



A.S.No.429 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.11.2022

Judgment Pronounced on : **30.11.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.429 of 2016

1. D.T.Raj Kapoor Sah @ Raghul Sah (Died)
2. D.T.Loku Sah
3. D.T.Rukma Sah
4. D.R.Jayanthi
5. B.Minu
6. K.Aishwarya .. Appellants

Appellants 4 to 6 brought on record as LR's of the deceased 1st appellant viz., (D.T.Raj Kapoor Sah @ Raghul Sah) vide Court order, dated 29.03.2022 made in C.M.P.No.9151 of 2021 in A.S.No.429 of 2016

Versus

1. Kamakshi Bai
2. Ambu Bai
3. Muniamma Bai
4. Kuppamma Bai @ Kuchala Kumari .. Respondents

Prayer : Appeal Suit filed under Section 96 read with Order XLI R 1 of Civil Procedure Code to allow the appeal by setting aside the decree and judgment passed on 11.01.2016 in O.S.No.2104 of 2014 on the file of the learned XV Additional Judge, City Civil Court, Chennai.



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For Appellants : Mr.N.Nago Sah

For Respondents : Mr.T.Murugamanickam, Senior Counsel
for Mr.R.Mubarak Basha

JUDGMENT

A. The Suit :

Kamakshi Bai, Ambu Bai, Muniyamma Bai, Kupppamma Bai @ Kuchala Kumari, four sisters filed the present suit for partition for partitioning the suit property and allotment of 4/7 shares to them against their brothers *D.T.Rajkapoor Sah @ Raghul Sah, D.T.Loku Sah* and *D.T.Rukma Sah*.

B. The Plaint :

2. The case of the plaintiffs is that one *Ellu Sah* is the grandfather of the plaintiffs and the defendants. He had three sons namely, *Thulasi Sah, Gopal Sah* and *Kuppa Sah*. The above said father and three sons started Shellac vending business and out of the income, three properties were purchased which includes the suit property. On 07.03.1964, by a registered partition deed, the suit schedule property was allotted to the share of *Thulasi Sah*, the father of the plaintiffs and the defendants. The said partition deed, dated 07.03.1964 wrongly describes as if the suit property is



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an ancestral property. Therefore, the suit property, in the hands of *Thulasi Sah* is to be treated as his separate property. The said *Thulasi Sah* died intestate on 30.05.2000 leaving behind him, the plaintiffs and the defendants as his legal heirs. The above said registered partition deed, which was of the year 1964, was unskillfully drafted whereby it includes the names of the defendants also along with the father of *Thulasi Sah* as if they are representing a branch. Therefore, the property is the absolute property of *Thulasi Sah* and after his death, is liable for partition among all the seven legal heirs. The plaintiffs, therefore, called upon the defendants by legal notice, dated 30.10.2013 to effect peaceful partition. However, the defendants did not come forward to partition the property, but, sent a reply notice, dated 30.11.2013 with untenable allegations. Even when the plaintiffs attempted to approach the defendants through panchayatdars, they declined and hence the suit.

C. The Written Statement :

3. The case of the defendants is that the suit property was allotted to the father of *Thulasi Sah* and the defendants. The suit property was purchased seven decades ago by the grandfather, late *Ellu Sah* and therefore



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has the status of ancestral property. Therefore, on the date when the partition was effected, women were not entitled to inherit the ancestral property of the joint family. The present suit is initiated only with a malafide intention of harassing the defendants.

D. The Issues :

4. On the strength of the said pleadings, the Trial Court framed the following issues:-

- (i) Whether the plaintiffs are entitled for a decree of partition and for mesne profits as prayed?*
- (ii) To what relief the plaintiffs are entitled?*

E. The Evidence :

5. Thereafter, the first plaintiff examined herself as P.W.1 and **Exs.A-1 to A-8** were marked. The first defendant examined himself as D.W.1 and no documents were marked on the side of the defendants.

F. The Findings of the Trial Court :



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6. The Trial Court, thereafter, considered the case of the parties and by a judgment, dated 11.01.2016, found that the property was self-acquired property of *Ellu Sah*. When it was allotted to *Thulasi Sah* and the other defendants, it was allotted with a condition to pay the joint family debts and since the defendants were aged 7 years, 4 years and 5 months respectively, they could not have discharged the debt. The Trial Court held that the contention of the defendants that the defendants 1 to 3 were to enjoy the property absolutely cannot be accepted. Merely because in the partition deed, the term "ancestral property" is used, that could by itself will not cloth any right on the defendants. D.W.1 had, in the cross-examination, also admitted that the suit property is the self-acquired property of the *Ellu Sah*, the grand father. Therefore, the Trial Court held that the suit property is liable for partition and passed a preliminary decree allotting 4/7 shares in the suit property to the plaintiffs. Aggrieved by the same, the defendants have filed the present Appeal Suit.

G. The Submissions :



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7. Heard *Mr.N.Nago Sah*, the learned Counsel appearing on behalf of the appellants and *Mr.T.Murugamanickam*, the learned Senior Counsel appearing on behalf of the respondents.

8. *Mr.N.Nago Sah*, the learned Counsel appearing on behalf of the appellants, would submit that in this case, the document, by which, title is claimed both by the plaintiffs and the defendants is the registered partition deed, dated 07.03.1964 (*Ex.A-2*). The said deed clearly describes that there was a joint family and that the properties were ancestral in nature. By the said deed, *Thulasi Sah* and the defendants 1 to 3 were allotted the suit schedule property. Therefore, when the said document is of the year 1964 and when the document remained unchallenged, at this distant point of time, the suit, which is filed in the year 2014, cannot be entertained. Even *Thulasi Sah* died in the year 2000. Absolutely, no claim whatsoever has been laid by the plaintiffs up to the year 2014 and therefore, the suit is hopelessly barred by limitation. The parties cannot approbate and reprobate. Once the title is claimed through a particular document, at the same stretch, they cannot contend that the said document is erroneous. Therefore, the suit filed by the plaintiffs/sisters ought to have been



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dismissed. Otherwise, the sisters were very well provided at the time of their marriage and the joint family debts were all discharged only by the father and the sons.

9. Per contra, *Mr.T.Murugamanickam*, the learned Senior Counsel appearing on behalf of the respondents, would submit that the terms "joint family" and "ancestral property" are distinct terms. Unless the defendants can claim right at their birth, the property cannot be said to be ancestral. In this case, the suit property was purchased by *Ellu Sah* vide *Ex.A-1* sale deed, dated 10.06.1943. Therefore, neither *Thulasi Sah* nor the defendants had any right by their birth and the property is not ancestral in nature. It is the self-acquired absolute property of *Ellu Sah*. Even though he had given the property to *Thulasi Sah* under a deed of partition, when *Thulasi Sah* as well as others did not have any right in the property and it cannot be construed as a partition and at best, can only be a gift. When it was given as a gift with a condition to discharge debts, it can be seen that the property is given only to *Thulasi Sah* and the defendants herein, even though their names were mentioned in the partition deed, were aged 7 years, 4 years and 5 months old at the time of the partition. Therefore, it can be seen that the



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property is the separate property in the hands of *Thulasi Sah*. Once the property is the separate property of *Thulasi Sah*, when he died intestate, the plaintiffs and the defendants, in total seven legal heirs, are entitled for a share each and therefore, the Trial Court had rightly decreed the suit.

10. In support of his contentions, *Mr.T.Murugamanickam*, the learned Senior Counsel for the respondents, relied upon the judgment of this Court in *S.Dakshina Vs. Chinnaponnu and Ors.*¹ for the proposition that the term "ancestral property" is a separate concept where son, son's son and son's son's son get a right by birth and can interdict improper alienation. If such a right is not in existence, the property will be treated as self-acquired/absolute property of the individuals. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court of India in *Mudigowda Gowdappa Sankh and Ors. Vs. Ramchandra Revgowda Sankh (Dead) by his Legal Representatives and Anr.*², for the proposition that the existence of the joint family does not lead to the presumption that the property held by any member of the family as the joint family property. The learned Senior Counsel relied upon the judgment of this Court in

¹ (2012) 7 MLJ 414

² (1969) 1 SCC 386



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N.Rajammal (Died) and Anr. Vs. P.Maragathammal and Ors.³, for the proposition that merely by naming the document as partition deed, the non-existent title could not have been conferred, as the partition is not a transfer but there must be a pre-existing right. If the pre-existing right is not there, the document, at best, can be considered as a gift. The learned Senior Counsel, more specifically relied upon paragraph Nos.29 and 30 of the said judgment.

11. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court of India in **Arshnoor Singh Vs. Harpal Kaur and Ors.**⁴, more specifically on paragraph Nos.7.3 to 7.6 for the proposition that if only inheritance goes upto three degrees and above of a person, then only the property assumes a coparcenary character. The learned Senior Counsel relied upon the judgment in **Hiraji Tolaji Bagwan (since deceased) by his LRs. Vs. Shakuntala**⁵, more specifically on paragraph No.7 for the proposition that without a legal entitlement, there cannot be family settlement and partition. The learned Senior Counsel also relied upon the Full Bench judgment of this Court in **The Additional Commissioner of**

3 (1998) 1 CTC 314

4 (2020) 14 SCC 436

5 (1990) 1 SCC 440



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Income-tax, Madras-1 Vs. P.L.Karuppan Chettiar, Karur⁶, more specifically on paragraph Nos.10 to 12, for the proposition that the property inherited by a male Hindu or coming to his possession which is other than an ancestral property, would only devolve on his legal heirs under Section 8 of the Hindu Succession Act, 1956. For the same proposition, the learned Counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in **Theiry Santhanamal Vs. Viswanathan and Ors.**⁷, more specifically relying upon paragraph Nos.29 and 30 of the said judgment to contend that partition deed can only be entered into between the parties who are joint owners of the property.

12. The learned Senior Counsel also relied upon the judgment of this Court in **P.M.Mani Vs. P.S.Mohankumar and Ors.**⁸ that the claim regarding ancestral property should be specifically proved, more-fully relying upon paragraph No.20 of the said judgment. The learned Senior Counsel also relied upon the Full Bench Decision of this Court in **Vairavan Chettiar, represented by Ramasami Chettiar Vs. Srinivasachariar**⁹, for the proposition that son acquires no legal rights over his father's self-

⁶ AIR 1979 Mad 1

⁷ (2018) 3 SCC 117

⁸ AIR 2002 MADRAS 402

⁹ XIII L.W. 475



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acquisitions and there can be no coparcenary between father and sons regarding self-acquired property.

H. Points for consideration :

13. I have considered the rival submissions made on behalf of either side and perused the material records of this case. Upon considering the submissions made on either side, the following questions arise for consideration:-

- (i) What is the nature of the suit property and whether the plaintiffs in the suit are entitled to a share thereof ?
- (ii) Whether the plaintiffs should be non-suited on the principle of estoppel against the document *Ex.A-3*?
- (iii) Whether the suit is barred by limitation?
- (iv) To what reliefs the parties are entitled?

I. Point No.i :

14. To answer these questions, it is useful to restate the legal position which obtains as on date.



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14.1. A joint Hindu family consists of persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The daughter, on marriage, ceases to be a member of her father's family and becomes a member of husband's family. Thus, the joint Hindu family is thus a larger body consisting of a group of persons who are united by the tie of sapindaship arising by birth, marriage or adoption. (Paragraph No.13 of ***Surjit Lal Chhabda Vs. CIT***¹⁰)

14.2. Coparcenary is a narrower body than the joint Hindu family. Before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire an interest in the coparcenary property by birth. After the Amendment Act, 2005, even the daughters are also coparceners. A coparcener has no definite share in the coparcenary property, but, he has an undivided interest in it and the interest enlarges by deaths and diminishes by births in the family. It is not static. (Paragraph No.11 of ***Rohit Chauhan Vs. Surinder Singh***¹¹)

14.3. The coparcenary property consists of ancestral property and the separate property of the coparceners thrown into common coparcenary stock. The term "ancestral property" is not defined in any Act. The

10 (1976) 3 SCC 142, 149

11 (2013) 9 SCC 419



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property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is an ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship. (Paragraph No.12 of ***Shyam Narayan Prasad Vs. Krishna Prasad***¹²)

14.4. This Court explained the concept of ancestral property in its judgment in ***S.Dakshina Vs. Chinnaponnu and Ors.***¹³, in paragraph No.10, as follows:-

" **10.** *At the outset, I would like to fumigate my mind with the concept 'ancestral property'. Certain excerpts from the famous Treatises would run thus:*

(i) Mayne's Hindu Law and Usage, 14th Edition at page No. 624.

¹² (2018) 7 SCC 646

¹³ (2012) 7 MLJ 414



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“292. Ancestral Property - The second question is as to what is meant by coparcenary property The first species of coparcenary property is that which is known as ancestral property That term, in its technical sense, is applied to property which descends upon one person in such a manner that his male issue acquire certain rights in it as against him For instance, if a father under Mitakshara law is attempting to dispose of property, we inquire whether it is ancestral property The answer to this question is that property is ancestral property in the father's hands if it has been inherited by him as unobstructed property, that is not ancestral if it has been inherited by the father as obstructed property The reason of this distinction is that, in the former case, the father had an effective vested interest in the property, before the inheritance fell in, and therefore his own issue acquired by birth a similar interest in that interest. Hence, when the property actually devolved upon him, he took it subject to the interest they had already acquired But in the latter case, the father had no such interest in the property, before the descent took place; therefore, when what even occurred, he received the property free of all claims upon it by his issue, and a fortiori, by any other person. Hence, all property which a man inherits from a direct male ancestor, not exceeding three degrees higher than himself, is ancestral



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property, and is at once held by himself in coparcenary with his own male issue In view of Section 8 of the Hindu Succession Act it has been held the property inherited by the son as Class I heir from his father will be the self acquired property in the hands of the son When he has no male issue, the sister will inherit the property as separate property But where he has inherited from a collateral relation, as for instance from a brother, nephew, cousin or uncle, it is not ancestral property in his hands in relation to his male issue; consequently his male issues have no equal rights as coparceners.....”

(ii) N.R. Raghavachariar's *Hindu Law Principles and Precedents* Nineth Edition at Page No. 213:

“244. Ancestral Property: The term “ancestral property”, which is a technical term having a special meaning, does not mean property inherited from any ancestor, male or female, paternal or maternal, near or remote, but only such property as is inherited by a male from father, father's father and father's father's father [Atar v. Thakar, L.R. 35 I.A. 206 : I.L.R. 35 Cal. 1039 : 6 I.C. 721 : 18 M.L.J. 379 : 10 Bom. L.R. 790; 12 C.W.N. 1049 (P.C.); Mohamed Hussain v. Babu Kishva Nandan, 46 L.W. 1 : 1937 M.W.N. 683 : (1937) 2 M.L.J. 151; Venkateshwarlu v. Raghavalu, 1955 An.W.R. 39; Budhraj v. Bhan Zarlal,



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A.I.R. 1954 Ajmer 69. Cf., Naragand Prabhu v. Janardhana Mallan, 1973 Ker.L.R. 665]. Such inheritor's son, son's son and son's son's son get an interest in it by birth and can interdict improper alienations by the inheritor, whose position in respect of that property, though it will otherwise be absolute, is reduced, in the presence of such descendants, to that of an owner with restricted rights [Chuttan Lal v. Kallu, I.L.R. 33 All 283 : 8 A.L.J. 15; 8 I.C. 719 Jugmohandas v. Mangaldas, I.L.R. 10 Bom. 528; Mahomed Hussain v. Babu Kishva Nandan, supra]. The circumstance that the property has been inherited from one of such three immediate paternal ancestors after the interposition of a life tenure created by that ancestor in his wife's favour does not take away the character of the property as ancestral and the inheritor's lineal male descendants upto the third degree will get an interest in it by birth [Beni Parshad v. Puran Chand, I.L.R. 23 Cal 262; Nanabhai v. Achratbai, I.L.R. 12 Bom. 122]. Nor does the circumstance that the property, when it was with the ancestor from whom it was inherited was his self acquired or separate property affect the question [Ram Narain v. Pertum Singh, 11 Beng. L.R. 397; Madivalappa v. Subbappa, 39 Bom. L.R. 895 : AIR 1937 Bom. 458; Shyam Behart v. Rameshwar, I.L.R. 20 Pat. 904 : AIR 1942 Pat 213; Mst Ram Devi v. Mst



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Gyarse, AIR 1949 All 545 (F.B.)]. Besides, it is absolutely immaterial whether the sons were born to the inheritor before or after the inheritance fell in But if the property is inherited from a paternal ancestor beyond the third degree then the property is not ancestral as against the inheritor's sons, and the inheritor has absolute powers of disposal over it.”

14.5. Recently, the Hon'ble Supreme Court of India in **Arshnoor**

Singh Vs. Harpal Kaur and Ors. (cited supra), in paragraph Nos.7.3 to 7.6,

held as follows:-

“ 7.3. Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs up to three degrees below him, would get an equal right as coparceners in that property.

7.4. In **Yudhishter v. Ashok Kumar** [**Yudhishter v. Ashok Kumar, (1987) 1 SCC 204**], this Court held that: (SCC p. 210, para 10)

“10. This question has been considered by this Court in **CWT v. Chander Sen** [**CWT v. Chander Sen, (1986) 3 SCC 567 : 1986 SCC (Tax) 641**] where one of us (Sabyasachi Mukharji, J.) observed that under the Hindu law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally,



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therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity.”

(emphasis supplied)

7.5. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

7.6. If succession opened under the old Hindu law i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants up to three degrees below him. The nature of property will remain as coparcenary property even after the



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commencement of the Hindu Succession Act, 1956."

14.6. The separate property once thrown into the coparcenary stock, then by virtue of Doctrine of Blending, it also becomes the coparcenary property. In ***Rajanikanta Pal Vs. Jagmohan Pal***¹⁴, it was held that where a member of a joint family blends his self-acquired property with property of the joint family, either by bringing his self-acquired property into a joint family account, or by bringing joint family property into his separate account, the effect is that all the property so blended becomes a joint family property.

14.7. The law on the aspect of blending is well settled that property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein; but to establish such abandonment, a clear intention to waive separate rights must be established. Clear intention to abandon the separate rights in the property must be proved. Even abandonment cannot be inferred from mere allowing other family members also to use the property or utilization of income of the separate property out

14 AIR 1923 PC 57



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of generosity to support the family members. (Paragraph No.9 of **S.Subramanian Vs. S.Ramasamy**¹⁵⁾

14.8. The doctrine of throwing to the common stock is a doctrine peculiar to the Mitakshara School of Hindu law. When a coparcener throws separate property into the common stock, he makes no gift under Chapter VII of the Transfer of Property Act. In such a case there is no donor or donee. Further no question of acceptance of the property thrown into the common stock arises. (Paragraph No.5 of **Goli Eswariah Vs. CGT**¹⁶⁾

14.9. If self-acquired property was made available for partition along with joint family property, that itself is proof of blending. (Paragraph No.11 of **CIT Vs. M.K.Stremann**¹⁷⁾

14.10. There is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. However, if the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his

15 (2019) 6 SCC 46

16 (1970) 2 SCC 390

17 AIR 1965 SC 1494



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own funds and not out of joint family nucleus that was available. (Paragraph

No.18 of ***D.S.Lakshmaiah Vs. L.Balasubramanyam***¹⁸)

15. In the instant case, the pleading of the plaintiffs, as per paragraph No.4 of the plaint, is that *Ellu Sah* along with his sons started Shellac vending business and out of the income of the joint business, they purchased three items of properties which included the suit property and the properties are divided by the registered deed of partition, dated 07.03.1964 to the said clans of three sons. The pleading of the defendants is that the property purchased by their paternal grandfather about seven decades ago and thereby, conferring upon it the status of ancestral property. However, it can be seen that *Ellu Sah* was alive as on 07.03.1964 and was a party to the registered partition deed. It is proved by the plaintiffs that the suit property was purchased by *Ellu Sah* vide ***Ex.A-1*** sale deed, dated 10.06.1943. Therefore, it cannot be *per se* categorised as ancestral property. However, no proof is let in by the plaintiffs to prove that the other items of the property which were the subject matter of the partition deed were also self-acquired properties, that too without any joint family nucleus.

18 (2003) 10 SCC 310



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16. This apart, when the registered partition deed, dated 07.03.1964 itself describes as the properties of the undivided joint Hindu family, now, the plaintiffs have not and cannot prove otherwise. When *Ellu Sah* himself has made the suit property available for partition by stating that it is joint Hindu undivided family property, applying the *Doctrine of Blending*, in respect of the suit schedule property, even though the same was purchased under *Ex.A-1* sale deed, it became the joint family property of the Hindu undivided family of *Ellu Sah* and his three sons. The joint family properties are divided into three shares and each of the three sons (along with their sons if available) were allotted one share each. Accordingly, once the suit property which is allotted to *Thulasi Sah* along with his three male children being specifically mentioned as party of the second part, the property in their hands in coparcenary in character. The property was held in tact till the lifetime of *Thulasi Sah*. Even thereafter, neither the property was in any manner dealt with by them nor partitioned by way of any registered partition deed. When the Hindu Succession Act is amended in the year 2005 and by virtue of the judgment of the Hon'ble Supreme Court of India in *Vineeta Sharma Vs. Rakesh Sharma*¹⁹, the rights of the daughters are made equivalent as to that of the son the amendment being held to be retroactive,

¹⁹ (2020) 9 SCC 1



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and by their birth, the plaintiffs also got the same rights in the coparcenary property by birth and the property, being intact not dealt with by *Thulasi Sah*, his children by way of any registered partition deed till the date of filing of the suit, the property is therefore available for partition among all the seven coparceners. It is stated that the *Thulasi Sah's* wife *Visalakshi Bai* died in the year 2013. She died intestate. Therefore the share devolved on her, upon her demise, again reverted back to the plaintiffs and the defendants. Thus, all the plaintiffs and the defendants are entitled to 1/7th share in the suit property.

17. Thus, the properties are coparcenary properties. The defendants, being in possession and enjoyment of the property only as co-owners and have not further acted in any manner so as to oust title of the plaintiffs. Therefore, the period of limitation for the plaintiffs would commence only upon refusal of partition after legal notice and therefore, the suit is well within the period of limitation. The father of the plaintiffs and the defendants died in the year 2000 and their mother died in the year 2013 and thereafter the plaintiffs issued legal notice on 30.10.2013 and the same was not agreed to by a reply notice on 30.11.2013 and therefore, the suit, filed in



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the year 2014, cannot be said to be barred by limitation. The Trial Court had granted a decree in favour of the plaintiffs by its reasoning that the property is the self-acquired property of *Thulasi Sah*. I am not in agreement with the said findings, I am of the view that the property is the joint family property and still, the plaintiffs are entitled for a preliminary decree as prayed for.

18. In view thereof, I answer the point No.1 for consideration that the suit property is undivided Hindu joint family property of *Thulasi Sah* and the plaintiffs and the defendants herein in view of the Judgment of the Supreme Court of India in *Vineeta Sharma Vs. Rakesh Sharma* (cited supra), all his seven children being the coparceners became entitled for $1/8^{\text{th}}$ share each and the $1/8^{\text{th}}$ share of *Thulasi Sah* devolved on 7 his seven children his wife and since, she died intestate, all the seven children get $1/7^{\text{th}}$ share each in the suit property.

J. Point No.ii:

19. In view of my findings in respect of point No.i, that the suit property is the Hindu Undivided Joint Family property, the question



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whether the parties are about by Ex. A3 partition deed and whether there would be estoppel to contend otherwise that the property is the separate property of *Thulasi Sah* does not arise. Accordingly Point No. ii is answered.

K. Point No. iii:

20. Once the property is coparcenary and since the plaintiffs are in constructive possession along with the defendants, and since there is no pleading or evidence regarding ouster, I answer point No.iii that the suit is not barred by limitation.

L. Point No.iv:

21. On point No. iv, as far as the issues framed by the Trial Court is concerned, in view of my findings, I answer that the plaintiffs are entitled for the decree of partition and mesne profits as prayed for. Thus, even though this Court not in agreement with the findings of the Trial Court, the ultimate decree which is passed by the Trial Court is in order and accordingly, the same is confirmed.



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M. The Result:

22. In the result :

- (i) this Appeal Suit in A.S.No.429 of 2016 shall stand dismissed;
- (ii) The decree and the judgment of the learned XV Additional Judge, City Civil Court, Chennai, dated 11.01.2016 in O.S.No.2104 of 2014 shall stand confirmed;
- (iii) However, in the facts and circumstances of the case, there shall be no order as to costs;

30.11.2022

Index : yes
Speaking order
grs

To

1. The XV Additional Judge,
City Civil Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Judgment in

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