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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2021

DATE OF DECISION : 03.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

A.S.No.687 of 2018

P.Hemamalini ... Appellant/Plaintiff

-vs-

1. K.Palani Malai
2. Raja alias Senthil Raja
3. City Union Bank
rep.by its Branch Manager
Jalakandapuram Branch
Jalakandapuram, Mettur Taluk
Salem District
4. Indian Oil Corporation
rep.by its Manager
Salem Branch
Leigh Bazar
Salem 636 002

... Respondents/Defendants

Memorandum of Grounds of First Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 28.03.2018 made in O.S.No.181 of 2011 on the file of the Additional District (Fast Track) Court, Mettur.

For Appellant :: Shri N.Jothi for
Mr.N.Manokaran

For Respondents :: Shri.R.Srinivas for
Mr.S.Sithirai Anandam
for R1 & R2
Mr.R.S.Varadharajan for R3
No appearance for R4



the defendants 1 & 2 to divide the suit properties into three equal shares by metes and bounds by taking into consideration of good and bad soil and allot one such share to the plaintiff and put her in separate possession, failing which to divide the suit properties by appointing a Court Commissioner for the purpose of the said partition and to declare the partition deed created by the defendants 1 & 2 on 11.5.2001 registered as Document No.1597 of 2001 in the Jalagandapuram Sub Registrar office as null and void and also for a permanent injunction restraining the defendants, their men, agents, servants and others from alienating or encumbering the suit properties to anyone until the partition is finally over.

3. Replying to the same, the first respondent filed a detailed written statement taking a stand that the suit was barred by limitation, because the appellant, after getting married in the year 2008, left for her matrimonial home; that she was not in joint possession and enjoyment of the suit properties; that the suit properties had already been partitioned between the family members of the first respondent in the year 1984 itself and that the suit properties are not the ancestral properties as alleged by the appellant, hence, the appellant is not entitled to one third share in the suit properties. It was further explained in the written statement that in the year 1984 itself the suit properties were allotted to the first respondent as 'C' schedule properties through a registered partition deed among the first respondent and his brothers, hence the suit properties are the absolute properties of the first respondent. Therefore, it was pleaded that except the first respondent, nobody has got any right or title over the properties and due to his old age, the first respondent-Father has given away the other properties by way of partition on 11.5.2001 in favour of the second respondent-Son and that the second respondent has been in separate possession and enjoyment of his share by paying kist to the said properties. Moreover, when the second respondent is having every right individually to obtain loan in respect of his property, he entered into an agreement for running a petrol bunk through Indian Oil Corporation and these facts are also known to the appellant. However, after a lapse of ten years, the appellant is seeking a declaratory relief against the registered partition deed, therefore, the partition suit is barred by limitation. It was also further pleaded that the appellant was not entitled to any relief against the respondents 1 & 2.

4. The second respondent also filed his detailed written statement reiterating the pleadings made by the first respondent.



5. The third respondent-City Union Bank also filed its written statement stating that the second respondent had obtained loan by pledging the lands in Survey Nos.162/4 having an extent of 2.10 acre; 163/1 having an extent of 0.62 cents; 162/7 having an extent of 0.42 cents; 162/8 having an extent of 0.45 cents and 171/1A having an extent of 0.12 ½ cents at Dhoramangalam Village. Moreover, the second respondent has also created an equitable mortgage upon the properties and obtained a loan of Rs.10 lakhs from the third respondent. Before sanctioning the loan, the documents submitted by the second respondent were properly scrutinized and then only the loan was sanctioned by the third respondent bank. The second respondent has also produced a sworn affidavit dated 3.10.2011 executed by the appellant in favour of the second respondent. The recital of the said document would reveal that the appellant has ratified the partition deed dated 11.5.2001, wherein she has consented that she would not claim any right over the properties mentioned therein and that she had no objection for the second respondent getting any loan from the bank based on the above properties. Therefore, after executing such document, the appellant's claim is unsustainable and she is estopped from making the claim.

6. The fourth respondent also filed its detailed written statement stating that the suit was vexatious, because there is no cause of action for the appellant to file the suit, hence, it is not legally maintainable. It was also pleaded that the Indian Oil Corporation Limited is a Government of India company incorporated under Section 617 of the Companies Act, 1956 and being a public sector enterprise of the Government of India, it is engaged in the marketing of petroleum products through retail network. Since the appellant has approached the Court with tainted and unclean hands, she is not entitled to any relief.

7. Based on the above pleadings, the trial Court, after framing the following seven issues,

- (i) Whether the suit property is the ancestral property of the first defendant or ancestral and joint family property of plaintiff, defendant 1 and 2?
- (ii) Whether the plaintiff, defendant 1 and 2 are in possession and enjoyment of the suit property or not?
- (iii) Whether the second defendant fabricated a false forged release deed dated 3.10.2011?



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(iv) Whether the plaintiff undervalued the suit property?

(v) Whether the first defendant purchased any portion of suit property from his brother Ponnusamy through a release deed?

(vi) Whether the plaintiff entitled for the relief claimed by her?

(vii) What is the result?,

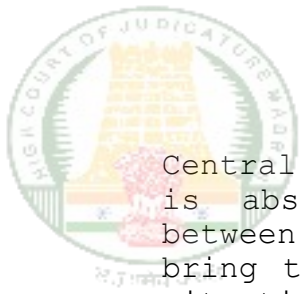
answering all the issues against the appellant/plaintiff, dismissed the suit holding that since the suit properties were already partitioned between the respondents 1 & 2/defendants 1 & 2 on 11.5.2001 before the Hindu Succession (Amendment) Act, 2005 (39 of 2005) came into force on 9.9.2005 and that any partition that took place before the Amendment Act 39 of 2005 came into force being valid, there is no legal right for the appellant/plaintiff to make her claim. Aggrieved thereby, the present first appeal has been filed.

8. Shri N.Jothi, learned counsel appearing for the appellant has raised several knotty legal issues of public importance. When the appellant daughter in this case got married on 6.6.2008, admittedly, the suit properties being ancestral, she is having equal right as a coparcener along with her father and brother, the respondents 1 & 2, because Section 29-A was inserted by the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) with effect from 25.3.89 conferring equal right on the unmarried daughter in the ancestral properties, therefore, the appellant daughter is entitled to get equal share by birth in the suit properties. Hence the partition said to have taken place on 11.5.2001 under Ex.A1 between the respondents 1 & 2/father & brother is not binding on the appellant, because Section 29A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) which came into effect from 25.3.89 has treated the daughters also as coparceners along with sons, therefore, once the appellant is treated as a coparcener by birth in the same manner as son, she is entitled to one third share in the suit properties by virtue of Section 29-A of the State Act which has been given retrospective effect. Shri Jothi also argued that the State Legislature in their wisdom thought it fit to treat the daughters as coparceners along with sons by introducing Section 29-A in the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) with effect from 25.3.89 subject to two conditions, namely, that the



daughter should have remained unmarried as on 25.3.89 and no partition should have taken place prior to 25.3.89. This amendment of Tamil Nadu also got the assent of the President of India, as per Article 254(2) of the Constitution of India. Whereas the Parliament had enacted a law by substituting the then existing Section 6 of the Hindu Succession Act, 1956 by way of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) with effect from 9.9.2005, subject to a rider that any alienation or partition or testamentary disposition that had taken place before 20.12.2004 shall not be invalidated. But in the case on hand, the appellant having married on 6.6.2008 is entitled to claim her share under Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990). Since the respondents 1 & 2/father & son have created a false partition deed under Ex.A1 dated 11.5.2001, the same is not binding on the appellant. In addition thereto, Ex.A1 partition deed is illegal and also null and void.

9. Drawing our attention to Article 254 of the Constitution of India, Shri Jothi argued that the provisions of Article 254 are absolutely clear and unambiguous. As per Article 254, when the provisions of the Central Act and the State Act in the Concurrent List are fully inconsistent and they are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy. However, the State law can be protected by obtaining the assent of the President under Article 254(2). By virtue of Article 254(2), after obtaining the assent of the President, the State law will prevail in the State in spite of the provisions of the Central Act. Such a situation may exist until the Parliament may at any time make a law adding to, amending, varying or repealing the law so made by the State Legislature. But in the case on hand, Shri Jothi pleaded that a comparative reading of Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) and Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) would not give rise to any inconsistency between the State Act and the Central Act. Explaining further as to the repugnancy, Shri Jothi argued that to plead a case of repugnancy under Article 254, twin requirements must be satisfied. Firstly, there has to be a repugnancy between the Central and the State Acts. Secondly, the Presidential assent has to be held as non existent. In an effort to bring the case of repugnancy, both the legislations must be substantially on the same subject. Placing reliance on a familiar Constitution Bench judgment of the Apex Court in M.Karunanidhi v. Union of India, (1979) 3 SCC 431, it has been argued that to bring the case of repugnancy, three conditions must be satisfied. They are (i) that there is a clear and direct inconsistency between the



Central Act and the State Act; (ii) that such an inconsistency is absolutely irreconcilable; (iii) that the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other. Although the Apex Court in the above judgment has given the triple test, in view of the fact that there is no inconsistency between the State law and the Central law, the question of repugnancy does not arise. This has been completely overlooked by the trial Court. Article 254 can apply only when the State law is repugnant to the law enacted by the Parliament, meaning thereby that the State law cannot co-exist to the extent which is repugnant to the Central law, it is pleaded.

10. Again explaining further, Shri Jothi submitted that while determining any question as to whether there exists any conflict, the real test would be as to whether both the legislations can stand together. Now the question is whether the State Amendment by inserting Section 29-A is relatable to Entry 5 in List III. While so, if we apply the rule of pith and substance, Section 29-A would still be valid, subject to the Parliamentary enactment by virtue of the proviso to Section 254 (2), for which the statement of objects and reasons may be referred to. When the Constitution has made a clear distinction between the making of law and the commencement of a law in view of the plain language used in Article 254(2), the State Act, namely, Section 29-A shall prevail over Section 6 of the Central Act, 2005, because Section 29-A has not been declared as invalid by any Court of law. Referring to the judgment of the Apex Court in Vineeta Sharma v. Rakesh Sharma and others, (2020) 9 SCC 1 and drawing our attention to paragraph-81, Shri Jothi argued that when a similar issue came up for consideration before the Apex Court in Mangammal v. T.B.Raju, (2018) 15 SCC 662, the Apex Court, while considering Section 29-A made in the State of Tamil Nadu, held that the State Government enacted the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) making effective from 25.3.89 adding Section 29-A in the Hindu Succession Act, 1956 specifically holding that Section 29-A is valid regarding succession by survivorship. The Apex Court has also held in that judgment that Section 29-A provided equal rights to daughters in coparcenary property, therefore, when Section 29-A has been held valid, the impugned judgment and decree passed by the trial Court are liable to be set aside with a direction to give one third share of the suit properties to the appellant/plaintiff.

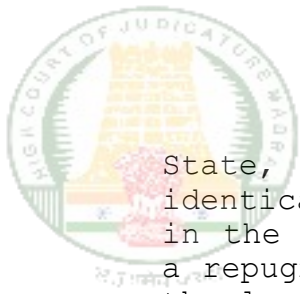


11. Again reiterating that Section 29-A of the State Act is valid, Shri Jothi further argued that when the Central Amendment Act came into force on 9.9.2005, the Parliament took note of various State Amendments into consideration for the purpose of amending Section 6 of the Hindu Succession Act, 1956. While amending Section 6 of the Hindu Succession Act, Parliament has removed Sections 23 and 24 of the Act in toto, but very carefully chose not to amend or repeal or vary or amend or delete Section 29-A of the Tamil Nadu Act 1 of 1990. That shows that Section 29-A was allowed to stay in the field. Therefore, the findings given by the trial Court that the suit properties were already partitioned on 11.5.2001 between the respondents 1 & 2 before the Hindu Succession (Amendment) Act came into force i.e., before 20.12.2004 is unsustainable in law. The proviso to Article 254(2) naturally curtails the scope of clause (2) of Article 254 by providing that the Parliament can enact a law with respect to the same matter in which the State Legislature has made the law, it goes without saying that the proviso to Article 254(2) enlarges the power of the Parliament to add, amend, vary or repeal, whereas the Parliament has not chosen to vary or amend Section 29-A when Section 6 was amended on 9.9.2005. That shows that the effect and existence of Section 29-A of the State Act has been well taken note of as recommended by the Law Commission's report. Again placing reliance on the judgment of the Apex Court in Vineeta Sharma's case, Shri Jothi argued that more than once a similar issue of Section 29-A of the Tamil Nadu Act 1 of 1990 came up for consideration before the Apex Court. When Section 29-A of the Andhra Pradesh Amendment Act came up for consideration in S.Sai Reddy v. S.Narayana Reddy, (1991) 3 SCC 647 before the Apex Court as to whether the benefit of Section 29-A of the State Act can be extended even at the stage of final decree, the Court was pleased to extend the benefit of the amended Section 29-A to the pending matters even though the suit was laid prior to 1986. When the intention of both the State and Central Acts are to ensure that the daughters are not deprived of their right to obtain the share on becoming coparceners, making a frivolous defence by fraudulently creating a sham and nominal partition deed like Ex.A1 in the present case should be eschewed by this Court, because the appellant cannot be deprived of her right to equality conferred upon her by Section 29-A of the State Act. Contending further, Shri Jothi heavily argued that the law makers keeping in mind the goal of reaching gender justice constitutionally envisaged to be achieved, have enacted Section 29-A in the State of Tamil Nadu giving equal rights to daughters by birth in the coparcenary property as the sons have, similar to this social reforms, the State of Andhra Pradesh, Karnataka,



Maharashtra and Kerala have made necessary changes in the law giving equal rights to daughters in Hindu Mitakshara Coparcenary property, therefore, such a social reforms resulting gender justice required to be espoused by this Court by reversing the impugned judgment. Therefore the appellant/plaintiff/daughter cannot be deprived of her right of equality conferred upon her by Section 29-A of the State Act.

12. Shri R.Srinivas, learned counsel appearing for the respondents 1 & 2/defendants 1 & 2, supporting the impugned judgment and decree passed by the trial Court, urging this Court to dismiss the first appeal, argued that the sole issue raised in this appeal is whether Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) coming into force from 9.9.2005 will apply or Section 29-A inserted in Chapter II-A by the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) coming into force from 25.3.89 will apply, to determine the entitlement of the appellant regarding her share in the suit properties made in O.S.No.181 of 2011 before the trial Court. Since the Hindu Succession Act has been enacted by the Indian Parliament relating to Entry 5 in List III Concurrent List, there is a repugnancy between Section 6 of the Central Act 39 of 2005 and Section 29-A of the Tamil Nadu Amendment Act 1 of 1990 with regard to the entitlement of a female coparcener. Section 29-A of the State Act gives right of equality in ancestral property with effect from 25.3.89 with two conditions, whereas Section 6 of the Central Act gives larger rights from 9.9.2005 with one condition that no partition should have taken place on and from 20.12.2004, therefore, as there has been a repugnancy, the Central legislation will prevail over the State legislation, hence, Section 29-A inserted by the Tamil Nadu Amendment Act 1 of 1990 will become void. Again pointing out the repugnancy so as to bring the operation of substituted Section 6 of the Hindu Succession Act valid, it was argued that Section 6 and Section 29-A broadly produce different results when applied to the same facts, inasmuch when the appellant/plaintiff got married after 25.3.89 i.e., on 6.6.2008, if the substituted Section 6 of the Central Act is applied, the appellant/plaintiff will not be entitled to any share, as a registered partition deed had taken place on 11.5.2001 under Ex.A1. Since both Section 6 and Section 29-A produce different results when applied to the facts and circumstances of the instant case, they are running repugnant to each other, hence, they cannot go together in the same field. Referring to the ratio laid down by the Apex Court in Zaverbhai Amaidas v. State of Bombay, (1955) 1 SCR 799 and in Innoventive Industries Ltd., v. ICICI Bank, CDJ 2017 SC 1013, he has pleaded that on a question arising from Article 254(1), whether an Act of Parliament prevails against the law of the



State, if the subject matter of the State Legislation is identical with that of the earlier Central legislation enacted in the Concurrent List, both cannot stand together, if there is a repugnancy, as a result the Act of Parliament prevails against the law of the State. Shri Srinivas has pleaded that when the Tamil Nadu Amendment Act 1 of 1990 inserting Section 29-A in Chapter II-A to the Hindu Succession Act came into force on 25.3.89 that remained in force till 9.9.2005 when the Parliament substituted Section 6 by the Hindu Succession (Amendment) Act 39 of 2005 on 9.9.2005, the provisions of Section 29-A being repugnant to Section 6 of the Central Act, Section 29-A becomes void, inasmuch as Section 6 will prevail and occupies the field and therefore anything inconsistent or repugnant to Section 6 will become void. Shri Srinivas further stated that when the present suit was filed in November, 2011 in O.S.No.181 of 2011, as the provisions of the Tamil Nadu Amendment Act 1 of 1990 inserting Section 29-A are repugnant to the substituted Section 6 of the Hindu Succession (Amendment) Act 39 of 2005 which came into force on 9.9.2005, it is only Section 6 that will apply to the facts and circumstances of this case.

13. Replying to the contention made by the appellant's counsel that Section 29-A of the State Act has been held as valid by the Apex Court in Mangammal v. T.B.Raju, (2018) 15 SCC 662, Shri Srinivas, referring to the ratio laid down by the Apex Court in Vineeta Sharma's case (2020) 9 SCC 1, pleaded that the three Judge Bench in the said decision, taking into consideration the State amendments vis-a-vis the grant of coparcenary rights to daughters effected by the States of Kerala, Andhra Pradesh, Karnataka etc., finally held that the rights under the amendments are applicable to living daughters of living coparceners as on 9.9.2005 irrespective of when such daughters are born, however, while holding so, the Apex Court also has made it clear that the disposition or alienation including partition which may have taken place before 20.12.2004 as per law prior to the said date will remain unaffected. Again in the said judgment, the Apex Court has held that any transaction of partition effected therefor will be governed by the explanation. Therefore, when the Apex Court has clearly applied the amendment to Section 6 of the Central Act holding that the rights under the amendments are applicable to the living daughters of living coparceners as on 9.9.2005 with a further clarification that any disposition or alienation including partition which may have taken place before 20.12.2004 will remain unaffected, it goes without saying that the substituted Section 6 of the Hindu Succession (Amendment) Act 39 of 2005 which came into force on 9.9.2005 will apply to determine the entitlement of the appellant regarding her share



in the suit properties. While so, the controversy between Section 29-A and Section 6 was not in issue therein, therefore, the decision in Mangammal's case is inapplicable to the present case.

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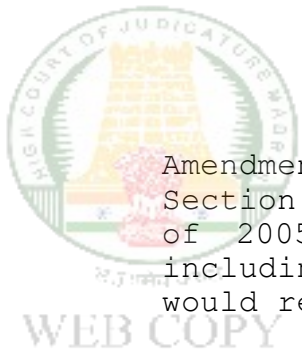
14. Again answering the second contention made by the appellant that the inserted Section 29-A in Chapter II-A of the Hindu Succession Act by the Tamil Nadu Amendment Act 1 of 1990 was held valid, refuting the same, Shri Srinivas argued that the three-Judge Bench of the Apex Court in Vineeta Sharma's case, in paragraph-139, overruling the views to the contrary expressed in *Prakash v. Phulavati*, (2016) 2 SCC 36 and *Mangammal v. T.B.Raju*, (2018) 15 SCC 662 and holding the opinion expressed in *Danamma v. Amar*, (2018) 3 SCC 343 is partly overruled to the extent it is contrary to this decision, has categorically held that the provisions of the substituted Section 6 are required to be given full effect, notwithstanding that a preliminary decree has been passed, because the daughters are to be given share in coparcenary property equal to that of a son in pending proceedings for final decree or in an appeal. Arguing further, Shri Srinivas stated that when the judgment in Vineeta Sharma's case has made it clear that Section 6 as substituted with effect from 9.9.2005 will have to be applied even in cases where preliminary decree has been passed, the judgment in Vineeta Sharma's case fully holds good the case of these respondents, therefore, Section 6 alone will prevail over Section 29-A, for the simple reason that the Apex Court has held in the said judgment that the substituted Section 6 will apply retroactively. Accordingly, directions have been given to all Courts in India to apply the new substituted Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) even to pending appeal. Therefore, in the present case also, he pleaded that the substituted Section 6 has to be applied and not the inserted Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990). Lastly meeting the arguments of the appellant that when the Central Act came into effect from 9.9.2005, the Parliament took note of various State enactments into consideration for the purpose of Section 6 of the Hindu Succession Act, 1956 to remove the gender bias, more importantly, the Parliament removed Sections 23 and 24 from the Hindu Succession Act, 1956, but carefully chose not to amend or repeal or vary or amend or delete Section 29-A of the State Act that shows the mind of the law makers that both Acts can co-exist, therefore, Section 29-A shall be allowed to exist; Shri Srinivas pressed into service a judgment of the Apex Court in *State of Orissa and another v. M/s M.A.Tulloch & Co.*, AIR 1964 SC 1284 answering the issue in this regard that the entire theory underlying implied repeals is that there is no need for



the later enactment to state in express terms that the earlier enactment has been repealed by using any particular set of words if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, hence, Section 29-A is impliedly repealed, resultantly Section 6 of the Hindu Succession (Amendment) Act, 2005 will govern the present situation and this legal aspect has been rightly followed by the trial Court, therefore this appeal shall fail.

15. Heard learned counsel for the parties.

16. The appellant/plaintiff Mrs.P.Hemamalini, Daughter of Mr.K.Palani Malai, the first respondent/first defendant and sister of Mr.Raja alias Senthil Raja, the second respondent/second defendant has brought this appeal aggrieved by the judgment and decree of the trial Court refusing her prayer. The appellant has filed the suit in O.S.No.181 of 2011 before the Principal District Court, Salem, which was transferred to the Additional District (Fast Track) Court, Mettur, to divide the suit properties in three equal shares, failing which to appoint a Court Commissioner for the said purpose of division, to declare the partition deed created by the defendants 1 & 2 dated 11.5.2001 as null and void and to grant permanent injunction restraining the defendants, their men, agents, servants, executors or assignees from alienating or encumbering the suit properties to any body until the partition is finally made. According to the appellant, she got married on 6.6.2008 and since the Tamil Nadu State Legislature has introduced Section 29-A in Chapter II-A by the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) with effect from 25.3.89 conferring equal rights to daughter in coparcenary property as is allottable to a son, subject to fulfillment of two conditions that (a) the daughter should have remained unmarried as on 25.3.89 and (b) no partition should have taken place prior to 25.3.89, she is entitled to one third share in the ancestral properties, as per Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990). But the respondents 1 & 2 have refused to partition the properties on the false ground that the suit properties were already partitioned by a registered partition deed dated 11.5.2001 under Ex.A1 and the recital of the partition deed would show that the appellant has ratified the partition deed and consented that she would not claim any right in the aforementioned properties. Secondly, when the marriage of the appellant was solemnized on 6.6.2008, the trial Court, erroneously accepting the case of the respondents 1 & 2, ought not to have dismissed the suit, overlooking Section 29-A of the Hindu Succession (Tamil Nadu



Amendment) Act, 1989 (1 of 1990), holding that the proviso to Section 6(1) of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) clearly speaks that any disposition or alienation including partition which may have taken place before 20.12.2004 would remain unaffected.

17. One of the knotty legal issues involved in this appeal is whether the substituted Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) brought in Chapter-II by the Parliament which came into force with effect from 9.9.2005 or Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) brought in Chapter II-A by the State Legislature which came into force with effect from 25.3.89 and holding the field till 9.9.2005, will apply, to determine the entitlement of the appellant/plaintiff regarding her one third share in the Hindu coparcenary properties in O.S.No.181 of 2011 on the file of the Additional District (Fast Track) Court, Mettur. The appellant claims that Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) shall be applied, without reference to the substituted Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005). On the other hand, the respondents 1 & 2 make a counter claim that only the substituted Section 6 of the Hindu Succession (Amendment) Act, 2005 shall be applied and not Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, on the ground that when there is a repugnancy between these two Acts, the Act enacted by the Parliament alone shall prevail over the Act enacted by the State Legislature and that a repugnancy between two statutes would arise if there is a direct conflict between the two provisions and if the law made by the Parliament and the law made by the State Legislature occupy the same field, namely, Concurrent List and clash with each other, the Parliament Act will prevail over the State Act. In this regard, let us first examine whether there is any repugnancy between the Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) and the substituted Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) in this case.

18. Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) came into force with effect from 25.3.89 with two conditions, namely, daughter should remain unmarried as on 25.3.89 and no partition should have taken place prior to 25.3.89. The appellant in this case got married on 6.6.2008, hence she makes her claim under Section 29-A. Whereas the Parliament in the same subject has enacted a law substituting Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) with effect from 9.9.2005 with one condition that the daughter is entitled to have equal share in the Hindu



coparcenary property like a son only if there is no disposition or alienation including partition or testamentary disposition of property had taken place before 20.12.2004. Now it is counter claimed that the right given by the State Act has been taken away by the Central Act by virtue of the proviso to Article 254 of the Constitution.

19. Let us now make a comparative analysis of both the provisions, namely, Section 29-A of the State Act and Section 6 of the Central Act. Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990), which came into force with effect from 25.3.89 is reproduced as follows:-

"S.29-A. Equal rights to daughter in coparcenary property. Notwithstanding anything contained in section 6 of this Act,--

(i) in a Joint Hindu Family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allottable to the pre-deceased child of a predeceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the predeceased son or of the pre-deceased daughter, as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) 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



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force, as property capable of being disposed of by her by will or other testamentary disposition; (iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989; (v) nothing in clause (ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989."

20. A careful reading of the above shows that Section 29-A was brought in with effect from 25.3.89 with three vital aspects:-

- (1) Notwithstanding anything contained in Section 6 of this Act i.e., as on 25.3.89 (a) daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property like a son and (b) also subject to the same liabilities and disabilities in respect thereto as the son.
- (2) A daughter married before the commencement of the Act-25.3.89 cannot claim anything under this Act.
- (3) A daughter cannot claim any property if partition had taken place before 25.3.89.

21. Whereas, Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) substituted with effect from 9.9.2005 is also reproduced as follows:-

"S.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 in 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 subsection shall affect or invalidate any disposition or alienation including any partition



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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."

22. A careful reading of the above shows the following benefits:

(a) A daughter becomes a coparcener like a son by birth;

(b) she shall have the same equal rights in the coparcenary property like a son;

(c) a daughter is also subject to the same liabilities and disabilities in respect of the coparcenary properties;

(d) any partition taken place prior to 20.12.2004 shall not be affected;



(e) whether the daughter is married or unmarried;

(f) any partition by execution of a deed of partition duly registered;

(g) the Act lays down a uniform and comprehensive system of inheritance all over the country to every Hindu by religion.

23. After a comparative analysis of both the above provisions, if we apply Section 29-A by taking the marriage date 25.3.89 and the partition date 25.3.89, the same will go repugnant to the cut off date 20.12.2004 fixed by Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), because as per Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990), if any partition has taken place prior to 25.3.89, such partition shall not be invalidated and any partition taking place from 26.3.89 will be invalid, whereas when we apply Section 6 of the Hindu Succession (Amendment) Act, 2005, the partition taking place from 26.3.89 till 20.12.2004 will not be invalidated or affected and they are saved and protected. This huge repugnancy gives a direct collision with each other resulting in a situation where it is impossible to obey the one without disobeying the other. The second repugnancy is this. If a daughter is married on or before 25.3.89, Section 29-A will disentitle her to have a share, whereas Section 6 of the Hindu Succession (Amendment) Act, 2005 says that from the commencement of the Act, a daughter of a coparcener in a joint family shall become a coparcener by birth and the disqualification of getting married is obliterated, therefore, Section 29-A of the State Act is in direct conflict with Section 6 of the Central Act 39 of 2005.

24. Now the tricky question is in view of the above repugnancy, whether Section 29-A will prevail over Section 6 of the Act or vice-versa. The answer is clearly given in Article 254 of the Constitution of India that when a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to the previous law made by Parliament, such law can be protected by obtaining the assent of the President under Article 254(2). The effect of obtaining the assent of the President would make the State law to prevail over the Central law in the State. Such a situation will legally continue until the Parliament makes a law adding to or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254(2).



25. When both the Parliament and the State Legislature are entitled to legislate in the Concurrent List in regard to any of the Entries appearing in Entry 5 of the List of Seventh Schedule of the Constitution and if there is any overlapping leading to repugnancy as to which law made by the Parliament or the State Legislature shall be enforced, in such event, the question of repugnancy would arise. In this context, it is relevant to refer to a decision of the Constitution Bench of the Apex Court in *M.Karunanidhi v.Union of India*, (1979) 3 SCC 431, wherein it is held that where there is a direct collision between the law made by the State and that made by the Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. The above judgment shows that Parliament is empowered to legislate regarding the matters contained in List I, which is called Union List to the Seventh Schedule and the State Legislature have no authority to make any law in respect of Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both the Parliament and the State Legislature are entitled to legislate in regard to any of the Entries appearing therein. If there is any repugnancy between the State law and the Central law, as per Article 254 (1), the Central law will prevail over the State law. So far as List II is concerned, only the State Legislatures are entitled to legislate on them.

26. When we look at the scheme of the Constitution, the distribution of legislative powers between the Parliament and the State Legislatures is scientifically made with equal distribution of legislative power.

26.1. Firstly, in List I to the Seventh Schedule, Parliament alone is empowered to legislate, hence the State Legislatures have no authority to make any law in respect of Entries contained in List I.

26.2. Secondly, so far as List II is concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions, Parliament can do so.

26.3. Thirdly, so far as the Concurrent List is concerned, both the Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the conditions laid down by Article 254(1).



26.4. From the above three Lists, repugnancy may occur from the following circumstances. For example, if there is repugnancy between the Central Act and the State Act arising only from the Concurrent List, by virtue of Article 254(1), the Central Act will prevail and the State Act will become void in view of the repugnancy.

26.5. If any law is made by the State Legislature in the Concurrent List and the assent of the President is obtained so far as the State Act is concerned, it will prevail in the State and will overrule the Central Act in its applicability to the State only. It is more important that such a state of affairs will exist only until the Parliament may at any time make a law by adding to or amending or varying or repealing the law made by the State legislatures under the proviso to Article 254(2). It is also equally important that even if the subsequent law made by the State Government clashes with Central Act, Parliament need not expressly state that it repeals, alters or amends the State law made under Article 254(2), because the subsequent law made by the Parliament will prevail and the provisions of the State law which are inconsistent/repugnant to the law made by the Parliament will to the extent of such repugnancy be void. With this background of legal position, let us go to the case on hand.

27. Shri Srinivas, learned counsel appearing for the respondents 1 & 2 argued that there is no necessity for the subsequent law of the Parliament to state that the State enactment is repealed, as there is a legal fiction embedded in Article 254, which says that when the State law becomes repugnant to the Central law, it automatically becomes void, therefore, there is no need for the new Union law to specifically repeal the State law. In support of his submissions, he has relied upon the judgment of the Apex Court in Zaverbhai Amaldas v. State of Bombay, AIR 1954 SC 752. The Apex Court while reading Section 107(2) of the Government of India Act and also referring to the power of the Dominion Legislature, Canada, in relation to that of the Provincial Legislature, similar to that under Section 107(2) of the Government of India Act, observed as follows:-

"7. This is, in substance, a reproduction of section 107(2) of the Government of India Act, the concluding portion thereof being incorporated in a proviso with further



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additions. Discussing the nature of the power of the Dominion Legislature, Canada, in relation to that of the Provincial Legislature, in a situation similar to that under section 107(2) of the Government of India Act, it was observed by Lord Watson in "Attorney-General for Ontario v. Attorney-General for the Dominion", 1896 AC 348(A), that though a law enacted by the Parliament of Canada and within its competence would override Provincial legislation covering the same field, the Dominion Parliament had no authority conferred upon it under the Constitution to enact a statute repealing directly any Provincial statute. That would appear to have been the position under section 107(2) of the Government of India Act with reference to the subjects mentioned in the Concurrent List.

Now, by the proviso to Article 254(2), the Constitution has enlarged the powers of Parliament, and under that proviso, Parliament can do what the Central Legislature could not under section 107(2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can, acting under the proviso to Article 254, repeal a State law. But where it does not expressly do so, even then, the State law will be void under that provision if it conflicts with a later "law with respect to the same matter" that may be enacted by Parliament." (emphasis applied)

28. The Apex Court in M/s Innoventive Industries Ltd., v. ICICI Bank and another, CDJ 2017 SC 1013, has clearly picturized how the legal position around the world is settled in regard to repugnancy arising between the State law and the Parliamentary law, as follows:-

"38....the Commonwealth of Australia Constitution Act of 1900, also enacted by the British Parliament, has a scheme by which Parliament, in Section 51, has power to make laws with respect to 39 stated matters. Under Section 52, Parliament, subject to the



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Constitution, has exclusive power to make laws only qua three subjects set out therein. Section 109 of the Australian Constitution reads as under:

"When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

B.N.Rau, J of the Calcutta High Court, delivering the judgment in G.P.Stewart v. B.K.Roy Choudhury, AIR 1939 Cal 628, while considering the meaning of 'repugnancy', after discussing the various authorities which laid down the test of repugnancy in Australia, Canada and England, concluded thus:-

"The principle deducible from the English cases, as from the Canadian cases, seems therefore to be the same as that enunciated by Isaacs, J. in the Australian 44 hour case (37 C.L.R. 466) if the dominant law has expressly or impliedly evinced its intention to cover the whole field, then a subordinate law in the same field is repugnant and therefore inoperative. Whether and to what extent in a given case, the dominant law evinces such an intention must necessarily depend on the language of the particular law." (emphasis supplied)

29. Doctrine of Pith and Substance: Coming to the doctrine of pith and substance, the Constitution of India has demarcated the boundary between the Centre and the States by way of the Seventh Schedule, which specifies the subject matters by dividing the power to make laws between them. List I or the Union List contains matters where the Centre has the power to make laws viz., Defence, Foreign Affairs, Currency etc.

List II or the State List contains the subjects where the State has the power to make laws viz., Public Order, Health, Sanitation etc.

List III or the Concurrent List contains subjects where both the Centre and the States have powers to legislate viz., Education, Forest, Administration, Justice etc.

30. In spite of the limitation given, often conflict arises between the State Law and the Central Law. When they are encroaching upon the sphere of the other, to deal with the said conflict, the Courts in India have developed a few Doctrines and



the Doctrine of Pith and Substance is one amongst them. This doctrine was evolved by the Privy Council, when it determines the appeals from Canada or Australia involving the question of legislative competence of the Centre or the States in those federations. Later on this doctrine came to be established in India, not only to find out whether the Parliament encroaches into the domain of State Legislature and vice-versa, but also employed to resolve the inconsistencies between the laws made by the Centre and the State Legislature. According to this doctrine, the law in question must be looked into as an organic hold and not as a mere collection of sections for determining the true nature and character of the impugned law. For applying this doctrine, one must have regard (a) to the enactment as a whole; (b) to its main objects and (c) to the scope and effect of this provision.

31. Taking support from the above doctrine, Shri Jothi argued that when several Entries in List III to the Seventh Schedule are legislative heads, it is quite likely that they may go overlapping. When such a situation arises, the issue may be resolved by applying the doctrine of pith and substance giving regard to the main object, the scope and effect of the provision and the extant of the Act.

32. In the light of the above, we have to look at the law as a whole and in substance whether it falls within the object of the Act. Coming to the object of substituting Section 6 of the Hindu Succession Act, 1956 is concerned, the statement of objects and reasons for introduction of the Bill is relevant, which reads thus:-

"Statement of Objects and Reasons.--The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri laws. The Act applies to every person who is



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a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

3. It is proposed to remove the discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as



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coparcenary property to women, whether married or unmarried, Section 6 of the Hindu Succession (Amendment) Act, 2005 brought into force with effect from 9.9.2005 by Act 39 of 2005 will prevail over Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 which came into force with effect from 25.3.89 by Tamil Nadu Act 1 of 1990.

34. Again the applicability of the doctrine of pith and substance in the matters of Concurrent List came up for consideration before the Apex Court in *Vijay Kumar Sharma v. State of Karnataka*, (1990) 2 SCC 562, wherein the Apex Court held that the Doctrine of Pith and Substance is applicable even to the matters in the Concurrent List in which both the Central and State legislature have the power to legislate. But, when there is an irreconcilable conflict between the two legislations, the Central Legislation will prevail. The Apex Court further held as follows:-

"63. The Court has to examine in each case whether both the legislations or the relevant provisions therein occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnance between the two laws. The emphasis laid by Article 254 is "with respect to that matter". Clause (1) of Article 254 posits as a rule that in case of repugnancy or inconsistency between the State law and the Union law relating to the same matter in the Concurrent List occupying the same field, the Union law shall prevail and the State law will fail to the extent of the repugnancy or inconsistency whether the Union law is prior or later in point of time to the State law. To this general rule, an exception has been engrafted in clause (2) thereof, viz., provided the State law is reserved for consideration of the President and it has received his assent, and then it will prevail in that State notwithstanding its repugnancy or inconsistency with the Union law. This exception again is to be read subject to the proviso to clause (2) thereof, which empowers the Parliament to make law afresh or repeal or amend, modify or vary the repugnant State law which will become void even though it received President's assent. In short, clause (1) lays down a general rule; clause (2) is an



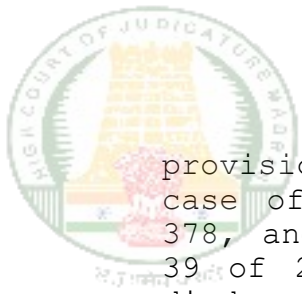
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exception to clause (1) and proviso qualifies that exception. The premise is that the law made by the Parliament is paramount and Union and State law must relate to the same subject matter in the Concurrent List. It is, thus, made clear that the Parliament can always, whether prior or subsequent to State law, make a law occupied by the State law. An absurd or an incongruous or irreconcilable result would emerge if two inconsistent laws or particular provisions in a statute, each of equal validity, could co-exist and operate in the same territory." (emphasis supplied)

The above judgment tells us that if the State law is found repugnant to Central Act, the State Act will give way for the Central Act.

35. Can we save Section 29-A by applying Doctrine of Eclipse: An eclipse situation is a situation which is temporary in nature. It means that a superior Legislature, because of some reason, is given certain power which it does not possess and for a brief period, and when that time is over, by virtue of the doctrine of eclipse, the State Law that was eclipsed by the operation of Central Act will come back to operation. That is called the doctrine of eclipse. For example, under Article 250, let's imagine an emergency is declared either internally or externally, Parliament can legislate on any subject and during the emergency, such Parliamentary Act will have force and after the emergency is over, the State Law will come back to force and will have full operation. Useful reference can be had from one of our old judgments in *Keshavan Madhava Menon v. State of Bombay*, AIR 1951 SC 128. Similarly, under Article 249, the Rajya Sabha can by two-third of the members of the House present and voting that for a period of one year, a particular subject in the State list can be availed of by the Parliament. Accordingly, if the Parliament enacts any law, Article 251 says that for the duration that parliamentary law is made, the State law will stand eclipsed. However, after that one year period, the parliamentary law goes out of the statute book and the State law will come back to force. But, this eclipse theory cannot be applied to our case as Section 6 of the Hindu Succession Act with more benefits than Section 29-A, will determine the rights of parties all over the Country without any interruption.

36. Our High Court Position: The Hon'ble Division Bench of our High Court had an occasion to consider the effect of the



provisions of the Central Act, namely, Act 39 of 2005, in the case of *Vijayalakshmi.P v. P.Susheela and others*, 2012 (5) LW 378, and clearly held that the Hindu Succession (Amendment) Act 39 of 2005 is prospective in operation and if the father had died prior to the coming into force of the said Act, i.e., on 9.9.2005, the benefit of the provisions of the said Act would not be available to a daughter to claim equal share as that of a son. This has been followed by Brother Justice M.Duraisamy in a reported decision in *Pugazhenthai and another v. Sundari Ammal and others*, 2013 (2) CTC 160 and also by Justice P.R.Shivakumar in a reported decision in *Kamalakannan and others v. Kasthuri and another*, 2013 (4) LW 193. These views were reiterated by the Apex Court in *Prakash v. Phulavati*, (2016) 2 SCC 36. However, the Apex Court in two of its judgments in *Ganduri Kotteeswaramma v. Chakiri Yanadi*, (2011) 9 SCC 788 and in *Prema v. Nanje Gowda*, (2011) 6 SCC 462 has held that the provisions of the 2005 Act are retrospective in operation. In *Ganduri's* case, the Apex Court has held that the new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from 9.9.2005. Thus, on and from 9.9.2005, the daughter is entitled to a share in the ancestral property by birth and is a coparcener as if she had been a son.

37. Again Justice A.Selvam, while considering a second appeal, in a reported decision in *Mariyammal and another v. Subbuthai and others*, 2013 (4) LW 360, without even resorting to the proviso to Article 254(2) of the Constitution of India, has held that Section 29-A of the Act 1 of 1990 would prevail in Tamil Nadu even after the introduction of the Act 39 of 2005 by the Union Government. Since the learned single Judge has omitted to consider the proviso to Article 254(2) of the Constitution of India, we are afraid that the said dictum may not be correct.

38. However, when there was a cleavage of opinion on the retrospectivity of the amending Acts 1 of 1990 and 39 of 2005, a three-Judge Bench of the Hon'ble Apex Court in *Vineeta Sharma v. Rakesh Sharma and others*, (2020) 9 SCC 1, putting a quietus to the issue, has categorically held that the rights under the substituted Section 6 can be claimed by daughter born prior to the amendment with effect from the date of amendment (9.9.2005) with the saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5) of the Hindu Succession Act with two important findings that (a) notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary property equal to that of a son in pending proceedings for final decree or in an appeal and (b)



that the plea of partition based on oral evidence cannot be accepted and to be rejected outrightly.

39. Yet, it is apt to refer to a judgment of the three-Judge Bench of the Hon'ble Apex Court in Pt. Rishikesh and another v. Salma Begum, (1995) 4 SCC 718, wherein it has been held that if the Parliament enacts a law on the same subject subsequent to the State law which has received the assent of the President, rendering the State law repugnant to the Central legislation, the State law would become void to the extent of inconsistency and this could be rectified by the State concerned by re-enacting the law and obtaining Presidential assent for the re-enacted law. The relevant portion of the judgment reads thus:-

"15. Clause (2) of Article 254 is an exception to Clause (1). If law made by the State Legislature is reserved for consideration and receives assent of the President though the State law is inconsistent with the Central Act, the law made by the Legislature of the State prevails over the Central Law and operates in that State as valid law. If Parliament amends the law, after the amendment made by the State Legislature has received the assent of the President, the earlier amendment made by the State legislature, if found inconsistent with the Central amended Law, both Central law and the State law cannot coexist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy the State law becomes void under Article 254(1) unless the State Legislature again makes law reserved for the consideration of the President and received the assent of the President...."

40. If we apply the above principle in the present case, after Section 6 of the Hindu Succession (Amendment) Act, 2005 was brought in, since the State has not re-enacted the law and has not once again obtained the Presidential assent for the re-enacted law, Section 6 of the Hindu Succession (Amendment) Act, 2005 would alone prevail.

41. Very interestingly, after going into various provisions of the Constitution of India, the Hon'ble Apex Court, in a seminal judgment in G. Mohan Rao and others v. State of Tamil Nadu and others, 2021 SCC Online SC 440, has laid down the law that if the Parliament amends the law, after the amendment made



by the State Legislature has received the assent of the President, the earlier amendment made by the State Legislature, if found inconsistent with the Central amended law, both the Central law and the State Law cannot coexist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy, the State law becomes void under Article 254(1), unless the State Legislature again makes law reserved for the consideration of the President and receives the assent of the President. The relevant paragraphs of the judgment read thus:-

46. Having understood the material basis of the High Court judgment and basic essence of the concept of repugnancy in light of Article 254, the fundamental question now is whether the 2019 Act qualifies as sufficient compliance of Article 254(2). For, Article 254(2) is the only mode of revival as per the High Court judgment.

47. Article 254(2) is produced again for ready reference thus:

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. -

(1) ...

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:"

(emphasis supplied)

48. The basic ingredients for the application of Article 254(2) can be noted thus:

- (i) A law made by the legislature of the State (the 2019 Act in this case);
- (ii) Such law is made on a subject falling in the concurrent list (Entry-42 of the Concurrent List in this case);
- (iii) Such law is repugnant to the provisions



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of an earlier/existing law made by the Parliament (the 2013 Act in this case); and
(iv) The State law is reserved for the assent of the President and has received the same.

49. Upon fulfilment of the above conditions, such State law would prevail in the State despite there being a law made by the Parliament on the same subject and despite being repugnant thereto. The most peculiar feature of Article 254(2) is the recognition of existence of repugnancy between the law made by the Parliament and State law and rendering that repugnancy inconsequential upon procurement of Presidential assent. In this case, the State legislature duly passed the 2019 Act (State law) on a subject of the concurrent list in the presence of a law made by the Parliament (2013 Act) and obtained the assent of the President to the same on 02.12.2019 after duly placing the State law before the President and duly stating the reason for reserving it for his assent. A priori, we hold that this is in compliance of Article 254(2).

50. This understanding of Article 254(2) is well settled and reference can be usefully made to the following paragraph of Pt.Rishikesh 40:

"15. Clause (2) of Article 254 is an exception to clause (1). If law made by the State Legislature is reserved for consideration and receives assent of the President though the State law is inconsistent with the Central Act, the law made by the Legislature of the State prevails over the Central law and operates in that State as valid law. If Parliament amends the law, after the amendment made by the State Legislature has received the assent of the President, the earlier amendment made by the State Legislature, if found inconsistent with the Central amended law, both Central law and the State Law cannot coexist without colliding



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with each other. Repugnancy thereby arises and to the extent of the repugnancy the State law becomes void under Article 254(1) unless the State Legislature again makes law reserved for the consideration of the President and receives the assent of the President. Full Bench of the High Court held that since U.P. Act 57 of 1976 received the assent of the President on 30-12-1976, while the Central Act was assented on 9-9-1976, the U.P. Act made by the State Legislature, later in point of time it is a valid law."

(emphasis supplied)

By virtue of the above ruling of the Apex Court, in the present case, after the Parliament had brought in the amended Section 6, which goes inconsistent with Section 29-A of the State amendment, the State Legislature have not made the law reserved for the consideration of the President and not received the assent of the President until now, therefore, this is not in compliance of Article 254(2). In similar circumstances, a Constitution Bench of the Hon'ble Apex Court in *Chebrolu Leela Prasad Rao and others v. State of A.P. & others*, 2020 SCC Online SC 383, while dealing with the repugnancy between the notification issued by the President and the order passed by the Governor, has held that the Presidential order will prevail over the order issued by the Governor.

42. Supremacy of the Parliamentary Legislation: Article 11 says that only Parliament alone can regulate the rights of citizenship by law, that means that the State cannot have that power. Article 13(2) directs the States that they shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution and if they do so, they shall be void. Articles 249, 250, 251 of the Constitution consistently state that the State law will stand repealed when the Parliamentary law comes to occupy the field. Article 245, while demarcating the legislative powers between the Parliament and the States, says that Parliament may make laws for the whole or any part of the territory of India and the Legislature of a State may make laws for the whole or any part of the State. Article 245(2) says that Parliament may make laws that would operate even outside India.



43. Article 246 deals with the residuary power, which says that all matters that are not enumerated in List II and List III can be dealt with by the Parliament, that would show that the Parliament stands taller than the State. Similarly, Article 249 says that the Rajya Sabha, by two-thirds of the members present and voting, can pass a resolution with respect to a particular subject in the State List, which shall be valid for a period of one year, during that period the State Law will stand eclipsed and after the period of one year, the State Law will be revived.

44. By virtue of Article 250, if Emergency is declared internally or externally, Parliament can legislate on any subject including Police, therefore, the same position of eclipse occurs so far as such Parliamentary law is concerned. Moving to Article 251, this Article also says that nothing in Articles 249 and 250 shall restrict the power of the Legislature of a State to make any law wherein it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, the law made by Parliament, shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy be inoperative. Again this shows that the Parliament stands on a higher footing than the State. All the Articles mentioned above clearly show that nowhere the State Legislature or the State law is taller than the Central law, more particularly, when there is an actual clash between these two legislations, the State must give way. Therefore, looking at the case of the appellant from various angles, Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) which came into effect from 9.9.2005, as per the settled legal position in India, will prevail over Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990).

45. Yet another argument of Shri Jothi that the amendment brought under Section 29-A of the Hindu Succession Act, 1956 in the States of Andhra Pradesh, Karnataka, Kerala, Maharashtra and particularly in the State of Tamil Nadu were taken as a guiding force for enacting Section 6 to remove gender bias and moreover, the Parliament had voluntarily removed Sections 23 & 24 from the Hindu Succession Act, 1956, therefore, cautiously the law makers chose not to amend, repeal or vary Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, are not sustainable in law, for the following reasons.

46. First of all, let us examine what is the legal status in the State of Karnataka. In Danamma's case, (2018) 3 SCC 343, the



Apex Court, after considering the historical analysis of Hindu law and the concept of joint Hindu family, held that an unobstructed heritage takes place by birth while the obstructed heritage takes place after the death of the owner. Under Section 6, rights are given by birth which is an unobstructed heritage, independent of the owner's death, therefore, the coparcenary father need not be alive on the date of substitution of Section 6. Again the Apex Court has held that the provisions of Section 6 are retroactive in nature and not retrospective, as even though the right of coparcener accrues to the daughter by birth. Therefore, in Danamma's case, Gurulingappa Savadi being the head of Hindu joint family died in 2001, hence, in 2002, his grandson brought a suit to partition the family property on the ground that Mr.Savadi's widow and two sons were co-owners of the property upon Mr.Savadi's death. This Karnataka case does not deal with the repugnancy part of Section 29-A of the Karnataka Act and Section 6 of the Hindu Succession (Amendment) Act, 2005. Moreover, the suit for partition was filed in the year 2002. During the pendency of the suit, the aforementioned amendment came into force. As the partition decree was awarded by the trial Court only in the year 2007, the rights of the parties became crystallized in the year 2005, hence, the issue should have been considered by the lower Court. It was pleaded that though Mr.Gurulingappa Savadi was the head of the Hindu joint family, after his death in the year 2001, in the year 2002, his grandson filed a suit for partition alleging that only Mr.Savadi's widow and two sons were co-owners of the property upon Mr.Savadi's death. The suit further asserted that Mr.Savadi's two married daughters were not entitled to any share in the property, since they were born prior to the Hindu Succession Act, hence, they could not be treated as coparceners. The trial Court agreed that the daughters had no right to a partition of the family property and rejected their contention. With the passage of the Hindu Succession (Amendment) Act, 2005 that the daughters are entitled to an equal share in the property, the daughters appealed. The Apex Court, on 1st February, 2018, reversing the lower Court's ruling, held that Section 6 of the Hindu Succession (Amendment) Act, 2005, which came into force with effect from 9.9.2005, settled the matter in favour of the appellants. This decision clarifies the legal position that the daughters now have the same right as sons with respect to commonly owned property partitioned after the amendment of the Act regardless of when they were born, but not under the State Act. In that case also, the repugnancy between Section 29-A and Section 6 was never raised.

47. In Mangammal's case, (2018) 15 SCC 662 also, the repugnancy between Section 29-A and Section 6 was not in issue.



When a suit in O.S.No.202 of 2003 praying for partition and separate possession of the suit properties was instituted, the trial Court, in its judgment dated 28.9.2004, dismissed the suit holding that they are not entitled to any partition. The appeal filed to the District Judge, Udhagamandalam was also dismissed vide judgment dated 14.12.2005 upholding the decision of the trial Court. Feeling aggrieved, the appellants preferred second appeal being No.780 of 2006 before this Court. The learned single Judge vide judgment dated 18.9.2006 dismissed the appeal at the admission stage itself. Consequently, the matter went up to the Supreme Court by Special Leave. The Apex Court held that any property inherited upto four generations of male lineage from the father, father's father or father's father's father, i.e., father, grandfather etc., is termed as an ancestral property. In other words, the property inherited from mother, grandmother, uncle and even brother is not an ancestral property. In ancestral property, the right of property accrues to the coparcener by birth. The State of Tamil Nadu, in order to give legal position to the families in ancestral property, have enacted the Hindu Succession (Tamil Nadu Amendment) Act, 1989, which came into force with effect from 25.3.89, by adding Section 29-A. It was held that Mangammal got married in the year 1981 and Indira got married in or about in 1984, namely, prior to the commencement of the 1989 amendment. Therefore, in view of clause (iv) of Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, the appellants could not institute the suit for partition and separate possession at first instance, as they were not the coparceners. Moreover, while dealing with Section 29-A of the Act where the Legislature has used the words " the daughter of a coparcener", it was held that both the coparcener as well as the daughter should be alive to reap the benefit of this provision at the time of commencement of 1989, i.e., only living daughters of living coparceners would be entitled to claim a share in the ancestral property. Here also, repugnancy between these two provisions was not the lis.

48. Coming to the State of Andhra Pradesh, in the case of S.Sai Reddy v. Narayana Reddy (1991) 3 SCC 647, all the Courts have dealt with only the rights conferred under Section 29-A of the State Act and did not deal with the repugnancy against Section 6 of the Hindu Succession (Amendment) Act, 2005. The trial Court's judgment was dated 24.8.89. The High Court's judgment was on 2.2.90 and the Supreme Court, confirming the High Court's judgment on 18.1.91, had no occasion to deal with Section 6 of the Hindu Succession (Amendment) Act, 2005 in that case, because Section 6 of the Hindu Succession (Amendment) Act, 2005 came into force with effect from 9.9.2005. Therefore, this



case is also not applicable. When no other High Court or the Supreme Court has ever held that the State Amendment of Section 29-A would prevail over Section 6 of the Hindu Succession (Amendment) Act, 2005 and on the other hand, in the State of Karnataka, in the case of Danamma and in the case of Vineeta Sharma, the Supreme Court has applied Section 6 of the Hindu Succession (Amendment) Act, 2005, it goes without saying that Section 29-A of the State Amendment has to give way to Section 6 of the Central Act.

49. Further, Article 254(1) of the Constitution says that when there is a direct collision between the law made by the State and that made by the Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. As per Article 254(2), if any law is made by the State Legislature in the Concurrent List and the assent of the President is obtained, the State law would prevail in the State and will overrule the Central Act. However, the proviso to Article 254(2) makes it clear that such a state of affairs will exist only until the Parliament may at any time make a law by adding to or amending or varying or repealing the law made by the State Legislatures. Since the Constitution Bench of the Supreme Court in *State of Orissa and another v. M/s M.A.Tulloch & Co.*, AIR 1964 SC 1284 has settled the issue, repelling Shri Jothi's contention that as the Parliament has not added or amended or varied or repealed the law made by the State Legislature under Section 29-A, Section 29-A would prevail over the Central Act and answering clearly that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting, it goes without saying that every later enactment supersedes an earlier one.

50. Doctrine of Harmonious Construction: To make both the provisions to co-exist in the State, it is a cardinal rule of construction that when there are two provisions of the same law conflicting with each other, then both of them cannot stand together, they should possibly be so interpreted that effect can be given to both and that construction which renders either of them inoperative and useless should not be adopted except as a last resort.

50.1. For example, in one Hindu family, if there are two daughters and if one daughter Ms.Lakshmi remained unmarried on 25.3.89 and that there was no dispossession or alienation of any property till 25.3.89, then the Ms.Lakshmi gets equal share like a son by virtue of Section 29-A. If the other daughter



remained married on 25.3.89, she will not get equal share like a son by birth, when we apply Section 29-A of the Tamil Nadu Amendment Act, whereas if we apply Section 6, both daughters, no matter whether they are married or unmarried, will get equal share by mere birth, if there is no partition taken place before 20.12.2004.

50.2. Again another illustration also will say that the Harmonious Rule will have no help. In a Hindu family, there are two sons viz., Mr.Balaji and Mr.Tirupathi. Now lets presume that Mr.Balaji marries Ms.Lakshmi hailing from a Hindu family in Tamil Nadu after 26.3.89, if she remained unmarried on 25.3.89 and no alienation has taken place till 25.3.89, she will get a share in the ancestral property, by virtue of Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act. Whereas if she remained married on 25.3.89, she will lose, again if there is any partition taken place on 25.3.89, she will lose. Whereas in the same family, another son Mr.Tirupathi marries Ms.Sonia, a Hindu woman from Punjab, she will get a share in the family ancestral property, by virtue of Section 6, no matter whether she remained married on 25.3.89 or not. Besides, if there is any partition taken place on 25.3.89 or not also, she will get a share under Section 6 of the Hindu Succession (Amendment) Act, 2005, as it says that a daughter by birth gets her right. In addition thereto, unlike unregistered partition in Section 29-A, there shall be a registered partition under Section 6. The above illustrations clearly shows that in one Hindu family, if Mrs.Lakshmi had to lose her coparcenary right of share in ancestral property on account of her marriage on 25.3.89, which is a legal bar imposed by Section 29-A, such disqualification is not imposed by Section 6. Secondly, Section 29-A approved unregistered partition, whereas Section 6 recognizes only registered partition. Thirdly, Section 6 lays down a uniform and comprehensive system of inheritance all over the country to every Hindu by religion.

50.3. Therefore, the above illustration vividly shows that the argument of Shri Jothi whether both legislations can be allowed to co-exist clearly suffers a legal infirmity, even if we apply the Doctrine of Harmonious Construction. Hence, even if the State Government makes law reserved for consideration of the President, such a State Law may not receive the assent of the President in view of the incurable repugnancy illustrated as above.

51. Conclusions: Finally, in the light of the above settled legal position, if we apply Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990), Hindu women in the



State of Tamil Nadu would be facing inequality with regard to inheriting rights of coparcenary property, more importantly, the judgment of the three-Judge Bench of the Apex Court in Vineeta Sharma's case ruling that the provisions of the substituted Section 6 of the Hindu Succession (Amendment) Act, 2005 are required to be given full effect, also has a binding force, therefore, the appellant/plaintiff Mrs.P.Hemamalini will not be entitled to a share in the suit properties, as the registered partition between the respondents 1 & 2 has been effected before the cut-off date 20.12.2004 i.e., on 11.5.2001 i.e., before the Hindu Succession (Amendment) Act came into force. Hence, we hold that the trial Court has rightly dismissed the suit. Accordingly, confirming the impugned judgment and decree, the first appeal fails and it is dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ss
To

The Additional District Judge,
(Fast Track Court),
Mettur.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.Manokaran, Advocate Sr.37986
+lcc to Mr.Sithirai Anandam, Advocate Sr.37785

A.S.No.687 of 2018

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