son are the persons concerned, by applying Section 8, we have to come to the conclusion that the father alone, namely Karuppan in this case will inherit the property to the exclusion of the grandson. This being the effect of the statutory provision, no interest will accrue to the grandson in the property which belonged to Palaniappa. Even assuming Palaniappa's property is ancestral property in the hands of Karuppan, still because of the effect of the statute, Karuppan's son will not have an interest in the property. This is directly derogatory of the law established according to the principles of the Hindu Law and this provision in the statute must prevail in view of the unequivocal expression of the intention in the statute itself which says that to the extent to which provisions had been made in the statute, those provisions should override the established provisions in the texts of Hindu Law. This is what M. N. Beg J. as he then was, said in the decision in Commissioner of Income Tax v. Ram Rakshpal. Commenting on this, Divan C. J. in Commissioner of Incometax v. Babubai Mansukhbai made the following observations :

"The Division Bench there held that in view of the provisions of Section 6 and Section 8 of the Hindu Succession Act, the old position no longer prevailed and the income from assets inherited by a son from his father must be held to be his

individual and not the income of the Hindu undivided family consisting of himself and his son. Main reliance in support of this conclusion was placed by the Allahabad High Court on the provisions of Section 6 and 8 of the Hindu Succession Act.

The Allahabad High Court accepted the principle that if it had not been for the Hindu Succession Act, on the death of a father whatever was inherited by his son by way of succession became ancestral property in the son's hands and this ancestral property in the hands of the son belonged to the coparcenary or the joint Hindu family consisting of the son and his own male issue

12. After discussing the matter at some length the learned Chief Justice observed at page 422-

".....With respect to the learned Chief Justice of the Allahabad High Court, it is impossible to read into the words of Section 8 any provision which interferes with the scheme of Hindu Law as it prevailed prior to the enactment of the Hindu Succession Act. Neither Section 6 nor Section 8 nor Section 30 affects this principle of Hindu Law as to in what capacity or in what character the son would enjoy the property once he received it from his father in succession".

Proceeding further, the learned Chief Justice, referred to a passage from Mulla's Principles of Hindu Law, 14th Edn. Edited by S. T. Desai. Illustration (a) at page 849 of the commentary is then extracted and the learned Chief Justice agreed with the Commentary and the illustration. With very great respect, we are unable to agree with the view expressed by the learned Chief Justice. The passage quoted from the commentary did not deal with the effect of Section 8 of the Act. What has been illustrated also is the position under the Hindu Law untrammelled by statutes and it occurs in the commentaries to Section 6 of the Act which deals with survivorship and the saving by Section 6 of that principle to the extent to which it had been done. This passage is of no assistance in determining the impact of

Section 8 on the principles of devolution of property on the death on the principles of inheritance. We have dealt with the effect of Section 8 earlier and it is clear that here Karuppan alone took the properties of his father Palaniappa, which the latter had obtained in the partition, and irrespective of the question whether it was ancestral property in the hands of Karuppan or not, he would exclude his son. Since the existing grandson at the time of the death of the grandfather has been excluded, we think that an after-born son of Karuppan will also not get any interest which Karuppan inherited from his father. Thus, the principles of Hindu Law are not applicable. It is impossible to visualise or envisage any Hindu undivided family in regard to the property which Karuppan got. This is the view that we have taken in the decision in The Additional Commissioner of Income Tax Madras II v. R.A.Manicka Mudaliar (died) and others, to which one of us was a party. We respectfully agree with the view expressed in that decision and answer the question referred to us in the affirmative i.e., in favour of the assessee and against the Department. The revenue will pay the costs of the assessee including counsel's fee of Rs. 500."

21. In Commissioner of Wealth Tax, Kanpur and others v. Chander Sen and Others, reported in 1986 (3) SCC 567, the Hon'ble Supreme Court after referring to the conflict of opinion between various High Courts on the question of applicability of Section 8 or Section 6 of the Hindu Succession Act had held as follows:

"20. We have noted the divergent views expressed on this aspect by the Allahabad High Court, Full Bench of the Madras High Court, Madhya Pradesh and Andhra Pradesh High Courts on one side and the Gujarat High Court on the other.

21. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

22. In view of the preamble to the Act, i.e., that to modify where necessary and to codify the

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

23. Before we conclude we may state that we have noted the observations of Mulla's "Commentary on Hindu law" 15th Edn. dealing with Section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on "Hindu Law," 12th Edition pages 918-919.

24. The express words of Section 8 of The Hindu Succession Act, 1956 cannot be ingored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but includes son of a predeceased son cannot be ignored.

25. In the aforesaid light the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court, and the Andhra Pradesh High Court, appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court noted hereinbefore".

From the above judgments, it is clear that a property that is inherited by a Hindu on the death of his father after 1956 as a Class I heir under Section 8, will not partake the character of coparcenary property qua his children. He will be the absolute owner of the property and he have absolute power of alienation over the property.

22. Adverting the decisions relied upon by the Mr.P.Dineshkumar, appearing for the respondents, the judgment of the Hon'ble Supreme Court in Shyam Narayan Prasad v. Krishna Prasad and Others, reported in 2018 (7) SCC 646, related to a property that was allotted to the father at a partition between him and his father. There was no dispute about the character of the property in the hands of the father as ancestral property. Therefore, the Hon'ble Supreme Court concluded that the property having devolved under Section 6, the plaintiffs therein would get a right by birth. This essential distinction has already been pointed out by the Full Bench in P.L.Karuppan Chettiar's case, referred to supra. As regards my judgment in M.Krishnamurthi v. K.Pondeepankar & others, reported in 2017 (3) CTC 170, there also there was no dispute that the property was held by the father Krishnamoorthy as ancestral property and the minor son would get a right by birth.

23. The questions that arose in M.Krishnamurthi v. K.Pondeepankar's case, as to whether, the son born after 1956 would get a right by birth. On facts it was conceded that the property was the ancestral property or coparcenary property in which the son would get a right by birth and therefore, both the decisions relied upon by the learned counsel appearing for the respondents would not applicable to the facts of the present case.

24. In view of the above discussions, the essential conclusion is that the property which belonged to Ranganatha Kounder, which was inherited by the first defendant Radha as the Class I heir on the death of Ranganatha Kounder after 1956, will not partake a character of coparcenary property or joint family property so that his children, namely, the plaintiffs would get a right by birth over the same and they will not have a right to challenge the alienation made by the first defendant or the second defendant as the power agent of the first defendant.

25. In view of the above conclusion,

25 (i). the question of law (a) is answered to the effect that the Lower Appellate Court was not right in concluding that Section 6 of the Hindu Succession Act, would apply to the facts of the case.

25 (ii). The question of law (b) is answered to the effect that the property inherited by a son from his father as a Class I heir under Section 8 of the Hindu Succession Act will not partake a character of ancestral property in which his children would get a right by birth.

25 (iii). The question of law (c) is answered to the effect that the First Appellate Court was not right in concluding that Section 8 would not apply to the facts of the case.

25 (iv). The question of Law (e) is answered to the effect that though a grandson would have a right to seek partition during the lifetime of his father in the ancestral property, but the same analogy cannot be extended to the self-acquired property of the grandfather which inherited by the father under Section 8 of the Act.

25 (v) As regards the cancellation of power of attorney, no doubt, a document dated 06.10.2003 styled as a cancellation deed has been marked as Ex.A4, but there is no evidence to show that the said document was executed in compliance with the provisions of Section 208 of the Indian Contract Act. Even otherwise once it is found that the plaintiff has no subsisting right over the suit properties they cannot question the alienation on the ground of cancellation of the power of attorney, hence question of law (d) is answered against the respondents and in favour of the appellants.

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26. For the foregoing reasons, the Second Appeal is allowed. The judgment and decree of the Lower Appellate Court are set aside, and that of the Trial Court are restored. However in the circumstances of the case there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv
To

1. The Principal District Judge,
Cuddalore District,
Cuddalore.

2. The Subordinate Judge,
Panruti.

3. The Section Officer,
V.R.Section,
High Court of Madras.

+1 cc to M/s.D.Ravichander Advocate sr89862

S.A.No.273 of 2014
and MP Nos.1 & 2 of 2014

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