



C.R.P(PD).No.164 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).No.164 of 2022

Shilpa

..Petitioner

Vs.

- 1.T.Marappa
- 2.Rajamma
- 3.Harish
- 4.T.Ramamoorthy
- 5.T.Venkatesh
- 6.K.M.Noordin
- 7.N.Suligaa
- 8.N.Riyasudeen
- 9.E.Nagaraj
- 10.K.Prabu
- 11.Anand Babu
- 12.Minor A.Vaisali
- 13.Minor A.Vishal
- (Minor 12 & 13 represented by their next friend
father namely 11th respondent G.R.Anand Babu)
- 14.Vinod Ragavendra
- 15.Pradeep Kumar
- 16.Vishwas
- 17.State Bank of Mysore,
Mathigiri Branch,
Main Road, Mathigiri,
Hosur Cattle Farm Post,



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Hosur Taluk, Krishnagiri District – 635 110.

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking for a direction to the learned Principal Sub-ordinate Judge at Hosur, Krishnagiri District to number the suit filed in unnumbered OS.Sr.No.771 of 2021 on the file of the Principal Sub-ordinate Court at Hosur, Krishnagiri District.

For Petitioner : Mr.R.Jayaprakash

ORDER

Aggrieved by an order, rejecting the suit even without numbering, the petitioner / plaintiff is on revision. Considering the fact that the suit has been rejected without even numbering, notice to the respondents is deemed unnecessary.

2. The plaintiff sued for partition against her father, step mother, step brother and brothers of the father. According to the plaintiff, the suit properties are all ancestral properties and she was born in 1991. Ignoring her, a partition has been entered into between the defendants on 03.03.2003. The plaintiff would therefore, contend that the partition is not binding on her and she would be entitled to share in the properties of her father as a



coparcener, who has been conferred with a right by birth. The Trial Court, returned the plaint questioning the maintainability, on the ground that the female coparcener would derive a right only after the Hindu Succession (Amendment) Act, 2005 and since the properties have been sold prior to the suit is not maintainable. This plaint was represented, explaining as to how the Hindu Succession (Act 1 of 1990), which came into force with effect from 31.03.1989 would be applicable to the case on hand.

3.The learned Sub-judge, Hosur, rejected the plaint holding that Section 29-A of the Hindu Succession Act will not apply to a Hindu woman in Tamilnadu after the enforcement of the Hindu Succession Act, 2005. Therefore, the claim cannot be sustained under the Tamilnadu Act. As far as the Central Act is concerned, the learned Sub-ordinate Judge found that the properties had been alienated prior to 2005 and hence, the plaintiff cannot question them and seek a share.

4.Though the rejection of a plaint would tantamount to a decree, in view of the definition of a decree under Section 2(ii) of CPC, this Court had in **Kittusamy Vs. K.Vellaisamy and Others** reported in **2019 (2) CTC 912** held that a revision would lie against the order rejecting the plaint without



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numbering and I have also followed the same in **M.Venkatesan Vs. SBI Cards and Payments Services Pvt. Ltd.**, reported in **2020 (6) CTC 245**.

Hence, this revision is entertained.

5.Mr.R.Jayaprakash, learned counsel appearing for the petitioner / plaintiff would contend that the action of the Sub-ordinate Judge in rejecting the plaint without numbering on the face of it illegal. He would further submit that upon enactment of the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005), rights that were obtained by the female hindu under the state enactment namely, Act 1 of 1990 are not wiped of. Under Act 1 of 1990, a daughter would not become a coparcener, if she had been married prior to 25.03.1989 or a partition had taken place prior to 25.03.1989, otherwise, a daughter would be a coparcener.

6.The plaintiff having been born in the year 1991, undoubtedly, became a coparcener by her birth by operation of Act 1 of 1990. The 2005 Act namely, Central Act makes a daughter of a coparcener, a coparcener by birth. The exemption is only to alienations made prior to the Act. The disqualification of marriage does not exist. The Central Act would undoubtedly prevail from the date of its enactment but, the same will not



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have the effect of taking away the right, which is vested with the daughter prior to its enactment, unless it is specifically says so. There is no such provision in Act 39 of 2005, which takes away rights that were conferred on daughters under the state Act namely, Act 1 of 1990.

7. Therefore, it is clear to my mind that the learned Sub-ordinate Judge was wrong in concluding that the state Act will not apply to Hindu women in Tamilnadu after enactment of Act 39 of 2005. The rights conferred under the state Act prior to the enactment of the Central Act will remain intact. Hence, this civil revision petition is allowed, the order of the learned Sub-ordinate Judge is set aside. The learned Sub-ordinate Judge, Hosur is directed to number the suit and proceed with it in accordance with law. No costs.

03.02.2022

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Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

To-

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The Principal Sub-ordinate Court,
Hosur, Krishnagiri District.



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R.SUBRAMANIAN, J.

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