



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2021	Pronounced on: 25.02.2021
-----------------------------	------------------------------

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No. 294 of 2010
and
M.P.No. 1 of 2010

Rangammal ...Appellant / Appellant / Plaintiff

Versus

1. Sundarambal
2. Siddheswaran ...Respondents / Respondents / Defendants

Prayer:

This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 03.09.2009 passed in A.S.No. 2 of 2009 on the file of the Sub Court, Bhavani by confirming the judgment and decree dated 29.12.2008 passed in O.S.No. 250 of 2007 on the file of the Principal District Munsif Court, Bhavani.

For Appellants : Mr.N. Manoharan

For Respondents : Ms.D.Sathya

JUDGMENT

This Second Appeal has been filed by the Appellant against the judgment and decree dated 03.09.2009 passed in A.S.No. 2 of 2009 on the file of the Sub Court, Bhavani by confirming the judgment and decree dated 29.12.2008 passed in O.S.No.250 of 2007 on the file of the Principal District Munsif Court, Bhavani.

2. Brief of the facts set out in the plaint are



as follows:-

The Respondents/Defendants 1 & 2 are the sister and the brother of the Appellant/Plaintiff. The Appellant's father Rangagounder @ Rangasamy Gounder derived title to the suit properties by virtue of the partition deed dated 01.03.1967. According to the partition deed, the Appellant's father is the absolute owner of the suit properties. The Appellant's father Rangasamy Gounder died eight years ago. After the demise of the Appellant's father, the Appellant and the Respondents are the only legal heirs to the deceased Rangasamy Gounder. The suit properties are the joint family properties of the Appellant and the Respondents and the Appellant is also one of the coparceners by her birth. As per the Hindu Succession Amendment Act 39 of 2005, the Appellant is entitled to 1/3 share and the Respondents 1 and 2 are also entitled to 1/3 share each in the suit properties. The Appellant made repeated demands to the Respondents for partition, but the Respondents neglected the same. Thereafter, the Appellant issued a legal notice to the Respondents on 18.08.2006 to divide the suit properties into six equal shares and allot one share to the Appellant, one share to the 1st Respondent and 4/6 share to the 2nd Respondent. However the Appellant is entitled to one share out of three shares under the Hindu Succession Amendment Act 39 of 2005. On 18.08.2006, the Respondents attempted to alienate the suit properties to a third party. The earlier suit filed by the Appellant for partition in O.S.No.351 of 2006 was withdrawn with a liberty to file a fresh suit on the same cause of action and now this suit for partition is filed for praying partition and separate possession of 1/3 share in the suit property and Permanent Injunction.

3. The written statement of the second defendant in brief:-

It is true that the suit properties are the ancestral properties. The Plaintiff and the First Defendant got married several years ago and hence they are not coparceners. The amended Hindu Succession (Amendment) Act, does not apply to them. The amended provision will apply only if the father of the plaintiff was alive on the date when the amendment came into force. The father of the plaintiff and the defendants died 8 years prior to the amendment and hence the plaintiff is not a co-parcener. But she is entitled to 1/3rd share of 1/2 share of her father.



4. The trial court accepted the contention of the second defendant and granted a preliminary decree for partition by fixing the share of the plaintiff as $\frac{1}{6}$ th. The Plaintiff filed the first appeal before the Sub Court, Bhavani and the first Appellate court confirmed the decree of the trial court as such. Aggrieved over the same, the plaintiff has filed this second appeal.

5. The Second Appeal was admitted on the following substantial questions of law:-

(i) Whether the courts below have committed error in treating the suit properties as ancestral properties?

(ii) Whether the courts below are correct in negating the applicability of the Amended Act 39 of 2005 in Hindu Succession Act with reference to the case of the Appellant?

6. The suit properties are the properties allotted to the share of the plaintiff's father by virtue of a partition deed dated 01.03.1967. The father of the plaintiff died intestate. The Appellant/Plaintiff who is the daughter has claimed that by virtue of the Hindu Succession (Amendment) Act 39 of 2005 herself and her sister (first defendant) have become coparceners along with her brother (second defendant) and hence she has $\frac{1}{3}$ rd of the suit properties. The Trial Court recorded a finding that the Appellant/Plaintiff is not entitled to the benefits of the amended Section 6(1) of the Hindu Succession Act because her father died 8 years back and the partition had already opened on the day when the father died and as per notional partition the plaintiff's father and the second defendant have got half share each. The plaintiff being a daughter can only claim $\frac{1}{3}$ rd share out of $\frac{1}{2}$ share of her father and thus she is entitled to $\frac{1}{6}$ th share only in the suit properties.

7. The Trial Court relied on the decision of the Madras High Court rendered in Smt. Bagirathi and Ors v. S. Manivannan and Anr, reported in [(2008) 4 CTC 374] to hold that the daughter can be considered as a coparcener only if her father



was alive when the amendment came into force. In Prakash case the Hon'ble Supreme Court has held that the amended Section 6 would apply only when the father was alive on the date of commencement of the Hindu Succession (Amendment) Act 39 of 2005. But in Dhanamma case, the Hon'ble Supreme Court has held that the amended provision confers equal rights upon the daughters also irrespective of the life or death of the father.

8. Since conflicting findings have been rendered by two Division benches with regard to the applicability of Section 6 of the Hindu Succession Act to daughters on account of the life of the father, various Special Leave Petitions have been filed before the Hon'ble Supreme Court regarding the question of interpretation of Section 6(1) of the Hindu Succession (Amendment) Act, 2005. In view of the conflicting decisions of the Two Division Benches of the Supreme Court itself, a reference on this point has been made in the case of Vineeta Sharma v. Rakesh Sharma and Ors, [(2020) 9 SCC 1] and it has been placed before the Hon'ble Full Bench of the Supreme Court.

9. After taking into consideration of the various judgments rendered on this aspect and making a threadbare analysis of the March of law which conferred property rights on women and interpreting the objects and reasons of the Amended Act, the Hon'ble Full Bench of the Supreme Court has put a finality for these controversies and held in crystal clear terms that the daughters are also equal co-parceners with sons irrespective of the fact whether the father was died or alive on the date of coming into force of the Amendment (i.e) on 09.09.2005.

10. Many significant observations have been recorded by the Full Bench of the Hon'ble Supreme Court while settling the above position of law. The Supreme Court has observed that while giving effect to an amendment which is prospective in nature, an antecedent event need not be taken in to consideration. It is held that the amendment confers equal co-parcenary rights on daughters by their very birth and it does not presuppose that there should be a living co-parcener or father, despite the share of a co-parcener fluctuates on the birth and death of a co-parcener. It is further observed that inventing conditions not contemplated by the legislation would amount to denying the very right to a daughter which has



been expressly conferred by the legislature. The language of the Supreme Court in making the above significant observations and distinction is extracted as below:-

Vineeta Sharma v. Rakesh Sharma and Ors,
(2020) 9 SCC 1

68. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of Sections 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).

69. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on



WEB COPY

9-9-2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9-9-2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).

71. As as per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death. It is the said principle of administration of Mitakshara coparcenary carried forward in statutory provisions of Section 6. Even if a coparcener had left behind female heir of Class I or a male claiming through such female Class I heir, there is no disruption of coparcenary by statutory fiction of partition. Fiction is only for ascertaining the share of a deceased coparcener, which would be allotted to him as and when actual partition takes place. The deemed fiction of partition is for that limited purpose. The classic Shastric Hindu law excluded the daughter from being coparcener, which injustice has now been done away with by amending the provisions in consonance with the spirit of the Constitution.

72. There can be a sole surviving coparcener in a given case the property held by him is treated individual property till a son is born. In case there is a widow or daughter also, it would be treated as joint family property. If the son is adopted, he will become a coparcener. An adoption by a widow of a deceased coparcener related to the date of her husband's death, subject to saving the alienations made in the intermittent period. In re: Acquisition of rights in coparcenary



WEB COPY

property

73. It is by birth that interest in the property is acquired. Devolution on the death of a coparcener before 1956 used to be only by survivorship. After 1956, women could also inherit in exigencies, mentioned in the proviso to unamended Section 6. Now by legal fiction, daughters are treated as coparceners. No one is made a coparcener by devolution of interest. It is by virtue of birth or by way of adoption obviously within the permissible degrees; a person is to be treated as coparcener and not otherwise.

74. The argument raised that if the father or any other coparcener died before the 2005 Amendment Act, the interest of the father or other coparcener would have already merged in the surviving coparcenary, and there was no coparcener alive from whom the daughter would succeed. We are unable to accept the submission because it is not by the death of the father or other coparcener that rights accrue. It is by the factum of birth. It is only when a female of Class I heir is left, or in case of her death, male relative is left, the share of the deceased coparcener is fixed to be distributed by a deemed partition, in the event of an actual partition, as and when it takes place as per the proviso to unamended Section 6. The share of the surviving coparcenary may undergo change till the actual partition is made. The proviso to Section 6 does not come in the way of formation of a coparcenary, and who can be a coparcener. The proviso to Section 6 as originally stood, contained an exception to the survivorship right. The right conferred under substituted Section 6(1) is not by survivorship but by birth. The death of every coparcener is inevitable. How the property passes on death is not relevant for interpreting the provisions of Section 6(1). Significant is how right of a coparcener is acquired under Mitakshara



WEB COPY

coparcenary. It cannot be inferred that the daughter is conferred with the right only on the death of a living coparcener, by declaration contained in Section 6, she has been made a coparcener. The precise declaration made in Section 6(1) has to be taken to its logical end; otherwise, it would amount to a denial of the very right to a daughter expressly conferred by the legislature. Survivorship as a mode of succession of property of a Mitakshara coparcener, has abrogated with effect from 9-9-2005 by Section 6(3).

75. The decision in *Bireswar Mookerji v. Ardha Chunder Roy Chowdhry*', was relied upon to contend that adoption is only of a male and not a female as held in *Amarendra Mansingh v. Sanatan Singh*', a male becomes a coparcener by birth or adoption. There is no dispute with the custom, which was prevalent earlier that there could be the adoption of a male child and not that of females. There is no dispute with the proposition that a coparcenary right accrued to males under the prevalent law by birth or adoption. In the same manner, right is accrued by birth to the daughter under the provisions of Section 6. The legislature in Section 6 used the term that a daughter becomes coparcener by birth. The claim based on birth is distinguishable and is different from modes of succession.

76. It was argued that in case Parliament intended that the incident of birth prior to 2005 would be sufficient to confer the status of a coparcener, Parliament would need not have enacted the proviso to Section 6(1). When we read the provisions conjointly, when right is given to the daughter of a coparcener in the same manner as a son by birth, it became necessary to save the dispositions or alienations, including any partition or



WEB COPY

testamentary succession, which had taken place before 20-12-2004. A daughter can assert the right on and from 9-9-2005, and the proviso saves from invalidation the above transactions.

77. It was argued that in the eventuality of the death of a father or other coparcener, the parties would have not only partitioned their assets but also acted in pursuance of such partition. However, partitions have been taken care of by the proviso to Sections 6(1) and 6(5). Parliament has not intended to upset all such transactions as specified in the proviso to Section 6(1).

78. It was vehemently argued that if the daughter is given the right to be a coparcener by birth and deemed to become a coparcener at any point in the past, in the normal working of the law, uncertainty would be caused. In our opinion, no uncertainty is brought about by the provisions of Section 6 as the law of Mitakshara coparcenary makes the share of surviving coparceners uncertain till actual partition takes place. Uncertainty in the right of share in a Mitakshara coparcenary is inhered in its underlying principles, and there is no question of upturning it when the daughter is treated like a son and is given the right by birth; to be exercised from a particular date i.e. 9-9-2005. It is not to resurrect the past but recognising an antecedent event for conferral of rights, prospectively. There is no doubt about it that advancement brings about the enlargement of the size of the coparcenary and disabling it from treating the daughter unequally. Even otherwise, its size could be enlarged by the birth of a son also. By applying Section 8, the joint possession was not repudiated by the fact that a female, whether a wife or daughter, inherited the share of coparcener under the proviso to original Section 6. She was an equal member of the joint Hindu family and deemed statutory partition did



not bring disruption of the coparcenary."

11. It is further held that the shares of the coparceners have to be worked out at the time of actual partition taking into account of the death of an existing co-parcener or birth of a new one in the family. So in all possible terms of the interpretation of the amended provision there is no need that the father should be alive on 09.09.2005 in order to bestow equal rights on the daughters. The Hon'ble Supreme Court has settled the above position so vividly as under:-

"107. Once the constitution of coparcenary changes by birth or death, shares have to be worked out at the time of actual partition. The shares will have to be determined in changed scenario. The severance of status cannot come in the way to give effect to a statutory provision and change by subsequent event. The statutory fiction of partition is far short of actual partition, it does not bring about the disruption of the joint family or that of coparcenary is a settled proposition of law. For the reasons mentioned above, we are also of the opinion that mere severance of status by way of filing a suit does not bring about the partition and till the date of the final decree, change in law, and changes due to the subsequent event can be taken in to consideration.

108. As to the effect of legal fiction, reliance was placed on CIT v. S. Teja Singh, in which it was laid down that in construing the scope of legal fiction, it would be proper and even necessary to assume all those facts on which alone the fiction can operate. There is no dispute with the aforesaid proposition, but the purpose of fiction is limited so as to work out the extent of the share of the deceased at the time of his death, and not to affect the actual partition in case it has not been done by metes and bounds....."

12. After making an exhaustive discussion on the right of a daughter as co-parcener by birth, the Full Bench of the Supreme Court has consolidated and crystalised their findings in the



following clear terms:

"137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 09-09-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 09-09-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effect by a deed of partition duly registered



WEB COPY

under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

138. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

139. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in *Prakash v. Phulavati* and *Mangammal v. T.B. Raju*. The opinion expressed in *Danamma v. Amar* is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits."

13. The dictum of the Hon'ble Supreme Court laid as above in its judgement in *Vineeta Sharma* case answers the questions of law arose in this case in favour of the Appellant. The Appellant being a daughter becomes a co-parcener by her very birth on and from the date when the amendment came into effect, irrespective of the factum of life or death of her father who was the senior co-parcener. Since the father died interstate before partition, the respective share of each of the co-parcener works out at 1/3 each. Since the conflicting opinions about the right of a daughter to become a co-parcener have been set at rest by virtue of the above said Full Bench judgment of the Hon'ble Supreme Court, all those cases in which similar such issue has been raised would get resolved. In view of the same,



I have no hesitation to answer the substantial questions of law Nos.1 and 2 in favour of the Appellant.

14. In the result, the Second Appeal is allowed and the judgement and decree of the lower court is modified to the effect that the Appellant and the respondents are entitled to 1/3rd share each in the suit properties and the preliminary decree is granted as prayed for. No Cost. Connected Civil Miscellaneous Petition if any are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Sub Court, Bhavani.
2. The Principal District Munsif Court,
Bhavani.

Copy To:

The Section Officer,
V.R. Section, High Court,
Madras - 104.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.11727
+1cc to M/s.Zeenath Begum, Advocate, S.R.No.11712

S.A.No. 294 of 2010
and
M.P.No. 1 of 2010

NRL(CO)
SB(01/10/2021)