



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD) (NPD) No.905 of 2011

and

M.P. (MD) No.1 of 2011

1.T.S.Kamala

2.L.T.Anjana

:Petitioners

vs.

1.C.R.Jothi (Died)

2.C.R.Balan

3.C.R.Harimoorthy

4.C.S.K.Navaneethakrishnan (Died)

5.C.N.Thianeshwaran

6.C.N.Ramesh

7.C.R.J.Sakunthala

8.Rama Konda

9.R.H.Vaishnavi

:Respondents

(R5 & R6 are already on record are recorded as LRS of deceased 4th Respondent vide Court order dated 05.03.2019 made in CMP(MD) Nos.5817 to 5820 of 2018)

(R7 to R9 were brought on record as legal heirs of deceased first respondent, vide order dated 05.03.2019 in C.M.P.(MD) Nos.5817 to 5820 of 2018)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order, dated 10.12.2010 passed in I.A.No.886 of 2010 in O.S.No.687 of 2000 on the file of the II Additional Subordinate Court, Madurai.

For Petitioners : Mr.M.Saravanan

For R1 to R6 : No Appearance

For R7 to R9 : Mr.D.Nalla Thambi

ORDER

This Civil Revision Petition is directed against the order dismissing the application filed in I.A.No.886 of 2010 in O.S.No.687 of 2000 to pass supplementary decree, dated 29.11.2004 under Section 94 r/w Section 151 of CPC.

2. The brother of the revision petitioner, as plaintiff, filed the suit for partition of his 7/24 shares. The petitioners are



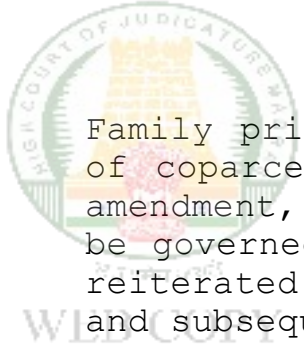
the defendants 3 and 5 in the suit. The trial Court decreed the suit and in view of the amendment to Hindu succession Act, 2005, the revision petitioners filed an application to pass supplementary decree.

3. It is not in dispute that the suit was filed in the year 2000 and the father of the petitioners died long prior to Hindu Succession (Amendment) Act, 2005. The fact that the father died prior to amendment is not in dispute and it is admitted that the succession opened long prior to the Hindu Succession (Amendment), Act, 2005. It is in the said circumstances, the lower Court also tested whether the revision petitioners could lay their claim on the basis of State Amendment in 1989.

4. Since the petitioners married long prior to 1989, the lower Court dismissed the petition on the basis that claim for enhancement of share on the basis of Hindu Succession (Amendment) Act, 2005, cannot be entertained. It is admitted by the petitioners that they have been given 1/24 share. Aggrieved by the same, the present Civil Revision Petition is filed.

5. The learned Counsel for the revision petitioners admitted that the father of petitioners died long prior to the amendment introduced in the Hindu Succession Act. The learned Counsel for the revision petitioners relied upon a Full Bench judgment of Bombay High Court in the case of **Shri Badrinarayan Shankar Bhandari and others vs Omprakash Shankar Bhandari and others**, reported **I 2014 (3) MWN (Civil) 225**, wherein, several issues have been decided contrary to the settled principles. A judgment of Division Bench of the Bombay High Court was held *per incuriam* the judgment of Honourable Supreme Court in **Ganduri Koteshwaramma** case, reported in **2011 (6) CTC 102 (SC)**. Issues were addressed with complicated propositions and the Full Bench of Bombay High Court has held that Section 6 of Hindu Succession Act, 1956, as amended by the Amendment Act of 2005 is retrospective in operation for holding that amended Section 6 applies to daughters born prior to 17th June, 1956 or thereafter, provided they are alive on 9th September, 2005. The issue in this case is different. Question here is whether daughter is entitled to the benefit of Amendment, if father died prior to amendment.

6. It is to be noted that in the judgment of Bombay High Court, the principle laid down by Honourable Supreme Court in Sheela Devi's case, reported in **2006 (8) SCC 581**, was not doubted. The principle of law stated in Sheela Devi's case has been reiterated by the Honourable Supreme Court in several judgments subsequently. For example, the Honourable Supreme Court in the case of **Prakash and others vs Phulavati and others**, reported in **2015 (6) CTC 576**, has categorically held that daughters cannot claim any right in case there is partition or death of coparcener in the Hindu Joint



Family prior to amendment and that succession opens on the death of coparcener. When the coparcener died prior to commencement of amendment, namely, Hindu Succession Act, 2005 the succession would be governed Law prevailed prior to amendment. This has also been reiterated by a few judgment of Honourable Supreme Court earlier and subsequent.

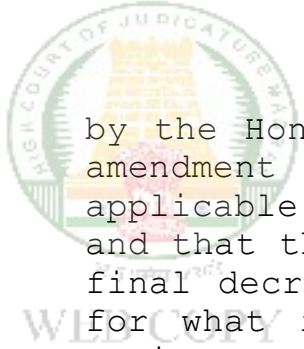
7.The learned Counsel for the revision petitioners also relied upon a judgment of Honourable Supreme Court in the case of **Danamma @ Suman Surpur and another vs Amar and others**, reported in **2018 (1) CTC 788**. This judgment has no application to the facts of the present case. The question of law arose for consideration before the Honourable Supreme Court was whether the daughters of coparcener could be denied their share on the ground that they were born prior to Hindu Succession Act and therefore, cannot be treated as coparceners?

8.The learned Counsel for the revision petitioners relied upon the following passage in the said judgment:

"24) Section 6, as amended, stipulates that on and from the commencement of the amended Act, 2005, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. It is apparent that the status conferred upon sons under the old section and the old Hindu Law was to treat them as coparceners since birth. The amended provision now statutorily recognizes the rights of coparceners of daughters as well since birth. The section uses the words in the same manner as the son. It should therefore be apparent that both the sons and the daughters of a coparcener have been conferred the right of becoming coparceners by birth. It is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by virtue of birth. Devolution of coparcenary property is the later stage of and a consequence of death of a coparcener. The first stage of a coparcenary is obviously its creation as explained above, and as is well recognized. One of the incidents of coparcenary is the right of a coparcener to seek a severance of status. Hence, the rights of coparceners emanate and flow from birth (now including daughters) as is evident from sub-s (1) (a) and (b)."

9.From the reading of said judgment, it is evident that the issue was different and the issue whether daughters of a coparcener, who died prior to amendment is entitled to claim equal share as a coparcener was not decided. What was further decided

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by the Honourable Supreme Court in the said judgment is that the amendment introduced in Hindu Succession Act, can be made applicable to all cases, even after passing of preliminary decree and that the shares can be altered, based on the amendment, if the final decree is not passed. However, a judgment is an Authority for what it decides and not for what flows from the judgment. Having regard to the position that the Honourable Supreme Court in earlier cases has settled that succession opens only on the death of coparcenar and a daughter of a male coparcener is not entitled to claim the benefit of Hindu Succession Act, as amended by Act 39 of 2005, in a case where the father died prior to 2005, this Court is unable to agree with the submission of learned Counsel for the revision petitioners.

10.As a result, this Court is of the view that the Civil Revision Petition has no merits. Accordingly, the Civil Revision Petition is dismissed. The order, dated 10.12.2010 passed in I.A.No.886 of 2010 in O.S.No.687 of 2000 by the II Additional Subordinate Judge, Madurai, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

The II Additional Subordinate Judge, Madurai.

+2 CC to M/s.M.K.RAJAGOPAL, Advocate (SR-77522[F] dated 25/07/2019)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-77793[F] dated 26/07/2019)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-77822[F] dated 26/07/2019)

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