



A.S.No.307 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.01.2023

Pronounced on : 02.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.No.307 of 2015

1.Thenmozhi

2.Kalaiselvi

... Appellants

Vs.

1.Kousalya (Retired Teacher)

2.Poonguzhali

Represented by her Power Agent and mother
Kousalya

3.Mahalingam

4.A.P.N.Javuli Readymades

13-B, Sambasivam Pillai Street,
Ariyalur.

5.GIIT Computers

13, B-3, Sambasivam Pillai Street,
Ariyalur.



A.S.No.307 of 2015

WEB COPY

6.Mahalakshmi Javuli Stores,
No.23, Raghavan Complex,
Vellala Street,
Ariyalur.

7.Balaji Thanga Maligai,
Raghavan Complex,
Vellala Street,
Ariyalur.

8.Amaravathi Super Market,
No.7 & 8, Vellala Street,
Ariyalur.

9.S.V. Oil Mills,
Vellala Street,
Ariyalur.

10.Rasi Hardwares,
Vellala Street,
Ariyalur.

11.Raghavan Saw Mill,
Kurinchankula Street,
Ariyalur.

12.P.V.R.Communications,
23, Raghavan Complex,
Vellala Street,
Ariyalur.

13.Karthikeyan
Proprietor of Ganesan Radio House,
No.7 & 8, Vellala Street,
Ariyalur.

... Respondents



A.S.No.307 of 2015

Prayer : Appeal Suit filed under Section 96 r/w. Order 41 Rule 1 and 2 of Code of Civil Procedure against the judgment and decree dated 27.02.2015 in O.S.No.3 of 2011 on the file of the Principal District and Sessions Court at Ariyalur.

For Appellants : Mr.P.Valliappan
Senior Counsel
assisted by Mr.M.S.Gokulraj

For R1 and R2 : Mr.S.Shyam Kumar

For R3 to R6,
R8 to R13 : No appearance

R7 : Left

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The defendants in the suit in O.S.No.3 of 2011 on the file of the Principal District and Sessions Court, Ariyalur, are the appellants in the above appeal.

2.The respondents 1 and 2 in this appeal, as plaintiffs, originally filed a suit in O.S.No.1 of 2006 on the file of the Principal District Court,



A.S.No.307 of 2015

Perambalur, and later, it was transferred to the Principal District Court, Ariyalur, and re-numbered as O.S.No.3 of 2011. The plaintiffs have filed the suit for a declaration that they are absolute owners of the suit A-schedule properties and for consequential permanent injunction restraining the defendants 1 to 3 from in any manner interfering with the peaceful possession and enjoyment. The plaintiffs sought for declaration of title and recovery of possession as an alternative prayer. Further they sought for preliminary decree for partition of their $\frac{1}{2}$ share in all the suit properties as a second alternative probably in the wake of defendants setting up a Will alleged to have been executed by 2nd plaintiff's father.

3.Before dealing with the case of the respective parties, it is necessary to refer to the relationship among the parties. The 1st plaintiff is the mother of 2nd plaintiff. The husband of 1st plaintiff and the father of 2nd plaintiff is one Sri.P.Veeraraghava Pillai, who died on 29.01.2005. The said Sri.P.Veeraraghava Pillai had three brothers and three sisters and defendants 1 to 3 are the two daughters and the son of one of the brothers of Sri.P.Veeraraghava Pillai, by name Kalyanasundaram. The other defendants



A.S.No.307 of 2015

in the suit are tenants in respect of some of the suit properties.

WEB COPY

4.The suit properties have been described as A and B-schedule properties. The suit B-schedule properties are only movables. However, suit A-schedule properties consist of 7 items and Item No.7 consists of properties in 37 survey fields both ryotwari nanja and punja lands.

5.The case of the plaintiffs in the suit is that the suit properties originally belong to the father of the 2nd plaintiff, by name Sri.P.Veeraraghava Pillai. It is specifically contended by the plaintiffs in the plaint that the suit properties are the properties obtained by Sri.P.Veeraraghava Pillai under a Partition Deed that had been entered into by him and his brothers in 1953 and properties purchased with the income derived therefrom as well as the amounts provided by the 1st plaintiff, namely, the wife of Sri.P.Veeraraghava Pillai, who was a teacher. It is specifically contended that Sri.P.Veeraraghava Pillai was never employed. Therefore, the suit properties are claimed to be joint family properties of Sri.P.Veeraraghava Pillai and the 2nd plaintiff, who claims to be a coparcener



A.S.No.307 of 2015

from the date of her birth by virtue of Hindu Succession (Tamil Nadu Amendment) Act, 1989.

6.Stating that the plaintiffs are the legal heirs of the deceased Sri.P.Veeraraghava Pillai, the main prayer in the suit is for declaration and for consequential injunction. The alternative prayer is for declaration and recovery of possession in case the Court holds that the A-schedule properties are in the possession of defendants. Since defendants 1 and 2 filed a written statement setting up a Will executed by Sri.P.Veeraraghava Pillai, the plaint was further amended to include the alternative prayer for partition and separate possession of suit A-schedule properties.

7.The suit was contested by the appellants mainly on the ground that Sri.P.Veeraraghava Pillai executed a Will, dated 04.12.2000, on his own accord and volition. It is further stated that the Will, dated 04.12.2000, is a registered last Will of the testator and that the Will was executed when the testator was in a sound disposing state of mind. The case of the 1st plaintiff that she contributed money to purchase properties in the name of



A.S.No.307 of 2015

Sri.P.Veeraraghava Pillai is specifically disputed by the appellants and the fact that the deceased Sri.P.Veeraraghava Pillai has obtained a decree against 1st plaintiff in respect of a house property which was purchased in the name of 1st plaintiff was also referred to in the written statement. It is contended that the entire suit properties, which are described as A-schedule properties in the plaint, were bequeathed in favour of defendants 1 to 3 with an obligation/idea that the 1st defendant/1st appellant should establish a Trust in respect of some of the properties of Sri.P.Veeraraghava Pillai bequeathed under the Will. The other defendants namely the tenants remained *ex parte*.

8.Before the trial Court, the 1st plaintiff was examined as P.W.1 and documents Exs.A1 to A3 were marked on the side of the plaintiffs. The 1st defendant was examined as D.W.1. One ArulNandhi was examined as D.W.2 and Exs.B1 to B7 were marked on the side of the defendants.

9.The trial Court framed the following issues :

1. *“Is it true that 1st plaintiff and 2nd plaintiff are the legal heirs of deceased Veeraraghavapillai ?*



A.S.No.307 of 2015

2. *Is it true that 1st plaintiff was divorced by him through an order obtained in H.M.O.P.No.16/92 ?*
3. *Whether alleged will said to be executed by Veeraraghavapillai is valid in Law (dt.04.12.2000) ?*
4. *Whether the plaintiffs are having any interest over the suit properties ?*
5. *Whether the plaintiffs are not entitled to get relief of declaration ?*
6. *Whether the plaintiffs are not entitled for consequential injunction (or) for relief of recovery of possession ?*
7. *Whether the defendants are liable to account for mesne profits ?*
8. *To what relief ?”*

10. There is no dispute with regard to relationship and the status of 2nd plaintiff as the only daughter of deceased Sri.P.Veeraraghava Pillai. However, it is admitted that the marriage between the 1st plaintiff and the deceased Sri.P.Veeraraghava Pillai was dissolved by a decree dated 10.09.1993 under Ex.B4 in the petition filed by Sri.P.Veeraraghava Pillai. The trial Court found that the 2nd plaintiff, as daughter of Sri.P.Veeraraghava Pillai, is a coparcener and entitled to equal share in all the properties of the



A.S.No.307 of 2015

joint family consisting of Sri.P.Veeraraghava Pillai and the 2nd plaintiff.

Though the trial court held that the Will executed by Sri.P.Veeraraghava Pillai under Ex.B2 dated 04.12.2000 is valid, the trial Court held that Sri.P.Veeraraghava Pillai is not entitled to deal with the ½ share of 2nd plaintiff, who is entitled to equal share by birth. Referring to Section 6 of Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005) and the fact that Sri.P.Veeraraghava Pillai died after the cut off date, that is 20.12.2004, it was held that the 2nd plaintiff became a coparcener in respect of the suit properties. The trial Court then held that the Will, which came into effect on 29.01.2005, is valid only to the extent of half share of Sri.P.Veeraraghava Pillai, as the daughter of Sri.P.Veeraraghava Pillai, the 2nd plaintiff is also entitled to ½ share in all the suit properties. The trial Court also held that defendants 1 to 3 are liable to render accounts for mesne profits. It is pertinent to mention that the plaintiffs filed a suit in O.S.No.4 of 2011 for permanent injunction and the said suit was also dismissed in view of the findings of the trial Court in O.S.No.3 of 2011, and the fact that defendants are in possession.



A.S.No.307 of 2015

11. Aggrieved by the judgment and decree of the trial Court granting a decree for partition in respect of the entire A-schedule properties and permanent injunction restraining defendants 1 to 3 from collecting rent from defendants 4 to 13, defendants 1 and 2 have preferred the above appeal.

12. Learned Senior Counsel appearing for the appellants submitted that, except properties which are referred to as Item No.7 in A-schedule, all the other properties were acquired by the father of the 2nd plaintiff, Sri.P.Veeraraghava Pillai. It is submitted that he was always independently earning by doing business. He submitted that the judgment of the trial Court in respect of all the properties described under A-schedule is unsustainable. The learned Senior Counsel appearing for the appellants submitted further that the trial Court presumed that all the properties are ancestral properties overlooking the fact that except Item No.7 in A-schedule, all other properties are self-acquired properties of Sri.P.Veeraraghava Pillai. Learned Senior Counsel then submitted that the death of Sri.P.Veeraraghava Pillai on 29.01.2005 will not militate against the claim of 2nd plaintiff/2nd respondent. The learned Senior Counsel relied upon



A.S.No.307 of 2015

the contents of the Will and submitted that the properties have been described as properties acquired by Sri.P.Veeraraghava Pillai in unequivocal terms. The trial Court has no reason to discard the statement of the testator himself in the document Ex.B2-Will.

13.Learned counsel appearing for the appellants then submitted that the 2nd respondent cannot claim any right in respect of properties, as she is not a coparcener, particularly when the coparcenary was not in existence at the time when succession opened. This argument of the learned Senior Counsel appearing for the appellants is on the basis of Para No.64 of the judgment of the Hon'ble Supreme Court in the case of ***Vineeta Sharma v. Rakesh Sharma and others*** reported in ***(2020) 5 CTC 302***. The appellants, though raised several other grounds relying upon the judgment of the Hon'ble Supreme Court in several cases, conceded the position that the female heirs are entitled to claim partition as a coparcener of the joint family irrespective of the death of father whether prior or after the amendment in 2005. Learned Senior Counsel, relying upon the averments in unamended plaint and the prayer, would submit that the plaintiff was not specific when



A.S.No.307 of 2015

the plaint was filed whether the properties are joint family properties or self-acquired properties of father Sri.P.Veeraraghava Pillai. When the pleadings in the plaint itself are not specific with reference to character of the suit properties, the learned Senior counsel submitted that the findings of the trial Court, without framing an issue with regard to the character of the suit properties, that plaintiff is entitled to half share in all the properties, is perverse.

14.Per contra, learned counsel appearing for the respondents 1 and 2, referring to the fact that the amendment was required after the statement of defendants 1 to 3 propounding the Will under Ex.B2, submitted that there is specific pleading in the plaint even before amendment as to the character of suit properties. Learned counsel then submitted that the burden lies on the father, who is the senior male member of the family, to establish that the properties acquired by him is without the aid of joint family nucleus. Since the father is no more in this case when the suit was filed, the learned counsel submitted that the burden lies on the appellants who claim title under the Will to prove that the properties are the self-acquired properties of father



A.S.No.307 of 2015

Sri.P.Veeraraghava Pillai. The learned counsel also relied upon a few judgments of the Hon'ble Supreme Court and pointed out that the evidence of P.W.1 has not been controverted by the defendants disputing her positive case that other properties were acquired out of joint family nucleus which were available with the testator as per registered Partition Deed which is also marked as Ex.A3. Relying upon the judgment of the Hon'ble Supreme Court in the case of *Muddasani Venkata Narsaiah (D) through LRs v. Muddasani Sarojana* reported in *(2016) 12 SCC 288* regarding the effect of failure to cross-examine the material witness of the other side, the learned counsel submitted that the appellants have not seriously disputed the specific allegation in the plaint as to the character of properties. Learned counsel appearing for the respondents 1 and 2 referred to the written statement and one of the documents filed by the appellants and submitted that Sri.P.Veeraraghava Pillai was filing Income Tax Returns as a Manager of Hindu Undivided Family by referring to agricultural income as income of the joint family. From the document, the learned counsel suggested Sri.P.Veeraraghava Pillai has admitted the character of properties during his lifetime as ancestral.



WEB COPY

15. Having regard to the pleadings, evidence, the issues framed by the trial Court and the submissions made by the learned counsel appearing on either side, this Court is of the view that the following points arise for determination in the present appeal :

- i. *Whether the 2nd respondent/2nd plaintiff, who got married on 09.02.1989 and whose father Sri.P.Veeraraghava Pillai died on 29.01.2005, is entitled to claim the benefit either under Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Act 1 of 1990) or Hindu Succession (Amendment) Act, 2005 ?*
- ii. *Whether the suit properties are the ancestral properties of the joint family consisting of 2nd plaintiff and her father Sri.P.Veeraraghava Pillai or the self-acquired properties of Sri.P.Veeraraghava Pillai ?*
- iii. *Whether the Will executed by Sri.P.Veeraraghava Pillai under Ex.B2, dated 04.12.2000, is proved in the manner known to law and valid to bind the 2nd plaintiff ?*
- iv. *Whether the judgment and decree of the trial Court granting one half share to the 2nd plaintiff in respect of all the suit properties described as A-Schedule is valid and in accordance with law ?*



A.S.No.307 of 2015

WEB COPY **Point No.(i) :**

16.It is admitted that the 2nd plaintiff's marriage was prior to the commencement of the Act 1 of 1990 and therefore, the position is admitted that the 2nd plaintiff will not get a right in coparcenary properties to claim any right by birth under the State amendment. It is admitted in the course of evidence that father Sri.P.Veeraraghava Pillai executed a Will under Ex.B2 dated 04.12.2000. Since the genuineness of the Will is disputed, the question whether the Will is proved and valid will be examined under the relevant issue.

17.Learned Senior Counsel appearing for the appellants, during his arguments, submitted that father Sri.P.Veeraraghava Pillai executed a Will on 04.12.2000 well before amendment in the year 2005 and that therefore, the 2nd plaintiff is not entitled to claim any share in the ancestral properties by virtue of Hindu Succession (Amendment) Act, 2005, as the properties had already been disposed of. Learned Senior Counsel then submitted that the Will came into effect on the death of Sri.P.Veeraraghava Pillai on 29.01.2005



A.S.No.307 of 2015

long before the Act 39 of 2005 came into force, i.e., on 09.09.2005. Learned Senior Counsel submitted that, when the Act came into force only on 09.09.2005, properties covered by the Will under Ex.B2 are not available for partition even if provisions of Act 39 of 2005 are to be applied.

18. When the learned Senior Counsel for the appellants was confronted with the judgment of larger Bench of the Hon'ble Supreme Court in the case of *Vineeta Sharma v. Rakesh Sharma* reported in **2020 (5) CTC 302**, learned Senior Counsel relied upon Para No.64 of the said judgment, which reads as follows :

“64. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In



A.S.No.307 of 2015

WEB COPY

case living coparcener dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted section 6(3).”

By referring to the above paragraph, the learned Senior Counsel submitted that a daughter can claim right as a co-owner only if the coparcenary exists as on 09.09.2005. Pointing out that the Will came into force on the death of Sri.P.Veeraraghava Pillai much prior to commencement of the Act, the Senior Counsel submitted that the suit for partition by a female member in respect of the properties which had been disposed by her father by a Will which came into force much prior to 09.09.2005, is not maintainable.

19.This Court is unable to countenance the said argument in view of the law declared by Hon'ble Supreme Court on the interpretation of Section 6 and other provisions of Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005. The ultimate conclusion reached by the larger Bench of Hon'ble Supreme Court in Para No.129 of the judgment in *Vineeta Sharma's* case, is extracted 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 out rightly.”

20. In the present case, the suit A-Schedule properties are claimed to be the ancestral properties of Sri.P.Veeraraghava Pillai and by virtue of Hindu Succession (Amendment) Act, 2005, the 2nd plaintiff is entitled to have equal share along with her father in all the joint family properties. Similar arguments were advanced in several occasions earlier before this Court and Hon'ble Supreme Court on the advent of Hindu Succession (Amendment) Act, 2005. First of all, the argument of learned Senior



A.S.No.307 of 2015

Counsel appearing for the appellants is by assuming the position that the father Sri.P.Veeraraghava Pillai is the sole surviving coparcener and that therefore, he became the absolute owner of the joint family properties. It has been held by Hon'ble Supreme Court in several cases that, property held by a person as sole surviving coparcener of a Hindu Undivided Family is not his separate property within the meaning of Section 3(1) of Hindu Women's Rights to Property Act, 1937. Referring to Section 3(1) of Hindu Women's Rights to Property Act, 1937, it has been held by the Hon'ble Supreme Court that a property obtained by a sole surviving coparcener in a family does not become his separate property so long as there is a woman in the family who can bring into existence a new coparcener.

21.A question may arise then whether the suit properties would also come under the purview of Hindu Women's Rights to Property Act, 1937, as the applicability of the Act is restricted to non-agricultural properties. In the case on hand, it is admitted that Sri.P.Veeraraghava Pillai got substantial properties which are described as Item No.7 in the A-Schedule, consisting of 37 Items of nanja and punja lands. The Law is settled in several judgments



that the property inherited by a sole surviving coparcener will not become his absolute property merely because at the time when succession opened, he was not married. The issue similar to the one raised by the learned Senior Counsel appearing for the appellants came up for consideration before a Division Bench of this Court, where the question was raised by a daughter by virtue of Section 29-A of Hindu Succession Act as amended by the State of Tamil Nadu. The Division Bench of this Court in the case of ***Alamelu Ammal and others v. Tamizh Chelvi and others*** reported in **2004 3 MLJ 620**, has held as follows :

“15.The next submission of learned Senior Counsel for the appellants is that on the facts of the case, Subramaniam died on 15.2.1986 and since on that date section 29A was not in force, the properties of Subramaniam whether held as joint family property or separate property, had already devolved on Class-I heirs, namely, the widow, daughter and mother of Subramaniam on the date of his death, i.e., 15.2.1986 by virtue of sections 6 and 8 of the Hindu Succession Act and there would be no scope for divesture of the properties already devolved and vested with Class-I heirs. She therefore submitted that it is not open to the second plaintiff, unmarried daughter of Subramaniam to claim half share in the ancestral



WEB COPY

properties held by Subramaniam as a coparcener.

16.Mr. Parthasarathy, learned Senior Counsel for the respondents, on the other hand, submitted that section 29-A of the Hindu Succession Act overrides section 6 of the said Act and in the absence of any exclusion, the shares already devolved should be redetermined by giving effect to section 29-A of the Act. He further submitted that only two kinds of exclusion are provided in section 29-A of the Act which prevent its operation, namely, (i) it does not apply to a case of a daughter who married before the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989; and (ii) in the case of partition which has been effected before the date of commencement of the said Amendment Act.

17.We find force in the submission of Mr. Parthasarathy, learned counsel for the respondents. Section 29-A of the Hindu Succession Act gives a special statutory right to daughters in a Hindu undivided family and a daughter of a Hindu, if not married before the commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989, is treated as a coparcener subject to certain conditions contained in section 29-A of the Hindu Succession Act, but her rights are equal to



WEB COPY



A.S.No.307 of 2015

that of a son in the Hindu family and she is regarded as a coparcener with a right by birth in the family properties. Section 29-A begins with the non obstante clause, 'notwithstanding anything contained in section 6 of this Act' which clearly indicates that the provisions of section 29-A would override the provisions of section 6 of the Hindu Succession Act.

18. It is true that in considering the point as to her share in the coparcenary properties, if an unmarried daughter born before the date of commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 is regarded as a coparcener from the date of her birth, any alienation or gift of the family properties by another coparcener during the interregnum period from the date of her birth till the date of commencement of the Tamil Nadu Amendment Act, 1989 may be exposed to challenge by the daughter, but that is not a ground to deny the right by birth granted under section 29-A of the Hindu Succession Act to an unmarried daughter. We are of the view that section 29-A is a special provision giving a statutory right to a daughter treating her as a coparcener in the family and if such right by birth is given to the daughter, it must mean that she gets the right by birth in the family



WEB COPY



A.S.No.307 of 2015

properties from the date of her birth and it is not a right that would accrue only on the commencement of the Tamil Nadu Amendment Act, 1989. As already held by us, though section 29-A of the Hindu Succession Act is prospective in operation, it takes note of the events that happened prior to the insertion of section 29-A of the Hindu Succession Act in its operation. Therefore, we are of the view that if any alienation or gift of immovable property was made by the sole surviving coparcener or the Kartha of the family during the interregnum period from the date of birth of a daughter till the date of commencement of the Tamil Nadu Amendment Act, 1989, such an alienation or gift of the family property is liable to be questioned by an unmarried daughter as if she is a coparcener, but we are of the view that the ground of challenge would be limited and the Court would be considering the question of validity of any alienation or transfer made by the said coparcener in the light of the provisions of section 29-A of the Act that the daughter became a coparcener only by virtue of that Section which was inserted subsequent to such alienation or transfer.

19.*Moreover, in S.SAI REDDY v. S.NARAYANA REDDY (1991) 3 SCC 647 the Supreme Court was dealing with a case*



WEB COPY



A.S.No.307 of 2015

of partition and in that case, a preliminary decree was passed on December 26, 1973 declaring that the male heirs would be entitled to 1/3rd share each in the coparcenary property and during the pendency of final decree proceedings, but prior to the passing of final decree, the Hindu Succession Act was amended by the State of Andhra Pradesh inserting section 29-A of the Act with the result the unmarried daughter was treated as a coparcener entitled to a share in the joint family property as a coparcener. The Supreme Court held that though a preliminary decree was passed declaring shares on the male members of the family, since the Amendment Act came into force before the final decree was passed, the intervening event which gave shares to daughters had the effect of varying shares of the parties in the preliminary decree like any supervening development and that has to be given effect to. It was also held that the legislation is a beneficial one and section 29-A was inserted with the avowed object of benefiting women and hence, it is necessary to give a liberal effect to it. The Supreme Court in S. Sai Reddy case held that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. A Division Bench of this Court in M. SHANMUGHA UDAYAR v. SIVANANDAM (AIR 1994



Madras 123) applied the principles laid down in Sai Reddy case and held that the daughter is entitled to a share equal to that of a son in the family. In SARASU v. BASKARAN (2000-3-L.W.599), in which one of us was a party, this Court has also taken the same view holding that the daughter is entitled to a share in the coparcenary property. In KOKILA v. SWATHANTHIRA & OTHERS (2004-3-L.W.60), K. Govindarajan, J. on the difference of opinion between two learned Judges has held that section 29-A of the Hindu Succession Act is a deviation from section 6 of the said Act and an unmarried daughter can, under section 29A of the Act, claim right equal to a son in spite of specific devolution of interest in coparcenary properties as contained in section 6 of the Act. We are of the view that though the properties devolved on the plaintiffs as well as the mother of Subramaniam, first defendant in the suit and vested in them in the year 1986 on the death of Subramaniam, since partition in the family had not taken place by metes and bounds as provided under clause (v) of section 29-A of the Hindu Succession Act, the rights devolved on the family members would get altered and the second plaintiff would be entitled to claim her share as a coparcener in the coparcenary properties left by Subramaniam as if she had a right by birth in the



WEB COPY



A.S.No.307 of 2015

coparcenary properties. We are of the view that any other construction would defeat the avowed purpose and object of section 29-A of the Hindu Succession Act as the legislature has indicated that section 29-A of the Act has excepted from its operation only two cases, namely, where partition was effected prior to the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 or where the daughter got married before the commencement of the said Amendment Act and in all other cases the necessary implication is section 29-A of the Hindu Succession Act would apply and consequently, the shares, if any, devolved on the members of the family under section 6 of the Hindu Succession Act would get altered and their rights in the family properties have to be redetermined by applying the provisions of section 29-A of the Hindu Succession Act. Therefore we hold that notwithstanding the fact that the properties had devolved on the heirs under sections 6 and 8 of the Hindu Succession Act prior to the insertion of section 29-A of the Act, the second plaintiff is entitled to a share as a coparcener in the coparcenary properties left by Subramaniam.”

The argument of learned Senior Counsel appearing for the appellants cannot be accepted. The position is also otherwise as can be derived from the



A.S.No.307 of 2015

verdict of Hon'ble Supreme Court in *Vineeta Sharma's* case.

WEB COPY

22.The learned Senior Counsel appearing for the appellants contended that, by virtue of the Will under Ex.B2, there was disposition, as the testator himself died before the commencement of Hindu Succession (Amendment) Act, 2005. The contention of the learned Senior Counsel appearing for the appellants cannot be countenanced in view of the judgment of the Hon'ble Supreme Court holding that Hindu Succession (Amendment) Act, 2005, is retrospective in nature and the rights under the Amendment Act are applicable to living daughters as on 09.09.2005 irrespective of the birth of daughters or the death of father before or after the commencement of Hindu Succession (Amendment) Act, 2005. The Hon'ble Supreme Court, in several judgments, has held that disposition or alienation including partition prior to 20.12.2004 alone will remain unaffected.

23.Question as regards the Will which comes into effect after 20.12.2004 has also been considered by this Court and Hon'ble Supreme Court. This Court is not inclined to elaborate this judgment by referring to



all the judgments, but refers to one judgment of a learned Single Judge of this Court, in the case of ***S.Narayanan v. V.Meenakshi and others*** [A.S.(MD) No.25 of 2014, dated 30.08.2017], who has considered the issue by referring to several binding precedents and held as follows :

“32.Therefore, I am of the considered view that in cases where the testator was alive as on 20-12-2004, the Will, even if any executed by him genuinely before the said date, would not make it a case of testamentary disposition which had taken place, so as to make the case fall under the proviso and to take it out of the application of section 6(1). In other words, a case will fall under the proviso to section 6(1), only if 2 things had taken place before 20-12 2004 namely (i) execution of a Will and (ii) the death of the testator. The execution of the Will before 20-12 2004 alone is not sufficient to take a case out of the operation of section 6(1), as no disposition under the Will would have taken place, if the testator was alive.”

Point No.(ii) :

24.In the pleadings and in evidence, it is admitted that the father of 2nd plaintiff Sri.P.Veeraraghava Pillai obtained substantial properties in the



A.S.No.307 of 2015

family partition between Sri.P.Veeraraghava Pillai and his brothers on 22.06.1953. It is also the common case of both parties that the properties which are described as Item No.7 in A-Schedule are allotted to Sri.P.Veeraraghava Pillai in the said partition effected in the family of Sri.P.Veeraraghava Pillai on 22.06.1953. In the plaint, it is specifically stated that the suit properties are the properties allotted to Sri.P.Veeraraghava Pillai under a registered partition deed dated 22.06.1953 and the properties purchased out of ancestral joint family nucleus. It is contended by the learned Senior Counsel appearing for the appellants that the plea that the other properties were purchased out of ancestral joint family nucleus was included only by way of amendment. However, it is seen that, in Para No.23 of the plaint, the respondents/plaintiffs have raised a specific plea that suit properties were either obtained by Sri.P.Veeraraghava Pillai in the partition that had taken place between him and his brothers or purchased with the income derived from the properties allotted to Sri.P.Veeraraghava Pillai in the family partition. The plaintiffs have also stated that 1st plaintiff, namely the wife of Sri.P.Veeraraghava Pillai, also contributed for the purchase of other properties, as she was drawing a decent salary as a



A.S.No.307 of 2015

Teacher employed in a School.

WEB COPY

25.Learned Senior Counsel appearing for the appellants relied upon the findings of the trial Court accepting the evidence on the part of defendants to the effect that Sri.P.Veeraraghava Pillai filed a suit in respect of a property purchased in the name of 1st plaintiff and got a decree declaring his title. Therefore, this Court is not inclined to accept the case of the plaintiffs that 1st plaintiff also contributed for the purchase of several other properties.

26.Learned Senior Counsel relied upon several judgments for the proposition that the initial burden of proof lies on the person, who sets up a plea that the property purchased by the individual is the joint family property, to show the existence of ancestral or joint family nucleus, by means of which, the property in question may have been acquired. It is further contended by the learned Senior Counsel appearing for the appellants that, not only the existence of ancestral or joint family nucleus is sufficient, but the person who claims property as a joint family property,



should prove that the joint family properties are capable of generating surplus income to enable the person to acquire the property in question. For the said proposition, the learned Senior Counsel relied upon several judgments, which are listed below :

- i. *Tadepalli Satchidanandam v. Vanapala Subbarazu* [MANU/TN/0353/1930]
- ii. *Amrita Lal Sen and others v. Surath Lal Sen and others* [AIR 1941 Cal 553]
- iii. *Darshan Singh v. Parbhu Singh and others* [AIR 1946 All 67]
- iv. *Shrinivas Krishnarao Kango v. Narayan Devji Kango and others* [AIR 1954 SC 379]
- v. *Ramakrishna Mardi and others v. Vishnumoorthi Mardi and others* [AIR 1957 Mad 86]
- vi. *Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh* [AIR 1969 SC 1076]
- vii. *D.S.Lakshmaiah and others v. L.Balasubramanyam and others* [AIR 2003 SC 3800]
- viii. *Rajamani and others v. Malliga and others* [AIR 2018 Mad 206]
- ix. *Bhagwat Sharan (dead) through LRs v. Purushottam and others* [AIR 2020 SC 2361]
- x. *Savithri v. L.Nagaraj and others* [MANU/TN/8573/2022]



A.S.No.307 of 2015

WEB COPY 27. We have no quarrel with the proposition of law of Hon'ble Supreme

Court and this Court in several precedents above referred to, regarding burden of proof in case where the acquisition of property by a junior member of joint family is claimed to be the joint family property. However, the position is different where the acquisition is by father who is the karta or Manager of the family. In the present case, it is not in dispute that Sri.P.Veeraraghava Pillai got the properties which are described as Item No.7 in A-Schedule in the family partition in 1953 between Sri.P.Veeraraghava Pillai and his brothers. Item No.7 in suit A-Schedule consists of 37 items in different survey fields. Out of the lands allotted to Sri.P.Veeraraghava Pillai, most of the lands, i.e., lands in Item Nos.23 to 37 are nanja lands. In other words, around 15 Acres of nanja lands have been obtained by the father Sri.P.Veeraraghava Pillai in the family partition. The existence of substantial joint family properties is admitted. The availability of substantial nanja lands will indicate that the lands are capable of cultivation with a permanent Government source of irrigation. Since the liability towards land revenue is more in respect of nanja lands, this Court cannot presume that there was no



A.S.No.307 of 2015

cultivation by Sri.P.Veeraraghava Pillai in the substantial portion of lands allotted to him in the partition. Since 2/3rd of the lands are potential agricultural lands, this Court is of the view that the case of plaintiffs that all the other lands were purchased out of income generated from the joint family nucleus, is more probable.

28.It is admitted that Sri.P.Veeraraghava Pillai is not employed and there is no evidence to show that Sri.P.Veeraraghava Pillai was engaged in any other business or avocation without the support or aid of joint family nucleus. When a plaint is presented with specific averments and sufficient materials, this Court is unable to find any independent evidence or material to accept the case of appellants. Though there are admissions to the extent that Sri.P.Veeraraghava Pillai was carrying on business, this Court does not find a scrap of paper to prove the source of income or the capacity of Sri.P.Veeraraghava Pillai to mobilise funds to start any business without the aid of joint family nucleus. It is to be noted that the defendants have



A.S.No.307 of 2015

admitted during evidence that Sri.P.Veeraraghava Pillai was the President of Sugarcane Producers Association till he died in 2005. The Hon'ble Supreme Court in the case of ***V.D.Dhanwatey v. The Commissioner of Income-Tax, Madhya Pradesh, Nagpur and Bhandara*** reported in ***1968 0 AIR (SC) 683***, has laid certain principles to be followed in cases like this in the following passage :

“4.The general doctrine of Hindu law is that property acquired by a karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. To put it differently, it.-is an essential feature of self-acquired property that it should. have been acquired without assistance or aid of the joint family property. The test of self-acquisition by the karta or coparcener is. that it should be without detriment to the ancestral estate. It is therefore clear that before an acquisition can be claimed to be a separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property. The principle is based on the original text of Yajnavalkya who while dealing with property not liable to



A.S.No.307 of 2015

partition, states :

"Whatever else is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend or a gift at nuptials, does not appertain to co-heirs. Nor shall he, who receives hereditary property which had been taken away, give it up to coparceners; nor what has been gained by science." (Yajnavalkya 2, verses 119-120)."

The Hon'ble Supreme Court, in the above judgment, examined the text of Yajnavalkya, the author of Mitakshara and ultimately held that, in a case where the property is acquired in the name of Manager or karta of a Hindu Undivided Family, the burden lies on the Manager or karta of the family to prove that the property was acquired by him without the aid of joint family nucleus. The above judgment was explained and interpreted in several judgments pronounced later by the Hon'ble Supreme Court and this Court and it has become the law that, where a property purchased by the Manager or karta of the family is claimed to be the property of joint family, the burden lies on the Manager or karta of the family to prove that the property was purchased by the Manager or karta of the joint family out of his self exertion or that the property was acquired by him out of his separate funds and not with the help of joint family funds of which he was in possession and



charge.

WEB COPY

29. We are not inclined to elaborate by referring to several judgments except a judgment of the Division Bench of this Court in the case of ***K.V.Duraisamy and another v. D.Perumalsamy (Minor) and another*** reported in ***1993 (2) MLJ 613***, where, it is held as follows :

“8. There is a positive admission on the part of the first appellant is the witness box which totally belies his claim that item 2 properties are his self-acquisitions. D.W.I states that he invested a capital of Rs.500 for his arecanut business. That sum was the income he got from the joint family property. Besides, he received Rs.1,300 as owelty under Ex.B-3 partition deed on account of the excess land given to his brother. His categorical admission in the witness box is So it is quite evident that there was some joint family nucleus with the aid of which the first appellant started arecanut trade and derived income therefrom. Since he was the manager of the family at the time of acquisition of the lands, as it has been laid down by the Supreme Court in Nallasappa v. Mallappa. A.I.R. 1961 S.C. 1268: (1962) 2 M.L.J. (S.C.) 154: (1962) S.C.J. 589: (1961) 2 S.C.R. 779: (1962) 2 An.W.R. (S.C.) 154, it is for him to prove by clear and satisfactory evidence that



WEB COPY



A.S.No.307 of 2015

the lands were acquired by him with his own separate funds and not with the help of joint family funds of which he was in possession and charge. The onus of proof must in such a case be placed on the manager and not on the coparceners. Further any property acquired with the aid of joint family property is joint family property.”

30.In the case on hand, this Court has held already that Sri.P.Veeraraghava Pillai was in possession and control of substantial properties of joint family capable of giving very good income. It is admitted before this Court that Sri.P.Veeraraghava Pillai married 1st plaintiff, who gave birth only to 2nd plaintiff, a daughter. Therefore, the entire family consists of three members and the commitments of Sri.P.Veeraraghava Pillai is negligible compared to the assets he got under the family partition. It is not the case of any one of the parties to the *lis* that Sri.P.Veeraraghava Pillai was leading any immoral life or he is a man of bad character with vices or to believe him as a spendthrift. In such circumstances, even though it is admitted that Sri.P.Veeraraghava Pillai was doing some business on his own, this Court cannot presume any source for investment without the aid of joint



A.S.No.307 of 2015

family nucleus. Therefore, in this case, the burden lies on the appellants, as they derive title from Sri.P.Veeraraghava Pillai. However, the appellants miserably failed to let in any evidence or acceptable material to show that Sri.P.Veeraraghava Pillai had other source of income on his own without the aid of joint family to purchase any other property.

31.Learned Senior Counsel appearing for the appellants then relied upon the contents of the Will under Ex.B2. It is true that, in the Will under Ex.B2, the testator, namely Sri.P.Veeraraghava Pillai, referred to properties as ancestral as well as self-acquired. The Will also refers to establishment of saw-mill and other businesses conducted by the testator. Though it is stated that the Will contained other properties acquired by him out of his earnings, Will does not refer to any statement by testator to the effect that he was doing business and established saw-mill without the aid of income from the joint family nucleus. In the Will, it is admitted that there was a partition in the testator's family when his father was alive in 1947. It is stated that, in 1947 partition, he was allotted separate properties and his father was in enjoyment of the properties allotted to him in the 1947 partition. It is further



A.S.No.307 of 2015

stated that the properties allotted to the father was divided in the partition in 1953. Therefore, when it is admitted that the properties described as Item No.7 in the suit A-Schedule are the properties allotted to the testator in 1953 partition, testator admits that there were other joint family properties allotted to him in the year 1947 partition. In other words, the testator himself admits the existence of some more properties as ancestral properties apart from the properties allotted to him in 1953 partition. Going by the statements of the testator himself in the Will under Ex.B2, this Court requires valid explanation from the appellants on the recitals regarding existence of further properties. Since there is no specific pleading or issue by the trial Court with regard to existence of further properties as ancestral, this Court is not inclined to rest our decision on the basis of recitals in Ex.B2 suggesting availability of other properties as ancestral referring to previous partition in 1947. However, we do not find any substance in the argument that the statements in the Will executed by the testator would be relevant to decide the character of all the other properties except Item No.7 in A-Schedule.

32.Having regard to the facts admitted and the legal position settled



A.S.No.307 of 2015

by precedents above referred to, this Court has no hesitation to hold that the entire suit properties are the joint family properties.

Point Nos.(iii) and (iv) :

33.Since, trial Court has held the Will-Ex.B2 as proved accepting the genuineness of the Will, it was held that the 2nd plaintiff is entitled to a decree for partition declaring her half share in A-Schedule property and consequential injunction. The suit was dismissed in respect of 1st plaintiff. However, the declaratory relief prayed for by the plaintiffs was specifically negated. The plaintiff has not questioned the findings of trial Court as regards proof and validity of the Will in respect of half share of Sri.P.Veeraraghava Pillai as father and karta of family. The findings as regards the genuineness and validity of the Will in respect of half share of Sri.P.Veeraraghava Pillai has become final. Learned Senior Counsel appearing for the appellant referred to the evidence of 1st plaintiff who has admitted not only the genuineness of the Will, but also deposed in such a fashion that Sri.P.Veeraraghava Pillai had every reason to execute the Will and the Will was executed by the testator in his sound disposing state of



A.S.No.307 of 2015

mind on his own volition. This Court, therefore, holds that the Will under Ex.B2 executed by the testator Sri.P.Veeraraghava Pillai is proved. Since the 2nd plaintiff is also a coparcener by virtue of Hindu Succession (Amendment) Act, 2005, the Will executed by Sri.P.Veeraraghava Pillai is valid only in respect of half share of Sri.P.Veeraraghava Pillai in all the joint family properties. Therefore, this Court holds that the judgment and decree of the trial Court granting one half share to the 2nd plaintiff in respect of all the suit properties described as A-Schedule is valid and in accordance with law.

34.In view of the conclusions we have reached above, this Court finds no merit in the above appeal and the appeal is, therefore, dismissed with costs.

(S.S.S.R., J.) (A.A.N., J.)
02.03.2023

mkn

Internet : Yes

Index : Yes / No

To

Page 42 of 44



A.S.No.307 of 2015

1.The Principal District and Sessions Judge,
Ariyalur.

2.The Section Officer,
VR Section, High Court,
Chennai.

S.S. SUNDAR, J.
and
A.A.NAKKIRAN, J.

mkn

Judgment in
A.S.No.307 of 2015



WEB COPY



A.S.No.307 of 2015

02.03.2023