



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.02.2021

Pronounced on : 04.03.2021

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Coram:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.250 of 2017

P.Saravanan

... Plaintiff/Appellant

/versus/

1. M.Sivasubramanian,

2. S.Manigandan,

3. Dhanuja Murali,

4. Kavitha Senthil,

5. Vidya Venkataragavan,

... Defendants/Respondents

Prayer: First Appeal is filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 01.02.2017 in O.S.No.76 of 2015 on the file of Principal District Court, Krishnagiri.

For Appellants : Mr.R.Subramanian, Senior Counsel
for M/s.Gupta and Ravi

For R1 to R5 : Mr.V.Lakshminarayanan,
for Mr.R.Jayaprakash

J U D G M E N T

The plaintiff, who lost his suit for partition is the appellant before this Court.

2. The factual background of the dispute between the parties can be summarised as under:-

The parties engaged in dispute are descendants of one K.N.T.Manickam Chettiar S/o.K.N.Thandavaraya Chettiar. During the life time of K.N.Thandavaraya Chettiar, he and his 6 sons entered into a partition deed on 01.01.1947 (Ex.A-20) and got it registered. The ancestral properties and the properties accrued through joint family members exertion were divided into 7 lots put under Schedule "A" to "G". The "A" schedule property was left to the parents namely Thandavaraya Chettiar and his wife Unnamalaiammal for their life time enjoyment. After their lifetime to be divided among the 6 sons after clearing the



parents debts, if any. The properties mentioned under "F" schedule was allotted to Manickam Chettiar. At the time of this partition, except the 6th son Markasagaya Chettiar, rest of the sons were married.

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3. In the year 1975, K.N.T.Manicka Chettiar and his children entered into a partition deed of their individual and family properties and got it registered on 26.03.1975 (Ex.A-1). In this partition deed, the properties held by Manickam Chettiar family were divided into 8 lots under Schedule "A" to "H". The properties listed under 'A' schedule was allotted to K.N.T.Manickam Chettiar and the 'B' Schedule properties were allotted to his son M.Sivasubramaniam. On the demise of K.N.T.Manickam Chettiar in the year 1982, the properties left by him were divided among his children under the registered partition deed (Ex.A-2) dated 19.05.2006. In this partition, Sivasubramaniam was allotted 'A' schedule properties.

4. Sivasubramaniam got married to one Primala Devi. Through her, he had a son (Saravanan) and a daughter (Dhanuja Murali). His first wife Parimala Devi died on 11.11.1977. After her demise, M.Sivasubramaniam married one S.Gnanasoundari and through her, he had a son (Manikandan) and two daughters (Kavitha Senthil and Vidya Venkataragavan). Before the commencement of dispute, certain properties devolved on M.Sivasubramaiaam under the partition deed Ex.A-1 and Ex.A-2 were sold. Also properties were acquired in the name of Sivasubramaniam, who retired as Professor from Kandasamy Kandar's College Salem and in the name of his elder son Saravanan, who is running cable business and Pawn broker business.

First Round Litigation

5. In the year 2012, Kavitha Senthil and Vidhya Venkataragavan, in the year 2012, the two daughter of Sivasubramaniam born through his second wife filed suit for partition claiming 1/3rd share against their father Sivasubramaniam, full blood brother Manikandan, half blood brother Saravanan and half blood sister Dhanuja Murali Babu. In the suit (O.S.No.23 of 2012) on the file of Principal District Judge, Krishnagiri. (in short called as previous suit) they contended that, the properties mentioned in "A" & "B" schedule and few other properties were ancestral joint family properties of Sivasubramaniam. In the partition dated 26.03.1975 M.Sivasubramaniam got the 'A' schedule property and a tiled shop in S.No.96/1 of Orappam Village, Krishnagiri District. Sivasubramaniam sold the tiled shop to one Suburnisha vide sale deed dated 08.06.1987 to met out the marriage expense of his sister Sivagami. The properties shown as item Nos.1 & 2 in the



"B" schedule property was sold away in the year 2001. After receiving the full payment, sale deed was executed on 28.07.2004. The sale proceeds were used to purchase the "C" schedule property in the name of Saravanan. Few more properties given under the partition deed dated 26.03.1975 to Sivasubramanian were sold away as house sites and the remaining properties were shown under "A" schedule property. Under the partition deed Ex.A.20, the properties which were allotted K.N.T.Manickam Chettiar were later devolved upon the sons and daughters of K.N.T.Manickam Chettiar. On his death, on 10.01.1983 and on demise of his wife Saraswathi in or about in the year 2005 those properties were divided among the brothers and sisters of Sivasubramanian and properties which are allotted to him were shown as "B" schedule property. From the sale proceeds of Orappam Village, the "C" schedule property was purchased in the name of S.Saravanan and the remaining sale consideration was used as capital to start the Pawn broker business and cable T.V. business. The business was looked after by the Saravanan on behalf of the joint family. The house constructed in the "C" schedule property from out of the income derived from the business and the loan availed from Syndicate bank. Though, the property described in "C" schedule stands in the name of Saravanan, it actually belongs to joint family and hence, accessible for partition along with the other properties mentioned under A & B schedule.

6. In this suit, it was averred that the Saravanan refuse to come for an amicable partition among the other co-sharers and therefore, they are forced to file suit for partition. Yet another property which was purchased by Sivasubramanian at Door No.105/926, T.N.H.B, I-Phase. Krishnagiri, not included admitting that, it was purchased by the Sivasubramanian from his own earning by serving as Professor.

7. In the said suit Sivasubramanian as 1st defendant filed written statement admitting that the property described under 'A & B' schedule are ancestral properties as found in the partition deed dated 26.03.1975 and 19.05.2006. He admitted that, he never denied the share of the plaintiffs or refuse to effect partition but it was only the 2nd defendant/Saravanan not co-operating for the partition. He denied the averments that the marriage of Sivagami was celebrated from the sale proceeds derived under the sale deed dated 08.06.1987 in favour of Saburnisha. In fact, the sale proceeds was used to release one of the partner by name Makeswaran son of Dhandapani from the business run in the name of 2nd defendant/Saravanan 'Parimala cable'.

8. Regarding the 'C' schedule property which was in the name of Saravanan, the first defendant in his written



statement had contended that, the said property was purchased in the name of his son 2nd defendant/Saravanan from out of the joint family property and construction was put up from the income derived from the joint family business and from the amount derived from selling the land in Orappam Village, Krishnagiri. Alleging that Saravanan has estranged from the family and not ready for amicable partition of the property, consented for passing of a decree allotting 1/6th share to him in the suit properties.

9. Saravanan as 2nd defendant in his written statement while accepting "A" and "B" schedule properties are joint family property denied the averments found in the plaint regarding the "C" schedule property as the joint family property. He contended that it his self acquired property which he purchased from the funds provided by his maternal grandparents to his mother and from the funds provided by his maternal uncle. He, in his written statement, referring the house property bearing door No.105/926, T.N.H.B, Krishnagiri, which was purchased in the name of 1st defendant/Sivasubramanian and not included in the schedule of properties for partition contended that, the said property is a joint family property and ought to be included in the list of properties. He claimed that the "A" schedule property is in his possession and he is carrying on business in the 'A' schedule property. In the 'B' schedule property, he has leased out for running Cycle stand on receiving advance of Rs.2,00,000/- and in the remaining vacant site had put up temporary shed and rented out for running a Hotel and Tea shop.

10. Thus, in the first round of litigation for partition instituted by two daughters born through his 2nd wife against Sivasubramaian and his other children namely Sivasubramaniam, Saravanan, Manikandan and Dhanuja Murali Babu. All the parties without any contradiction admitted that the "A" and "B" schedule properties are ancestral joint family property came into the hand of Sivasubramaniam through partition dated 26.03.1975 and 19.05.2006. Conflict was only regarding "C" schedule property in S.No.94/2B3, at Basheer Mohammed layout bearing Plot No.11 measuring 25,15 ½ sq.ft including two storied building thereon in the name of 2nd defendant/Saravanan. Except the 2nd defendant in whose name the property stood, others contended that it was purchased by the 1st defendant/Sivasubramniam vide sale deed dated 03.11.2004 in the name of 2nd defendant and the building put up over it from out of joint family property income.

11. When the previous suit O.S.No.23 of 2012 was pending after examining P.W.1 (2nd plaintiff Vidya Venkataragavan) and Sivasubramaniam (1st defendant) as D.W.1. Sivasubramaniam created four gift settlement deeds dated 28.05.2014 in favour of defendants Nos.2 to 5 and after withdraw



of the suit another gift deed dated 28.11.2014 in favour of the 5th defendant in respect of some portions of the 'A & B' schedule properties.

12. The said suit O.S.No.23 of 2012 was withdrawn as settled out of Court based on the memo filed by the plaintiff's counsel on 30.07.2014. In the said memo conspicuously the 2nd defendant/Saravanan was not a signatory.

13. Present Suit by Saravanan for partition.

At this juncture, the subsequent suit came to be filed by Saravanan on 05.10.2015 for partition. In this suit O.S.No.76/2015 which is now the subject matter of this Appeal, Sivasubramaniam, Manikandan, Dhanuja Murali Babu, Kavitha Senthil and Vidhya Venkataragavan are the defendants. The difference in the subsequent suit is the "C" schedule property. Instead of the property at Basheer Nagar which is in the plaintiff Saravanan name, the T.N.H.B property in the name of Sivasubramanian was included.

14. In this suit, the plaintiff/Saravanan contended that, the "A" & "B" schedule properties are properties in the name of first defendant are ancestral properties. The "C" schedule property at Door No.105/926, T.N.H.B, Krishnagiri, purchased in the name of First defendant Sivasubramanian from out of joint family income.

15. It was averred after executing the gift deeds, collusively without notice and consent a memo was filed stating that the suit in O.S.No.23 of 2012 settled out of Court and got the previous partition suit dismissed on 30.07.2014. The application filed to recall the said order of dismissal as settled out of Court is still pending. Hence, sought for partition of properties shown in schedule "A" to "C" contending that the "A" schedule property is the property what his father Sivasubramanian the 1st defendant got under the partition deed (Ex.A.1) dated 26.03.1975, the "B" schedule property is the property which the 1st defendant got under the partition deed dated 19.05.2006 (Ex.B.2) and "C" schedule property is the property purchased in the name of 1st defendant from out of joint family income.

16. In the written filed by the Sivasubramanian as first defendant he contended that, the "A" schedule property came into his hand, when his father K.N.T.Manickam Chettiar and his brothers divided the property. Once he got the property under the said partition, it become his absolute property. "B" schedule property was the share allotted to him in the partition among the sons and daughters of K.N.T.Manickam Chettiar. Neither "A" nor "B" schedule properties devolved upon him on survivorship. It is his self acquired property and therefore,



he has every right to deal with the said property. The 'C' schedule property is the property purchased from out of his earning and savings. He availed loan from L.I.C and put up the construction. In fact, the property in the name of the plaintiff at Basheer Nagar was purchased and improved from out of his earning and income derived from 'A & B' schedule properties. Therefore, without including that property the partition suit is bad for partial partition. Hence, his son have no right to claim partition.

17. With the above pleadings, the parties went on trial. The trial Court framed following issues:-

- (i). Whether the plaintiff is entitled for 1/6th share?
- (ii). Whether the four settlement deeds dated 25.08.2014 to be declared as void?
- (iii). Whether the sale deed dated 28.11.2014 to be declared as void?
- (iv). Whether the plaintiff is entitled for permanent injunction?
- (v). Whether the A schedule property is the absolute property of 1st defendant?
- (vi). Whether the B schedule property is the ancestral property?
- (vii). Whether the C schedule property is the absolute property of the 1st defendant?
- (viii). Whether the 1st defendant purchased house site in the name of plaintiff?
- (ix). What are the reliefs?

18. Before the Trial Court, the plaintiff/Saravanan was examined as P.W.1 and 29 Exhibits were marked. The first defendant/Sivasubramanian was examined as D.W.1 and 14 Exhibits were marked. The Trial Court dismissed the suit holding the suit properties are not joint family properties. Against the dismissal of the suit, this appeal filed assailing the Trial Court judgment.

Point for consideration:-

Whether the suit properties are ancestral properties to devolve upon the plaintiff by survivorship or it is a self acquired property acquired by the 1st defendant to dispose it as self acquired?

19. There are enough judgments and literatures about devolution of Hindu Male Mitakshara property. Therefore, this Court is restraining itself from dwelling upon those literatures and judgments at length except few which are necessary to decide the appeal.



20. The core facts of the case is narrated at the commencement of the judgment. This is subsequent partition suit between the family members of Sivasubramanian, who is the son of K.N.T.Manickam Chettiar. The three category of properties are shown in the plaint which stands in the name of Sivasubramanian and one property not included stands in the name of Saravanan, who is the plaintiff herein. The First Category property is the property which devolved upon Sivasubramanian, when his father and other divided the ancestral and joint family property in the year 1975. This property is shown under schedule "A". Second Category Property is the property which devolved upon Sivasubramanian under the partition deed (Ex.A.1) between him and his siblings. Third category property is the property purchased in the name of Sivasubramanian in the year 2004 upon which, he has constructed a house and the property purchased in the name of Saravanan and construction put upon it. As far as the Third category of property is concerned, the property in the name of Sivasubramanian alone is the subject matter of the present suit. The plaintiff has excluded the property which stands in his own name. He wants to retain it as his self acquired individual property and had contended that, it does not form part of the joint family property. Whereas, in the earlier suit filed by the daughters of Sivasubramanian, they have contended that, "C" schedule property in this suit is the self acquired property of their father Sivasubramaian and the property in the name of Saravanan is the joint family property purchased in the name of 1st defendant/Saravanan.

21. As far as "A" & "B" schedule properties are concerned, the parties have no quarrel about the manner it devolved on Sivasubramanian. Ex.A.1 & Ex.A.2 both describes these properties as joint family property blended with the ancestral property, put in the hotchpot. Even in the previous suit filed by the daughters of 1st defendant, they have contended that 'A & B' schedule properties are joint family properties blended with ancestral properties and they want it to be divided, but the plaintiff in this Suit, who was arrayed as 2nd defendant in the previous suit alleged not co-operating for an amicable settlement. This has been endorsed and confirmed by the 1st defendant/Sivasubramanian also in his written statement. No doubt, the said suit was withdrawn as settled out of Court before conclusion of trial Court, the manner in which, it was settled is questioned by the plaintiff. In any event, the statements made in the previous proceedings form part of admission as defined under Section 17 of Indian Evidence Act and same can be taken as a proof of admission as per Section 21 of Indian Evidence Act. Contrary to his admission in O.S.No.23 of 2012, the 1st defendant herein had pleaded that 'A & B' schedule properties are his self acquired properties.



22. According to the Learned Counsel appearing for the 1st respondent/Sivasubramanian after the partition between the family members of K.N.T.Manickam Chettiar, the property is were treated as joint family property but not as an ancestral property. Unless, it was treated as an ancestral property inheritance by survivorship will not arise and the devolution is only by Succession under Section 8 of Hindu Succession Act.

23. Contrarily, the Learned Counsel for the appellant would submit that the recitals in the earlier partition deeds namely Ex.A.20 dated 01.01.1947 and the subsequent partition deed Ex.A.1 dated 26.03.1975 describes the property as ancestral properties and self acquired property put in the hotchpot and blended with the ancestral property. The parties have consciously treated it as an ancestral property and the defendants have also admitted in the earlier proceedings the properties are joint family accrued from the income of ancestral property. Therefore, they are estopped to plead that the properties are self acquired property of the 1st defendant.

24. As far as the "C" schedule property is concerned, as pointed out earlier, it stands in the name of the 1st defendant and he claims it to be a self acquired property, contrarily the plaintiff pleads it as joint family property.

25. Section 4, 6 and 8 of Indian Evidence Act and the judgments of the Courts which has been extensively referred by both the parties would show that, in a Mitakshara Hindu Family, the property held by a male member will devolve upon by survivorship on a peculiar facts and circumstances, it is an exception to Section 8 of Hindu Succession Act.

26. The Learned Counsel for the respondent states that, when the partition effected in the year 1947 between the family members of K.N.Thandavaraya Chettiar, the "F" schedule property was allotted to Manickam Chettiar. He held that property not by intestacy but by way of an instrument. This property was subsequently divided among the family members by Manickam Chettiar and his sons under partition deed in the year 1975. This was also not by devolution or by inheritance but by way of an instrument namely Partition deed. When the parties decided to divide this property, they were conscious of the provisions of Section 6 as well as Section 8 of Indian Succession Act. Knowing fully well, they have divided the property among the family members, treating it as a joint family property and not as coparcenary property, that is why Manickam Chettiar has given share to all his sons and daughters under his deed. After the death of Manickam Chettiar, his share has been divided among his children. Even without partition deed by law



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of inheritance under Section 8 of Hindu Succession Act, they all would have got equal share but due to cordiality, they have divided the share equally among themselves and they have reduced the partition deed into writing and got it registered and given effect.

27. In view of this Court, since parties have admitted that "A" & "B" schedule properties are joint family property in the previous proceedings, they are estopped to plead anything contrary. The controversy is only in respect of property purchased and improved in the name of Saravanan (plaintiff) and Sivasubramanian (1st defendant) whether it is self acquired property of the individual or joint family Property.

28. Law and Judgments are very clear on this issue. If any person say a property has been purchased in the name of family members from out of joint contribution of the family members, then, the person who assert that fact, should prove it. Both the plaintiff as well as the 1st defendant were able to show their independent source of income for purchasing the property in their respective names. While the plaintiff has deposed that his maternal uncle and maternal grandmother financially assisted him to establish his finance business and cable T.V business. The 1st defendant able to establish that he got his retirement benefit after serving as professor in Kandasamy Kandar College, for nearly 30 years and from out of that money, he purchased the land mentioned in "C" schedule property and constructed the building availing loan. Since, the "C" schedule property stands exclusively in the name of 1st defendant and he has shown is independent source of income for purchasing the said property and improving it, the plaintiff can have no right or share in the said property. Though, the property in the name of the plaintiff not subject matter of the suit, it was shown as "C" schedule property in the earlier suit filed by the sisters and later withdrawn as not pressed. What applies to the present "C" schedule property, same analogy shall apply to the property in the name of the plaintiff also.

29. It is the previous suit filed for partition, in the mist of the trial, except the plaintiff herein others have signed the memo for withdrawing the suit as settled out of Court. The 1st defendant had settled the properties mentioned in Schedule A & B to the other signatories to the memo of compromise. The said settlement deeds are also challenged in this suit to declare it as void.

30. To buttress their respective submissions, the following judgments were relied by the learned Counsel for the Appellant and Learned Counsel for the respondents.

(i). Bishwanath Prasad and others -vs- Dwarka Prasad



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and others reported in (1974) 1 SCC 78.

(ii). P.V.Sri Rangammal @ Muthuammal and other -vs- K.Dharmaraja, S.Jaman @ Gomathi reported in 2001 (2) L.W. 193.

(iii). Pachiammal, Gnanambal -vs- Manivasagam and others reported in 2017 (3) TNNJ 122 (Civil).

(iv). M.Krishnamoorthy -vs- K. Pondeepankar and others reported in 2017 (3) CTC 170.

(v). Vineeta Sharma -vs- Rakesh Sharma and others reported in (2020) 9 SCC 1.

(vi). The Additional Commissioner of Income Tax, Madras -vs- P.L.Karuppan Chettiar reported in 1978 SCC Online Mad 30.

(vii). Commissioner of Wealth Tax, Kanpur and others -vs- Chander Sen and others reported in (1986) 3 SCC 567.

(viii). Yudhishter vs. Ashok Kumar reported in (1987) 1 SCC 204.

(ix). Commissioner of Wealth Tax -vs- P.L.Karuppan Chettiar reported in 1993 Supp (1) Scc 580.

(x). Bhanwar Singh -vs- Puran and others reported in 2008 (3) SCC 87.

(xi). Arunagiri -vs- Ayyar Muthuraja and others reported in 2014 (1) CTC 73.

(xii). Uttam -vs- Saubhag Singh and others reported in 2016(4) SCC 68.

31. The list of judgments relied on either side are long and length but its is suffice to refer the following two judgments which covers the point under Consideration (i). The judgment of this Court rendered by Justice R.Subramanian in M.K.Krishnamoorthy -vs- K.Pondeepankar reported in 2017 (3) CTC 170, which reads as below:-

"14. As per proviso to unamended Section-6 and Sub Section 3 of the amended Section-6 makes it clear that it is only the interest of the deceased Mitakshara coparcener in the property that would devolve either by testamentary or intestate succession under the Act. The position of law declared by the Hon'ble Supreme Court in various pronouncements regarding the proviso remains unaltered by the amendment of Section 6 by Act 39 of 2005. Sub Section-3 of Section-6 is only a reproduction of proviso to old Section-6. The difference between devolution under Section-6 and the devolution under Section 8 was observed by the Supreme Court in Eramma v. Verrupanna reported in AIR 1966 SC 1879 wherein the Hon'ble Supreme Court pointed out and observed as follows:



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"It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of S. 8 must be construed in the context of S. 6 of the Act. We accordingly hold that the provisions of s. 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e., where succession opened before the Act, S. 8 of the Act will have no application."

15. After elucidating the different contexts under which Sections 6 and 8 would operate, a three judge Bench of the Hon'ble Supreme Court held that Section-8 cannot have retrospective operation and Section 8 should be read in the context of Section-6. The question as to the nature of property which devolves on a male Hindu under Section 6 vis a vis, the property inherited by a male Hindu under Section 8 was considered by a Full Bench of this Court in Additional Commissioner of Income Tax Madras-I v. P.C. Karuppan Chettiar (AIR 1979 Mad 1). Another three judges Bench of the Hon'ble Supreme Court in Gurupad Khandappa Magdum v. Hirabai Kahandappa Magdum reported in AIR 1978 SC 1239 dealing with the consequence of a notional partition, which is to be assumed under explanation 1 to Section-6 as it stood then, observed as follows:

"All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life time of the deceased. The allotment of this share is not a processual step devised merely for the purpose of



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working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition."

16. In Additional Commissioner of Income v. P.L. Karuppan Chettiar reported in AIR 1979 Mad 1 a Full Bench of this Court after revisiting the law as well as the effect of Section-4, concluded that the property allotted to a Hindu male in a partition between him and his father or the property that devolves on him, as coparcener under Section-6 will be treated as ancestral property vis a vis his son. In so far as the property i.e. inherited by a male Hindu under Section-8, will be held by him as an absolute owner and that his son or sons will not get a right by birth over the same. In effect, the Full Bench, noticed the difference between a devolution of ancestral property under Section-6 and inheritance under Section-8.

(ii). Vineeta Sharma -vs- Rakesh sharma and others reported in 2020 (9) SCC 1 by Hon'ble Supreme Court, which reads as below:-

In re: Partition and effect of statutory fiction

"85. The right to claim partition is a significant basic feature of the coparcenary, and a coparcener is one who can claim partition. The daughter has now become entitled to claim partition of coparcenary w.e.f. 9-9-2005, which is a vital change brought about by the statute. A coparcener enjoys the right to seek severance of



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status. Under Sections 6(1) and 6(2), the rights of a daughter are pari passu with a son. In the eventuality of a partition, apart from sons and daughters, the wife of the coparcener is also entitled to an equal share. The right of the wife of a coparcener to claim her right in property is in no way taken away.

86.....

87. It is settled proposition of law that without partition, only undivided share can be sold but not specific property, nor joint possession can be disrupted by such alienation. Whether the consent of other coparcener is required for sale or not, depends upon by which School of Mitakshara law, parties are governed, to say, in Benares School, there is a prohibition on the sale of property without the consent of other coparceners. The Court in the abovesaid decision made general observation but was not concerned with the aspect when the partition was completed, the effect of intervening events and effect of statutory provisions as to partition, as such, it cannot be said to be an authority as to provisions of Section 6 as substituted and as to enlargement of the right by operation of law achieved thereunder. Shares of coparceners can undergo a change in coparcenary by birth and death unless and until the final division is made. The body of coparcenary is increased by the operation of law as daughters have been declared as a coparcener, full effect is required to be given to the same. The above decision cannot be said to be an authority for the question involved in the present matters.

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 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



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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 into consideration.

111. In Gyarsi Bai v. Dhansukh Lal [Gyarsi Bai v. Dhansukh Lal, AIR 1965 SC 1055] , it was held that the shares of all coparceners should be ascertained in order to work out the share of the deceased coparcener, partition to be assumed and given effect to when the question of allotment comes, but this Court did not lay down in the said decision that the deeming fiction and notional partition brought an end to the joint family or coparcenary.

112. In case coparcenary is continued, and later on between the surviving coparceners partition takes place, it would be necessary to find out the extent of the share of the deceased coparcener. That has to be worked out with reference to the property which was available at the time of death of deceased coparcener whose share devolved as per the proviso and Explanation I to Section 6 as in case of intestate succession."

32. In these two judgments extracted above all other judgments touching upon the point of devolution in respect of Mitakshara Hindu Male Property under Section 6 by survivorship or devolution of the property by way inheritance under Section 8 is extensively discussed.

33. In the said contest, the admission made by the parties in the earlier proceedings namely O.S.No.23 of 2012 gains at most significance.

34. In P.V.Sri Rangammal @ Muthuammal and other -vs- K.Dharmaraja and another reported in 2001 (2) L.W.193, wherein, this Court while considering the admission made in the previous proceedings after distinguishing the admission made to be used under Section 21 of the Indian Evidence Act and the difference in using the previous statement for contradicting under Section 145 of Indian Evidence Act, after following the Hon'ble Supreme Court judgment in Bishwanath Prasad and others -vs- Dwarka



Prasad and others reported in 1974 (1) SCC 78, held that, admissions are substantive evidence by themselves in view of Section 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted.

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35. In P.V.Rangammal @ Muthuammal vs. K.Dharmaraja and others reported in 2001 (2) LW 193, observation of the Hon'ble Supreme Court is extracted below:-

"26. What is the effect of such an admission? In (1977) 3 Supreme Court Cases 540 = 90 L.W. 107 S.N. (Thiru John v. Returning Officer), it is held thus,

"... A party's admission under Sections 17-21 of the Evidence Act is substantive evidence proprio vigore and if it is clearly and unequivocally made, is the best evidence against the party making it, and though not conclusive, is enough to shift the onus on the maker..."

27. In (1979) 4 Supreme Court Cases 790 (Avadh Kishore Das v. Ram Gopal), their Lordships held thus,

"Evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong but they do raise an estoppel and shift the burden of proof on to the person making them or his representative in-interest. Unless, shown or explained to be wrong, they are an efficacious proof of the facts admitted.

If, however, the admission as made by the predecessor consciously and not inadvertently and, far from explaining it, the successor-in-interest affirms it, the admission would be a relevant evidence raising the estoppel."

36. Undoubtedly, though not conclusive the admissions made by the parties in the previous proceedings is a substantive evidence to put against the maker. From the conduct of the parties, till they withdrew the previous suit for partition,



atleast properties under schedule "A" & "B" of the present suit were considered as properties blended to the hotchpot of the ancestral property by all the parties concern. The properties shown in "A" & "B" schedule were not purchased by 1st defendant. It devolved upon him by a previous partition deeds and the sharers have explicitly accepted that these properties become the joint family property having put in the hotchpot of the ancestral property. After such blending, with the ancestral property the unilateral alienation of 'A & B' schedule properties under Ex.A.13 to Ex.A.17 which were executed between 28.05.2014 and 28.11.2014, to the parties in the earlier partition liable to be declared as null and void, since Ex.A.13 to Ex.A.16 were transactions pendente lite and Ex.A.17 soon after the withdrawal of the partition suit behind the back of the plaintiff.

37. The Trial Court has miserable failed to note that Ex.A.1 and Ex.A.20 clearly refers about the ancestral nature of the property and the other properties getting blended with the ancestral property. Whereas, the Trial Court has construed those properties as self acquired property kept by the members of the joint family and got divided under these deeds. The source for acquiring "B" schedule property is the property what K.N.T.Manickam Chettair got under the partition deed Ex.A.20 of the year 1947 and the "A" schedule property was the property allotted to K.N.T.Manickam Chettiar under Ex.A.20. The "A" & "B" schedule properties came to the hands of M.Sivasubramanian/1st Defendant only through his father K.N.T.Manickam Chettiar. The said K.N.T.Manickam Chettiar got those property from his father K.N.Thandavaraya Chettiar. When in the year 2006, under Ex.A.2 Manickam Chettiar and his siblings divided the property, they have treating it as a joint family property. This will not take away the coparcenary character of the properties which devolved to Sivasubramanian from his father and grandfather. The partition effected between the bothers and sisters of K.N.T.Manickam Chettiar and his siblings under Ex.A.2 cannot deprive the right of the plaintiff, who by survivorship have a share in the ancestral property. The individual property can blend with the ancestral property or with the joint family property but not vice versa. The Trial Court has in reverse held that the ancestral property had become joint family property and on subsequent division among the members of the joint family property it has become individual property and therefore, it has lost the character of ancestral property. On the birth of male coparcener, the character of coparcenary property gets retained. The point which shall remain to answer whether the estate gets enlarged on blending or not.

40. In this context, it is also appropriate to refer the judgment of the Hon'ble Supreme Court rendered in M.Arumugam vs. Ammaniammal and others reported in 2020 (5) CTC 680, in



"A" & "B" schedule property those documents are declared as void. As far as "C" schedule property is concerned, the plaintiff has failed to prove that the said property was purchased from out of the income derived from the ancestral property. Contrarily, the first defendant had proved he had his own source of income to purchase the "C" schedule property. Therefore, the partition relief as against "C" Schedule property is dismissed. Preliminary decree is passed in respect of "A" & "B" schedule property. Plaintiff shall proceed further to get the properties divided by metes and bounds through final decree as per law. Accordingly, the Appeal suit is Partly-Allowed. No costs.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

bsm

To,
1.The Principal District Court,
Krishnagiri.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Jayaprakash, Advocate SR.No.13772

+1cc to M/s.Gupta and Ravi, Advocate SR.No.134771

A.S.No.250 of 2017

PVS (CO)
GMY (20/09/2021)