



AS.No.63/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.03.2023

Delivered on 07.06.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

AS.No.63/2012

Mrs.N.Kalavathy

.. Appellant /
Plaintiff

Versus

1.Mr.Sriramulu Naidu [deceased]

2.Mr.S.Devarajulu

3.Mr.D.Deepakraj

4.Mr.D.Yashwanth

.. Respondents
/ Defendants

**R2 recorded as LR of deceased 1st respondent
vide order dated 05.07.2012 made in AS.No.63/2012
[Memo dated 28.06.2012 in SR.No.54737/2012]**

Prayer:- Appeal Suit filed under section 96 of CPC read with Order 41 Rules 1 and 2 of CPC against the decree and judgment dated 28.03.2011 in OS.No.22/2008 on the file of the learned Additional District Judge, Fast Track Court No.III, Tiruvallur.



AS.No.63/2012

For Appellants : Mr.V.Raghavachari,
Senior counsel for
Mr.A.Arumugam
For RR 2 to 4 : Mr.R.Parthasarathy
Senior counsel for
Mr.J.Harikrishna
R1 : Died

JUDGMENT

S.S.SUNDAR, J.

- (1) The plaintiff in the suit in OS.No.22/2008 on the file of the Additional District Court-cum-Fast Track Court-III, Tiruvallur, is the appellant herein.
- (2) Brief facts that are necessary for the disposal of this appeal are as follows:
- (3) The appellant filed the suit in OS.No.22/2008 for partition and separate possession of her 1/3rd share in all the suit properties. The suit properties consists of 4 schedules, namely, A, B, C and D. The 1st defendant is the father of the appellant/plaintiff and 2nd



defendant and the 2nd defendant is the brother of plaintiff.

Defendants 3 and 4 in the suit are the sons of 2nd defendant.

- (4) It is the case of the appellant/plaintiff that the suit properties are the ancestral family properties of plaintiff and defendants 1 and 2 and the plaintiff is entitled to 1/3rd share in all the suit properties as per the Hindu Succession Act. It is the further case of the plaintiff that the 1st defendant/father executed a Deed of Settlement dated 27.06.2002 in respect of A, B and C schedule properties in favour of 2nd defendant and that, he executed further Deeds of Settlement dated 09.02.2002 in favour of defendants 2 to 4. It is contended by the plaintiff that the 1st defendant has no right to execute a Settlement Deed in respect of the entire suit schedule properties as the plaintiff is also entitled to equal share along with defendants 1 and 2. It is also stated that the Deeds of Settlement dated 26.07.2002 and 09.02.2002 in favour of defendants 2 to 4 are neither valid nor binding on the plaintiff. It is specifically pleaded that the plaintiff is a coparcener in the joint family consisting of her



father/1st defendant and his two children and that she is entitled to claim equal share in the family properties by birth as any other male member of the family by virtue of Hindu Succession Amendment Act, 2005. In the plaint itself, it is admitted that the 1st defendant purchased some properties in Chennai out of income derived from the properties obtained by him in the koor chit [partition] dated 05.09.1955, i.e., A, B and C schedule properties. It is admitted that the 1st defendant sold a portion of property to a third party namely one Andal by virtue of sale Deed dated 25.03.1970.

- (5) The suit was contested by the 2nd defendant by filing a written statement adopted by defendants 1, 3 and 4. The relationship between the parties is not in dispute. However, defendants 1 to 4 disputed the plaintiff's claim in respect of 1/3rd share in all the suit properties. It is also the case of the 2nd defendant that the 1st defendant got the suit 'A', 'B' and 'C' Schedule properties by virtue of a partition between himself and his father and his brother through a koor chit dated 05.09.1955. It is contended that the 1st defendant is



AS.No.63/2012

the lawful owner of both ancestral properties and his own self acquired properties. It is stated that the 1st defendant had settled all the suit properties in favour of his son and grandsons namely defendants 3 and 4 by virtue of registered Settlement Deeds dated 26.07.2002 and 09.02.2002 which are registered as Doc.Nos.767/2002, 535/2002, 533/2002 and 534/2002. Stating that the defendants 2 to 4 are in possession and enjoyment of all the suit properties settled in their favour, the suit was contested further on the ground that the plaintiff is not entitled to file the suit by paying the court fee under section 37[2] of the Tamil Nadu Court Fees and Suit Valuation Act. It is also the case of the defendants that the plaintiff got married in the year 1979 and that her marriage was performed in a grand manner by giving her 300 sovereigns of gold and silver ornaments and a huge amount of cash at the time of marriage. Since the State Amendment to Hindu Succession Act, 1956, was brought in and came into force only from 1989, it is contended that the plaintiff who got married in the year 1979, is not



entitled to any share in the ancestral properties as unmarried daughters alone are entitled to equal share in the joint family properties when the amendment came in the year 1989.

(6) The Trial Court framed the following issues:-

(a) Whether the plaintiff is entitled for 1/3rd share in the suit properties?

(b) Whether the suit has not been valued properly for the purpose of court fee?

(c) To what relief is the plaintiff entitled?

(7) Before the Trial Court, the plaintiff examined herself as PW1 and marked Exs.A1 to A8. The 1st defendant was examined as DW1 and the 2nd defendant was examined as DW2. Exs.B1 to B14 were marked on behalf of defendants. The Trial Court after considering the pleadings and evidence held that the plaintiff was not in joint possession of the suit properties relying upon documents Exs.B8 to B14. Referring to the fact that suit A, B and C schedule properties were given to the share of 1st defendant in the partition between 1st defendant with his father and brothers, the Trial Court held that the



AS.No.63/2012

plaintiff is not entitled to any share in the suit property. Even after referring to section 6 of the Hindu Succession Amendment Act, 2005, the Trial Court held that the disposition or alienation including partition of property before 20.12.2004 is valid. the Trial Court also found that several properties had already been alienated prior to 20.12.2004 and therefore, the plaintiff is not entitled to claim any share in the coparcenary properties. The Trial Court also found that the court fee paid under section 37[2] of the Act is not proper and therefore, the suit is liable to be dismissed. Therefore, the Trial Court dismissed the suit accepting the contentions of defendants 1 to 4. Aggrieved by the judgment and decree of the Trial Court, the above Appeal Suit is preferred.

- (8) Mr.V.Raghavachari, learned Senior counsel appearing for the appellant/plaintiff submitted that the properties purchased by the 1st defendant are from the income generated from the ancestral property and hence, the 1st defendant had no independent right to settle any of the suit property in favour of defendants 2 to 4. Learned Senior



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AS.No.63/2012

counsel then submitted that the Manager or Kartha has no power to execute any Settlement Deed in respect of a joint family property without the consent of other coparceners and therefore, the Settlement Deeds executed by 1st defendant in favour of other defendants are void and not binding on the appellant/plaintiff. The learned Senior counsel further submitted that the plaintiff being a coparcener by birth after the commencement of Hindu Succession [Amendment] Act, 2005, is entitled to equal share in all suit properties. Learned Senior also relied upon the judgment of a Larger Bench of Hon'ble Supreme Court in *Vineeta Sharma Vs. Rakesh Sharma and Others* reported in 2020 [9] SCC 1 for the proposition that the right created in favour of a daughter to inherit the property by birth by virtue of the amendment cannot be just denied especially when the Hon'ble Supreme Court has held in unequivocal terms that amendment to the provisions of Hindu Succession Act will have a retrospective effect. Referring to the nature of Settlement Deeds executed under Exs.A1, A6, A7 and A8,



AS.No.63/2012

the learned Senior counsel submitted that void documents in the form of Settlement Deeds can have no legal implication to bring about severance in the joint family status or properties. He relied upon the judgment of the Hon'ble Supreme Court in ***Thamma Venkata Subbamma Vs. Thamma Rattamma and Others*** reported in ***1987 [3] SCC 294*** for the proposition that a Kartha of Hindu Joint Family is not competent to execute gift or settlement deed even in respect of his undivided interest without the consent of all the coparceners. Learned Senior counsel then pointed out that the findings of the Trial Court to the effect that the plaintiff is not in possession of the suit properties is unwarranted as it is not necessary for the plaintiff to prove her actual possession as possession of one co-owner in law should be treated as one on behalf of all unless there is a specific pleading of ouster by exclusion is proved. Learned Senior counsel further submitted that the documents Exs.A1, A6, A7 and A8 cannot be treated as alienation or testamentary disposition of the joint family property to save



conveyance by virtue of the proviso to section 6 of Hindu Succession Act as amended in 2005.

- (9) ***Per contra***, Mr.R.Parthasarathy, learned Senior counsel appearing for respondents 2 to 4 relied upon several precedents to suggest that disposition of property by way of Will or settlement is not opposed to any principle of Law applicable to Hindus or Customary Hindu Law. He submitted then, that the Settlement Deeds executed by the 1st defendant in favour of defendants 2 and 3 though are not valid as a gift, still it convey the right in favour of defendants 2 and 3 by way of relinquishment or renunciation. Learned counsel then submitted that the Settlement Deeds in favour of the coparceners should be considered as a family settlement, relying upon the judgment of a Division Bench of this Court in ***Appan Patra Chariar Vs. Srinivasa Chariar*** reported in ***ILR 1917 Vol.40 Mad 1122***. Referring to essential characteristics of a Hindu coparcener, learned Senior counsel submitted that there was no coparcenery in existence as on the date of Hindu Succession Amendment Act 2005 and therefore,



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AS.No.63/2012

the plaintiff/appellant, a daughter of 1st defendant, cannot claim any right under Hindu Succession Amendment Act, 2005. Learned Senior counsel also submitted that the 1st defendant executed the Settlement Deeds in favour of defendants 2 and 3 who are the other members of coparcenery and therefore, the Court can presume consent of all other coparceners. Referring to the judgments relied upon by the learned Senior counsel appearing for the appellant, the learned Senior counsel appearing for the respondents 2 to 4 submitted that a coparcener can make a gift in respect of his undivided interest in the joint family in favour of other coparceners, namely, defendants 2 and 3. Referring to para 21 of the judgment of the Hon'ble Supreme Court in *Thamma Venkata Subbamma Vs. Thamma Rattanna and others* reported in 1987 [3] SCC 294, the learned Senior counsel submitted that the Gift Deed executed by 1st defendant in favour of other defendants should be treated as an act of renunciation which would enure to the benefit of all the coparceners. Since renunciation by one coparcener in favour of



AS.No.63/2012

another coparcener enure to the benefit of the entire coparcenery, he submitted that consent of other coparceners is immaterial as held by the Hon'ble Supreme Court in ***Thamma Venkata Subbamma's case*** [cited supra].

- (10) In view of the legal submissions made by the learned Senior counsels appearing for the parties, this Court is of the view that following points arise for consideration:

*A) Whether the Settlement Deeds under Exs.A1, A6, A7 and A8 are valid or vitiated as laid down by the Hon'ble Supreme Court in the judgment in the case of **Thamma Venkata Subbamma Vs. Thamma Rattanna and others** reported in 1987 [3] SCC 294 or whether a Kartha of a Hindu Joint Family is competent or has a power to dispose of the coparcenery property without the consent of other coparceners and whether consent can be implied because 1st defendant gifted the suit properties in favour of defendants 2 to 4?*



AS.No.63/2012

*B) Whether the Settlement Deeds under Exs.A1, A6, A7 and A8 executed in favour of other co-parceners can be considered as a family settlement applying the judgment of the Division Bench of this Court in **Appan Patra Chariar Vs. Srinivasa Chariar** reported in **ILR 1917 Vol.40 Mad 1122**?*

C) Whether a gift of a donor's undivided coparcenary interest in favor of some of the coparceners amounts to renunciation or relinquishment of his share?

D) Whether the daughters of a Hindu Joint Family have equal share as that of a son during life time of their father despite the father having executed the Settlement Deeds in favour of his male descendants prior to the commencement of Hindu Succession Amendment Act, 2005?

POINT [A]:

- (11) Learned Senior Counsel appearing for the appellant relied upon the judgment of Hon'ble Supreme Court in the case of **Thamma Venkata Subbamma's case** reported in **1987 [3] SCC 294**. The



Hon'ble Supreme Court in the above judgment, considered the issue whether a gift by a coparcener of his undivided coparcenary interest to another coparcener without the consent of other coparceners is void. Referring to Sections 6 and 30 and several other precedents, the Hon'ble Supreme Court though observed that there is no specific textual authority prohibiting alienation by gift, held in unmistakable terms that a coparcener can make gifts of his undivided interest in the coparcenary property to another coparcener or to a stranger only with the prior consent of all other coparceners and that the gift/settlement without consent is void. It is useful to refer to paragraphs No.11 to 19 of the judgment of the Hon'ble Supreme Court, which are extracted thus:-

"11. In Ramanna v. Venkata [ILR 11 Mad 246] a Hindu made a gift of certain land which he had purchased with the income of ancestral property, and a suit was brought to recover the land on behalf of his minor son, who was born even seven months after the date of the gift. It was held that the gift was invalid as against the plaintiff, and that he was entitled to recover



AS.No.63/2012

the land from the donee. Thus, a son, who was born to the family after the gift was made, was held entitled to recover the property from the donee. In other words, he would not be bound by such an alienation. Again, in Rottala Runganatham Chetty v. Pulicat Ramasami Chetti [ILR 27 Mad 162] it has been held that it is not competent to an individual member of a Hindu family to alienate by way of gift his undivided share or any portion thereof; and such an alienation, if made, is void in toto.

12. There is a long catena of decisions holding that a gift by a coparcener of his undivided interest in the coparcenary property is void. It is not necessary to refer to all these decisions. Instead, we may refer to the following statement of law in Mayne's Hindu Law, Eleventh Edn., Article 382:

“It is now equally well settled in all the Provinces that a gift or devise by a coparcener in a Mitakshara family of his undivided interest is wholly invalid.... A coparcener cannot make a gift of his undivided interest in the family property, movable or immovable, either to a stranger or to a relative except for purposes warranted by special texts.”

13. We may also refer to a passage from Mulla's



AS.No.63/2012

Hindu Law, Fifteenth Edn., Article 258, which is as follows:

“Gift of undivided interest.—(1) According to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners.”

14. It is submitted by Mr P.P. Rao, learned Counsel appearing on behalf of the respondents, that no reason has been given in any of the above decisions why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift. The reason is, however, obvious. It has been already stated that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that



AS.No.63/2012

there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated.

15. The rigour of this rule against alienation by gift has been to some extent relaxed by the Hindu Succession Act, 1956. Section 30 of the Act permits the disposition by way of will of a male Hindu in a Mitakshara coparcenary property. The most significant fact which may be noticed in this connection is that while the legislature was aware of the strict rule against alienation by way of gift, it only relaxed the rule in favour of disposition by a will the interest of a male Hindu in a Mitakshara coparcenary property. The legislature did not, therefore, deliberately provide for any gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to another coparcener. Therefore, the personal law of the Hindus, governed by Mitakshara School of Hindu law, is that a coparcener can dispose of his undivided interest in the coparcenary property by a will, but he cannot make a gift of such interest.



WEB COPY



AS.No.63/2012

16. Again, it may be noticed in this connection that under the proviso to Section 6 of the Hindu Succession Act, 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 female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under the Act and not by survivorship. The devolution of interest in coparcenary property by survivorship has been altered to testamentary or intestate succession, as enjoined by the proviso to Section 6 relating to a female relative or a male relative claiming through such female relative. The substantive provision of Section 6, however, enjoins that the interest of a male Hindu in a coparcenary property will devolve by survivorship upon the surviving members of the coparcenary and in accordance with the provisions of the Act.

17. It is, however, a settled law that a coparcener can make a gift of his undivided interest in the



AS.No.63/2012

coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid.

18. The High Court has noticed most of the above decisions and also the legal position that a gift by a coparcener of his undivided interest in the coparcenary property without the consent of the other coparceners is void. The High Court has also noticed the provisions of Sections 6 and 30 of the Hindu Succession Act. The learned Judges of the High Court have, however, placed much reliance upon its previous Bench decision in G. Suryakantam v. G. Suryanarayanamurthy [AIR 1957 AP 1012 : 1955 Andh WR 944] . In that case, it has been held that the law is not that a gift of an undivided share is void in the sense that it is a nullity, but only in the sense that it is not binding on the other coparceners. No authority has, however, been cited in support of that proposition of law. On the contrary, there is a long series of decisions since the decision in Baba v. Thimma [ILR 7 Mad 357 (FB)] some of which have been referred to above,



AS.No.63/2012

laying down uniformly that a gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to his relation without the consent of the other coparceners is void. In the circumstances, it is very difficult to accept the proposition of law laid down in G. Suryakantam v. G. Suryanarayanamurthy [AIR 1957 AP 1012 : 1955 Andh WR 944] that a gift by a coparcener of his undivided interest in the joint family property is not void, but is only not binding on the other coparceners. When a particular state of law has been prevailing for decades in a particular area and the people of that area having adjusted themselves with that law in their daily life, it is not desirable that the court should upset such law except under compelling circumstances. It is for the legislature to consider whether it should change such law or not. It may be legitimately presumed that before the passing of the Hindu Succession Act, 1956, the Legislature must have taken into consideration the prohibition against making of gifts by a coparcener of his undivided interest in the coparcenary property, but the legislature has not, except permitting the coparcener to make a will in respect of his undivided



AS.No.63/2012

interest by Section 30 of the Hindu Succession Act, altered the law against making of gift by a coparcener of his undivided interest. While considering whether the strict rule against alienation by gift should be interfered with or not, the court should also take into consideration the legislative inaction in not interfering with the rule against alienation by gift, while enacting the Hindu Succession Act. In the circumstances, we are unable to accept the proposition of law that has been laid down in G. Suryakantam case [AIR 1957 AP 1012 : 1955 Andh WR 944] .

19. In the instant case, the High Court has also noticed a decision of this Court in Ammathayee alias Perumalakkal v. Kumaresan alias Balakrishnan [AIR 1967 SC 569 : 1967 All LJ 354 : (1967) 1 Mad LJ SC 164] that a gift of a coparcenary property is not valid under the Hindu law except for specified purposes. That case has been distinguished by the High Court on the ground that the question of validity of such a gift on the ground of consent of other coparceners did not arise for consideration. We do not think that it was a reasonable distinction that could be made of the law laid down by this Court merely because the question of



AS.No.63/2012

consent of other coparceners did not arise. This Court, therefore, also has laid down against validity of a gift of an undivided share in the coparcenary property."

(12) A reading of the said judgment clearly indicates that the Hon'ble Supreme Court and our High Court have uniformly laid down that a gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to another coparcener, without the consent of other coparceners, is void. The above judgment of Hon'ble Supreme Court in ***Thamma Venkata Subbamma's case [cited supra]***, is again quoted with approval by the Hon'ble Supreme Court in ***Vineeta Sharma Vs. Rakesh Sharma*** reported in **2020 [9] SCC 1**.

(13) The submission of the learned Senior counsel appearing for respondents that the Settlement Deeds should be treated as a family settlement made by father, is on the basis of the judgment of the Division Bench of this Court in the case of ***Appan Patra Chariar Vs. Srinivasa Chariar*** reported in ***ILR 1917 Vol.40 Mad 1122***. It is to be seen that the facts in ***Appan Patra Chariar's case*** are entirely



different. One Srinivasa Chariar, when he was on his death bed, executed a Will by which he gave the properties mentioned in 'A' Schedule attached to the Will to his elder son [1st defendant in the suit], gave the properties mentioned in 'B' Schedule to his minor son [2nd defendant] and the land mentioned in the 'C' Schedule to his daughter [3rd defendant]. Later, there was an arrangement by which 'C' Schedule property which was given to the daughter [3rd defendant] was agreed to be sold with an understanding that the sale proceeds should be divided equally between two sons namely defendants 1 and 2. Pursuant to the Agreement, the 1st defendant, one of the sons of Srinivasa Chariar, executed a Sale Deed in favour of plaintiff therein during December 1909. Based on the Sale Deed obtained from the 1st defendant, the plaintiff filed a suit for declaration of his title which was opposed by the 3rd defendant on the ground that she became the sole owner of 'C' Schedule properties under the testamentary Gift [Will]. The suit was dismissed by the Lower Appellate Court and on Second Appeal, the plaintiff



AS.No.63/2012

contended that the Will can only operate from the date of death of testator at which time all the properties would pass to defendants 1 and 2 by right of survivorship and that it is not within the scope and powers of the guardian of a minor son to consent to the giving of property by a father to a third person. From the reading of the said judgment, the Division Bench considered the competency of a father in a joint and undivided family, with the consent of his adult male members to make valid provisions by Will in favour of female members of his family, provided such provisions are reasonable in extent and value. After referring to a few judgments which are in different context, the Division Bench has held as follows:-

;;In the present case also, the testator could have separated from his two sons and taken one-third share as his separate share and given it away to his daughter, the 3rd defendant. This would have been much more to the detriment of the 2nd defendant than the provision made in the Will by which he got half of the whole ancestral properties except the C schedule properties. In the present case, the testator could have



AS.No.63/2012

made a gift of the C schedule properties validly to his daughter and effected a partition between his two sons during his lifetime. But with the consent of his major son and with the consent of his minor son's mother and in what he himself as the guardian of his minor son considered to be in the interests of his said son, he made a gift by Will to take effect after his death instead of by a deed to come into effect at once. I think that on the logical application of the principles laid down in the cases I have referred to above and seeing that their Lordships of the Privy Council treated the disposition by Will in certain circumstances though of ancestral property as standing in the same footing as disposition by deed intervivos provided the consent of the parties to be affected is obtained, the family settlement made by Will [Exhibit V[a]] in this case sought to be upheld. In the result, the second appeal will be dismissed with costs."

- (14) From the said judgment of the Division Bench, this Court can extend the principle only to the effect that disposition by Will in respect of ancestral property can be treated as a disposition



intervivos, provided the consent of the parties to be affected is obtained. It is in the said factual context, the Will was treated as family settlement made by Will with the consent of parties. The said judgment has no application to the facts of this case, especially having regard to the facts particularly pleaded and arguments advanced before the Division Bench and answered by the Division Bench.

POINT [B]:-

- (15) The submission of the learned counsel appearing for the respondents that consent can be implied, cannot be accepted. First of all, there is no specific pleading to infer that there was consent or implied consent from other coparceners when the gift in favour of each of the defendants 2 to 4 was given under four different Settlement Deeds. It is to be noted that lineal male descendants upto the third generation acquire right of ownership by birth and not as representing their ancestors. Until partition, each member of coparcenery is entitled to exercise his right of ownership over the



AS.No.63/2012

entire property conjointly with the rest. Defendants 1 to 4 are all coparceners as defendants 3 and 4 are also entitled to the properties as coparceners by birth. It is admitted that the 1st defendant executed the Settlement Deeds in favour of 2nd defendant under Exs.A1 and A6 dated 27.06.2002 and 09.02.2002 respectively. The document, Ex.A7 dated 09.02.2002 was executed by the 1st defendant in favour of 3rd defendant and Ex.A8 dated 09.02.2002 was executed by 1st defendant in favour of 4th defendant. In all the Settlement Deeds except Ex.A1, the 1st defendant described the properties as his self acquired properties. When the Settlement Deeds were executed in respect of different parcels of land describing the character of properties differently, the consent cannot be implied. First of all, 1st defendant has only an undivided half share and he cannot deal with more than what he is entitled to. Further, the documents, Exs.A1, A6, A7 and A8 do not mention or refer to any consent. Each one of defendants 3 and 4 have definite share. In the absence of any pleading, this Court is unable to accept



the submissions of the learned Senior counsel appearing for the respondents that the consent of other coparceners should be implied or presumed to hold that the Settlement Deeds are valid.

POINTS [C] AND [D]:-

- (16) Learned Senior counsel appearing for respondents 2 to 4 placing reliance on paragraph 21 of the judgment in ***Thamma Venkata Subbamma's case***, submitted that the Settlement Deeds in the present case will be valid to treat the same as a conveyance by renunciation. Paragraph No.21 of the Hon'ble Supreme Court in the case of ***Thamma Venkata Subbamma's case [cited supra]*** reported in ***1987 [3] SCC 294*** reads as follows:-

"21. Assuming that it is a renunciation in favour of one of the coparceners, namely, Veera Reddy, such renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made. In our view, the gift made by Rami Reddy to



AS.No.63/2012

Veera Reddy should be construed as renunciation of his undivided interest in the coparcenary in favour of Veera Reddy and his sons who were the remaining coparceners. The gift was, therefore, valid construing the same as renunciation or relinquishment by Rami Reddy of his interest in the coparcenary and, accordingly, the consent of other coparceners was immaterial."

- (17) It is true that the Hon'ble Supreme Court, in ***Thamma Venkata Subbamma's case*** reported in ***1987 [3] SCC 294***, has construed the gift as renunciation since it was made in favour of the remaining coparceners. Therefore, it is stated that consent is immaterial as held by the Hon'ble Supreme Court. However, that does not make the position better for the respondents. Defendants 2 to 4 are holding the properties as coparceners. It cannot be disputed that every coparcener gets an interest by birth in the coparcenary property. When the coparcenary property comes to the hands of a single



AS.No.63/2012

coparcener, it would be treated as his property with the power of alienation. However, once a son is born, coparcenery would revive in terms of Mithakshara. When a person acquires an interest by birth, the inheritance is known as unobstructed heritage. So long as the property is not divided among defendants 2 to 4, the character of property cannot be different from coparcenery. A share of a member of coparcenery fluctuates from time to time and the position is settled. Even by adoption, the status of coparceners can be conferred in favour of the adopted son. After the Hindu Succession Amendment Act, 2005, daughters have also been given unobstructed heritage and their entitlement to get share by birth does not depend upon any other event, only subject to the limitations found in Section 6 of the Hindu Succession Amendment Act, 2005. The Hon'ble Supreme Court in *Vineeta Sharma's case [cited supra]* reported in **2020 [9] SCC 1**, has held that the provisions contained in substituted Section 6 of the Hindu Succession Act, 1956, confers status of coparcener on the daughter born before or after the



AS.No.63/2012

amendment in the same manner as son with same rights and liabilities. For a daughter to claim share, it is true that coparcenery must exist as on 09.09.2005. In this case, the coparcenery exists as renunciation under the Settlement Deeds, will not extinguish the character of property as coparcenery especially, when there is no division of coparcenery property among defendants 1 to 4. When the Gift Deed or Settlement Deed is treated as renunciation, the character of property will remain coparcenery and the plaintiff's right as a daughter to get equal share by virtue of Hindu Succession Amendment Act, 2005, is not affected by the Settlement Deeds.

- (18) For the foregoing reasons, this Court holds that the appellant/plaintiff is entitled to equal share as that of defendants 1 and 2 and the plaintiff is entitled to 1/3rd share in all the suit properties.
- (19) In the result, the Appeal Suit is **allowed** and the judgment and decree dated 28.03.2011 passed in OS.No.22/2008 by the learned Additional District Judge, Fast Track Court No.III, Tiruvallur, is **set**



WEB COPY



AS.No.63/2012

aside and the suit in OS.No.22/2008 **is decreed as prayed for.** No costs.

[SSSRJ] [PBBJ]
07.06.2023

AP

Internet : Yes

Index : Yes/ No

To

1.The Additional District Judge, Fast Track Court No.III, Tiruvallur.

2.The Section Officer

VR Section, High Court

Madras.



WEB COPY



AS.No.63/2012

S.S.SUNDAR, J.,
and
P.B.BALAJI, J.,

AP

Judgment in
AS.No.63/2012

07.06.2023