



A.S.No.881 of 2012

THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on
29.03.2022

Orders pronounced on
17.06.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

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1. M. Sathishkumar
S/o Marimuthu

2. Minor M.Parimalam
D/o Marimuthu
[Rep.by Guardian and Father
Marimuthu]

... Appellants/Plaintiffs

(Cause title accepted vide order dated
30.07.2012 made in M.P.No.1 of 2012
in A.S.(SR) No.54215 of 2012)

Vs.

1. Subbanna Gounder
2. Palanathal
3. M.Banumathi
4. S.Shakuntala
5. S. Vadivel

... Respondents/Defendants

Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the Judgment and Decree of the Principal District Judge, Coimbatore, dated 09.03.2012 made in O.S.No.323 of 2008.



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For Appellants : Mr.A.S. Ravichandran

For Respondents 1 & 2 : Mr.D.Muthuselvan

Respondents 3 & 4 : No appearance

For Respondent-5 : Mr.C.Santhosh Kumar

J U D G M E N T

The Appellants, who are plaintiffs in O.S.No.323 of 2008, have filed this appeal challenging the judgment and decree, dated 09.03.2012, passed by the learned Principal District Judge, Coimbatore

2. For the sake of convenience, the parties herein are referred to as they were arrayed in the original suit.

3. The brief facts, as averred by the plaintiffs in the original suit, are as follows:

One Krishnasamy Gounder, father of the 1st Defendant owned an extent of 5.40 acres in Neelambur Village, comprised in various survey numbers. Krishnasamy Gounder had two wives, viz., Subbathal and Chinnammal. Through his first wife Subbathal, Krishnasamy Gounder



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had a son by name Subbanna Gounder (first respondent/first defendant) and a daughter by name Rajathal, who is no more. Through his second wife Chinnammal, Krishnasamy Gounder had a son by name Palanisamy and two daughters by name Subbathal and Chinnakkanna. Legal heirs of Krishnasamy Gounder through his two wives, partitioned the properties on 22.12.1986 by a Partition Deed registered as document No.2120 of 1986 with SRO, Sulur. The properties were divided into three schedules, viz., 'A' schedule was allotted to Tmt.Chinnammal, 'B' schedule was allotted to Subbanna Gounder (first respondent/first defendant) and 'C' schedule was allotted to Palanisamy. 'B' schedule properties, to an extent of 2.69½ acres allotted to Subbanna Gounder (first respondent/first defendant), are the suit properties herein. Ever since the date of partition, the suit properties are jointly enjoyed by Subbanna Gounder (first respondent/first defendant) and his family. Subsequently, through a registered partition deed dated 08.06.2004, registered as Document No.2524 of 2004 with SRO, Sulur, respondents/defendants partitioned the suit properties into four shares. Even though the defendants 3 and 4 are entitled to 1/4th share each in the suit properties ie., 67.37 cents each, they were clandestinely allotted only 20 cents each. Believing the words of defendants 1, 2 and 5 that the suit property was being divided into four



equal shares, respondents 3 and 4/defendants 3 and 4 have signed the document. The division of property is improper and illegal. Moreover, the interest of the minor plaintiffs have also been ignored and neglected. Since the suit property being ancestral property and the plaintiffs are grandchildren of Subbanna Gounder, they are totally entitled to 8/48 share. The partition deed 08.06.2004 is invalid, unenforceable and not binding on the plaintiffs, as it was not executed in accordance with law. Therefore, they filed the suit for (i) declaration that the partition deed 08.06.2004 is null and void; (2) partition of the plaintiffs 8/48 share and also (3) permanent injunction restraining the defendants from alienating or encumbering the suit properties to third parties.

4. The case of the respondents 1, 2 and 5/defendants 1, 2 and 5, as stated in the written statement, is as follows:-

The partition deed executed between the defendants 1 to 5 is valid and enforceable in law. The partition was effected only after full negotiations and taking into account the relative possession of the parties. “Sreethanam” was done to the defendants 3 and 4 by the defendants 1 and 2. The parties to the documents did not challenge or question the said partition. The partition deed was executed voluntarily by the parties



to the document. No representation of any kind was made by any of the parties to the document to either parties to the document inducing them to sign in the partition deed dated 08.06.2004. After the execution of partition deed, it was pressed into service of the parties to the partition deed succeeded to their respective shares and they have been in possession and enjoyment of the same. If at all aggrieved, it is the parties to the said document alone can question or challenge the document. The plaintiffs, who are minor daughters of third defendant, have no locus standi to question the partition deed dated 08.06.2004 that was entered among the defendants 1 to 5 and they have no right in the suit properties. They are claiming the right through their mother/3rd defendant. Once they added their mother as third defendant, they cannot plead on behalf of their mother/3rd defendant. The plaintiffs have taken inconsistent stand. After the partition deed dated 08.06.2004, the defendants 1 and 2 have executed a settlement deed dated 21.06.2004 in favour of their son/fifth defendant. Thereafter, defendants 1 and 2 along with fifth defendant sold a portion of their property in favour of Pricol Industries Ltd., on 22.02.2007. Therefore, the partition was acted upon and the parties to the partition can deal with their respective share absolutely. The defendants 3 and 4 are colluding parties. The plaintiffs had never



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been in joint possession of the suit property. The deemed joint possession is not applicable to this case. Hence, they pray to dismiss the suit with costs.

5. Respondents 3 and 4 / Defendants 3 and 4 remain exparte before the trial Court and they had not filed any written statement.

6. Based on the pleadings the trial court framed the following issues:

- 1. Whether the Partition Deed dated 08.06.2004 is null and void?*
- 2. Whether the Plaintiffs are entitled to a decree for partition as prayed for?*
- 3. Whether the Plaintiffs are entitled to the relief of permanent injunction?*
- 4. To what relief?*

7. Before the trial Court, on the side of plaintiffs, their father Mr.Marimuthu was examined as P.W.1 and Exs.A.1 to A.4 were marked.



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No oral and documentary evidence was adduced on the side of the defendants 1, 2 and 5.

8. Learned trial Judge, on considering the oral and documentary evidence and also the arguments of both side learned counsels, gave a finding that the plaintiffs have to prove their case and they cannot rely on defendants' case and the plaintiffs have not pointed out any law to show that they are co-parcenars in their own right, as far as the suit property is concerned and also that the partition deed dated 08.06.2004 was effected prior to 20.12.2004 and hence, Section 6(5) of Hindu Succession Act is not applicable to this case and accordingly, dismissed the suit. Challenging the same, the plaintiffs have filed the present appeal.

9. Heard learned counsel for the appellants and learned counsel for the respondents 1,2 and 5.

10. Mr. A.E. Ravichandran, learned counsel for the Appellants submitted that a larger extent of property measuring 5.40 acres in Neelambur Village is an ancestral property inherited by Krishnasamy



Gounder. After his demise, a partition was entered into by a partition deed dated 22.12.1986 between the 2nd wife of Krishnasamy Gounder, the son born through 1st wife namely Subbanna Gounder (1st Defendant) and son born through 2nd wife, namely, Palanisamy. Under the said partition the 1st Defendant was allotted 2.69 ½ Acres. The property in the hands of the 1st Defendant is ancestral in nature and held as joint family property. Thereafter, the Tamil Nadu Act No.1 of 1990 came into force with effect from 25.03.1989 whereby, Section 29-A was introduced, granting equal rights in coparcenary property/joint family property to a daughter. As per Section 29A(ii), the coparcenary property shall be so divided as to allot to a daughter, the same share as is allottable to a son.

11. It is submitted by the learned counsel for the appellants/plaintiffs that plaintiffs' mother (third defendant), who is the daughter of 1st Defendant, by birth, is also entitled to equal share ie. 67.375 cents in the ancestral joint family property in the hands of 1st Defendant, as per Tamil Nadu Act No.1 of 1990. However, in the partition deed dated 08.06.2004 lesser share of 20 cents was allotted to the 3rd Defendant who is the mother of the Plaintiffs, which is unfair and unjust. Moreover, when the partition deed was effected, the plaintiffs



were born and they are also co-parceners at the time of partition and they are also entitled for a share in the ancestral joint family property, but without adding them as parties to the partition, the partition deed was effected, hence, the very partition between defendants 1 to 5 has to be declared as null and void insofar as plaintiffs' share is concerned and the plaintiffs should be allotted 8/48 share. Hence, he prayed this Court to allow the first appeal and decree the suit as prayed for.

12. In support of his contention, learned counsel for the appellants/plaintiffs relied on the following judgments:

(i) **(1976) 1 SCC 214 [Ratnam Chettiar and Others v.s S.M.Kuppuswami Chettiar and others]**. He relied the portion, which is extracted hereunder:-

“19 (3) Where, however a partition effected between the members of the Hindu Undivided Family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place. In such a case it is the duty of the Court to protect and safeguard the interests of the minors and the onus of proof that



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the partition was just and fair is on the party supporting the partition. ”

(ii) (2017) SCC Online Mad 37611 : (2017) 4 MLJ 571
(*M.Krishnamoorthy vs. K.Pondeepankar and Others*). He relied the portion, which reads as follows-

“1. The property that is allotted to a male Hindu at a partition, in his capacity as a coparcener will be held by him with all incidents of coparcenery. Once a son is born, he will acquire the right by birth in the said property. Needless to say till such time, a son is born, the male Hindu to whom the property allotted will hold it absolutely as a sole surviving coparcener.
2. The property that is inherited by a male Hindu on the death of his father under Section-8 as class-1 heir will be his absolute property and neither his son nor his daughter would claim any right by birth. ”

13. Learned counsel for the Respondents/Defendants 1, 2 and 5 submitted that the trial court has clearly analysed the case of the Appellants/plaintiffs. The suit has already been dismissed by the trial



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court on 26.06.2008 on the ground that the plaintiffs 1 and 2 are not entitled and the plaintiffs are not entitled to claim shares from the suit property of the third defendant, when she is alive. Challenging the same, plaintiffs preferred an appeal in A.S.No.771 of 2008 and this Court on 01.07.2011 set aside the judgment and decree of the trial court and remitted back the case for fresh disposal and directed the trial Court to provide adequate opportunity to the respondents/defendants to file their respective written statement and also to produce evidence on their behalf. Even thereafter, daughters of first defendant, namely defendants 3 and 4 have not chosen to file written statement.

14. Learned counsel for the Respondents/Defendants 1, 2 and 5 also submitted that the ancestral properties had already been partitioned between the legal heirs of Krishnasamy Gounder ie., family members of the first respondent Subbanna Gounder in the year 1986 itself and he was allotted 'B' schedule property through a registered partition deed dated 22.12.1986 and therefore, the share allotted to the Subbanna Gounder/first respondent herein becomes absolute property (coparcenary property) of Subbanna Gounder/first respondent and except the first respondent, nobody has got any right or title over the same. Due to love



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and affection, the first respondent has given away some of his properties to his children by way of partition dated 08.06.2004. Before the trial Court, the Plaintiffs have not proved with sufficient documents that they by birth become co-parceners. Under such circumstances they cannot question the partition deed. Moreover, the partition deed was registered on 08.06.2004 and some of the portions were sold to Pricol Industries by the defendants 1, 2 and 5 and therefore, the partition was acted upon. Since the partition deed was registered on 08.06.2004, ie., before 20.12.2004 as indicated in Hindu Succession (Amendment) Act, 2005, the same cannot be held as null and void and it is protected by the Act itself. The learned trial judge has thoroughly analysed the entire facts and law and dismissed the suit, which do not require any interference. Hence, he submitted that the decree and judgment of the trial court is liable to be confirmed and the appeal has to be dismissed. In support of his submission, learned counsel for the respondents 1, 2 and 5 relied on the judgment of the Hon'ble Apex Court in ***Vineeta Sharma ..vs.. Rakesh Sharma and others reported in (2020) 9 SCC 1***. The relevant portion reads as follows:-

“51. The daughter is treated as a coparcener in the same manner as a son by birth



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with the same rights in coparcenary property and liabilities. However, the proviso of sub-section (1) contains a non-obstante clause providing that nothing contained in the sub section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of the property which had taken place before 20.12.2004.

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.....

55. The amended provisions of [section 6\(1\)](#) provide that on and from the commencement of the [Amendment Act](#), the daughter is conferred the right. [Section 6\(1\)\(a\)](#) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son." [Section 6\(1\)\(a\)](#) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. [Section 6\(1\)\(b\)](#) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she



had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20.12.2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

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.....

62. The proviso to [section 6\(1\)](#) and [section 6\(5\)](#) saves any partition effected before 20.12.2004. However, Explanation to [section 6\(5\)](#) recognises partition effected by execution of a deed of partition duly registered under the [Registration Act, 1908](#) or by a decree of a court. Other forms of partition have not been recognised under the definition of 'partition' in the Explanation.



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79. *The right to claim partition is a significant basic feature of the coparcenary, and a coparcener is one who can claim partition. The daughter has now become entitled to claim partition of coparcenary w.e.f. 9.9.2005, which is a vital change brought about by the statute. A coparcener enjoys the right to seek severance of status. Under [section 6\(1\)](#) and [6\(2\)](#), the rights of a daughter are pari passu with a son. In the eventuality of a partition, apart from sons and daughters, the wife of the coparcener is also entitled to an equal share. The right of the wife of a coparcener to claim her right in property is in no way taken away.*

80. Once the share of a coparcener is determined, it ceases to be a coparcenary property. After taking a definite share in the property, a coparcener becomes the owner of that share, and, as such, he can alienate the same by sale or mortgage in the same manner as he can dispose of his separate property.

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15. Considered the rival submissions made on both sides and perused the records.

16. Now the points for consideration are,

(1) *Whether the partition deed is acted upon ?*

(2) *Whether the third defendant and plaintiffs are co-parceners, by birth ?*

(3) *Whether the plaintiffs can challenge the partition deed dated 08.06.2004 when third defendant, who is the mother of the plaintiffs, has not challenged the same and remained exparte ?*

(4) *Whether the partition deed dated can be declared as null and void when inserted Section 6(5) of Hindu Succession (Amendment) Act, 2005 has been effected from 20.12.2004 and also based on the recent judgment of the Hon'ble*



Apex Court in “*Vineeta Sharma ..vs.. Rakesh Sharma and others*
reported in (2020) 9 SCC 1.”

19. In Mitakshara law, on the death of a coparcener, his interest became merged with that of the surviving coparceners. Sons inherited property only by virtue of being or becoming coparceners. Even under the codified laws, women were denied coparcenary status. These laws were repealed by the Hindu Succession Act, 1956.

20. When the Hindu Succession Act, 1956, was enacted to amend and codify the law relating to intestate or unwilled succession, the Act lays down an uniform and comprehensive system of inheritance and succession into one Act. This position was largely preserved by Section 6 of the Act. It states that when a male Hindu died after the Act came into force, his interest in a Mitakshara coparcenary shall go to the surviving members of the coparcenary and not in accordance with the Act. However, a proviso was added to preserve the interest of female children. Unamended [Section 6 of Hindu Succession Act, 1956](#) provided that if a male coparcener had left behind, on death, a female relative specified in Class I of the Schedule or male relative claiming through such female



relative, the daughter was entitled to limited share in the coparcenary interest of her father not share as a coparcener in her rights. They were unable to inherit the ancestral property like sons/male counterparts. The Mitakshara coparcenary law not only contributed to discrimination on the ground of gender but negated the fundamental right of equality guaranteed by the Constitution of India.

21. Unamended Section-6 of the Hindu Succession Act, as it stood prior to the amendment by Act 39 of 2005, reads as follows:

"6. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act.

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such a female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate



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succession, as the case may be, under this Act and not by survivorship.

Explanation 1.-For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.-Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

22. In the State of Tamil Nadu, the State Government enacted the Hindu Succession (Tamil Nadu Amendment) Act, 1989, made effective from 25.3.1989, adding [section 29 A](#) in the [Hindu Succession Act](#), 1956. [Section 29A](#) was held to be valid regarding succession by survivorship. [Section 29A](#) provided equal rights to daughters in



coparcenary property. The provisions were more or less similar, except

[section 29A\(iv\)](#) treated a married daughter differently. The provisions

were not applicable to the daughters married before the date of

commencement of [Amendment Act](#), 1989 i.e, 25.3.1989. Thus, married

daughters were not entitled to equal rights. Section 29-A of Hindu

Succession (Tamil Nadu Amendment) Act, 1989, reads as follows:-

“29A 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 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 pre-deceased 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 pre-deceased 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 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.”

23. Part of the Hindu Succession Act, 1956 was later amended in December 2004 by Hindu Succession (Amendment) Act, 2005. According to this amendment, the discrimination shown between married and unmarried daughters by Section 29-A in Tamil Nadu Amendments has also been taken care of in [section 6](#), as substituted by Amended Act 2005, and no discrimination is made against married daughters. The Union government, in its “**statement of objects and reasons**” for the amendment, said “the recognition given in the 1956 Act to the rule of devolution by survivorship and its retention of the Mitakshara coparcenary property without including women in it meant that women could not inherit ancestral property in the same way as men”. It said: “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....”. Therefore, it amended Section 6 to remove the discrimination and confer equal rights



on daughters too. It declared that a coparcener's daughter would become a coparcener in her own right by birth, in the same manner as a son; and would have the same rights that she would have, had she been a son. The amendment came into force on September 9, 2005, but it contained a proviso that it would not invalidate any disposition of property by partition or will that had taken place prior to December 20, 2004 — the day the amendment was introduced in the Rajya Sabha. The object of substituting [Section 6](#) of the Hindu Succession Act, 1956 as stated by the Union Government in “the statement of objects and reasons for introduction of the Bill” is extracted herein:-

“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 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](#).

24. The substituted Section 6 of the Hindu Succession (Amendments) Act, 2005 is extracted hereunder:-

Section-6 as amended by Act 39 of 2005 reads as follows:

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,*



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(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 sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub--section (1) 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 force in, as property capable of being disposed of by her by testamentary disposition.



(3) Where a Hindu dies after the commencement of the [Hindu Succession \(Amendment\) Act, 2005](#), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,*

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.



Explanation. For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the [Hindu Succession \(Amendment\) Act, 2005](#), no court shall recognise any right to proceed against a son, grandson or great--grandson for the recovery of any debt due from his father, grandfather or 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.] As per proviso to unamended Section-6 and Sub [Section 3](#) of the amended Section-6 makes it clear that it is only the interest of the deceased Mitakshara coparcener in the property that would devolve either by testamentary or intestate succession under the Act. The position of law declared by the



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Hon'ble Supreme Court in various pronouncements regarding the proviso remains unaltered by the amendment of [Section 6](#) by Act 39 of 2005. Sub Section-3 of Section-6 is only a reproduction of proviso to old Section-6.

25. The Hon'ble Apex Court in its recent landmark judgment between ***Vineeta Sharma ..vs.. Rakesh Sharma and others reported in (2020) 9 SCC 1***, gave a finding as follows:-

129. Resultantly, we answer the reference as under:

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

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in [Section 6\(1\)](#) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.



(iii) *Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.*

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

(v) *In view of the rigor of provisions of Explanation to [Section 6\(5\)](#) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the [Registration Act, 1908](#) or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and*



partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

26. From the reading of the above Acts and recent judgment of the Hon'ble Supreme Court, it is clear that a Coparcener is a person who has a birthright to parental property and daughters are also coparceners on par with son. The Hon'ble Apex Court has also upheld in its recent decision that “coparcenary status of daughters is created by birth and is not dependent on whether the father was alive or not on the date on which it came into force - a daughter has the same status as a son as soon as she is born”. The significance of this verdict is that it has put an end to all doubts about whether the daughters are coparceners on the date when the amendment comes into force, and whether some women could be left out of it on the ground that it can only have prospective application. It also upheld that *the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004 are saved/protected.*



27. 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 on account of their marriage, with regard to inheriting rights of coparcenary property, more importantly, the judgment of the three Judge Bench of the Hon'ble Apex Court in *Vineeta Sharma's case* ruling that the coparcenary status of daughters is created by birth and the provisions of substituted [Section 6](#) of the Hindu Succession (Amendment) Act, 2005 are required to be given full effect, also has a binding force.

28. Now, come to the case on hand. Appellants/Plaintiffs are the minor daughters of third defendant and grandchildren of Subbanna Gounder, first defendant. In one place, they claimed right through his mother/third defendant and in another place, they claimed right as coparceners of ancestral property of Subbanna Gounder, first defendant.

29. A coparcener has the right of ownership on the ancestral property from their birth. To form it as an ancestral property, it has to pass down the road for four generations with no divisions. So, only great-grandchildren of Subbanna Gounder ie., children of plaintiffs and their



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children have the proper right to the suit property, that too, if the suit property is not divided/partitioned for four generations. In this case, suit property was already partitioned among the family members of Subbanna Gounder/first respondent herein. Hence, the plaintiffs cannot be claimed as coparceners along with Subbanna Gounder.

30. Once an ancestral property breaks, it becomes a self-acquired property to the coparceners, and it is no longer an ancestral property. It again becomes ancestral as long as it passes right down to three generations without division. In this case, as rightly pointed out by the learned counsel for the respondents 1, 2 and 5 that since the ancestral properties had already been partitioned between the legal heirs of Krishnasamy Gounder ie., family members of the first respondent Subbanna Gounder in the year 1986 itself and he was allotted 'B' schedule property through a registered partition deed dated 22.12.1986, his share/'B' schedule property cannot be treated as ancestral property and it has to be deemed as self-acquired property, therefore, except the first respondent, nobody has got any right or title over the properties. If a property passes through four generations ie., Karta and his 3 generations, it is the ancestral property and if the Karta shares his



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property with his three generations ie., children, grandchildren and great grandchildren, who are co-parceners, then that property is termed as co-parcenary property. In the case on hand, since already partition effected between the family members of first respondent/legal heirs of Krishnasamy Gounder through a registered partition deed dated 22.12.1986 itself, the share allotted to first respondent in the said partition is treated as self acquired property (coparcenary property) of first respondent and cannot be treated as ancestral property of Hindu Undivided Family. Subsequently, the coparcenary property of first defendant was partitioned between his first generations legal heirs on 08.06.2004. If the property is not divided among the Hindu Undivided Family consists of Karta and 3 generations, then it is considered as ancestral property. However, in the case on hand, since already division of property through a partition deed dated 08.06.2004 was already effected between the first generation of Karta Subbanna Gounder/first respondent herein, the plaintiffs, who are the second generations of Subbanna Gounder/first respondent are not the coparceners of self-acquired property (coparcenary property) of first respondent and hence, they are not entitled for any share in the self-acquired property (coparcenary property) of Subbanna Gounder/first respondent herein.



WEB COPY 31. The Hon'ble Apex Court in *Vineeta Sharma's case (2020) 9*

SCC 1 (cited surpa), 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, Tamil Nadu etc., finally held that the rights under the amendments are applicable to living daughters of living coparceners as on 9.9.2005 irrespective of 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



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2005 which came into force on 09.09.2005 will apply to determine the entitlement of the appellant regarding her share in the suit properties.

32. Eventhough the judgment of the three-Judge Bench of the Apex Court in *Vineeta Sharma's case (cited supra)* ruling that the provisions of the substituted [Section 6](#) of the Hindu Succession (Amendment) Act, 2005 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 and also has a binding force, in the case on hand, the appellants/plaintiffs are not entitled to any share in the suit properties, as the registered partition between the respondents 1 to 5 has been effected before the cut-off date 20.12.2004 i.e., on 08.06.2004 i.e., before the [Hindu Succession \(Amendment\) Act](#) came into force on 09.09.2005. Hence, this Court holds that the trial Court has rightly dismissed the suit.

33. In fine, the impugned judgment and decree of the Principal District Judge, Coimbatore, dated 09.03.2012 in O.S.No.323 of 2008 is hereby confirmed and accordingly, the Appeal Suit is dismissed.



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However, there is no order as to costs.

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Mra

17.06.2022

Index : yes

Internet : yes

Speaking / Non-speaking Order

To:

- 1) The Principal District Judge, Coimbatore.
- 2) The Section Officer, VR Section, High Court, Madras.

S. KANNAMMAL, J.

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Judgment made in
A.S.No.881 of 2012

17.06.2022