



S.A.No.751 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

C O R A M

THE HONOURABLE Ms.JUSTICE **P.T.ASHA.J**

S.A.No.751 of 2007

and

M.P.No.1 of 2007

Susila Ammal

.. Appellant

-Vs.-

1. K.R.Parthasarathy

2. K.R.Ekambram

3. K.R.Munusamy

4. K.R.Karpagam

5. Gunasekaran

.. Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure Code against the judgment and decree dated 02.04.2007 made in A.S.No.16 of 2005 on the file of the Sub Court, Vellore, Vellore District confirming the judgment and decree dated 13.08.2004 made in O.S.No.497 of 1996 on the file of the Principal District Munsif Court, Vellore, Vellore District.



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For appellant ... Mr.T.Dhanyakumar
For Respondent-1 ... Died
For Respondents ... Mr.S.N.Ravichandran
2,3,6 to 10
For Respondent-4... Not ready in notice
For Respondent-5... Dismissed vide order dated 23.07.2010.

JUDGMENT

This Second Appeal arises out of a suit for partition filed by the plaintiff seeking a decree for her 1/5th share in the suit schedule properties. Since the appeal purely rests upon the decision of the Hon'ble Supreme Court reported in **2020 (9) SCC 1 [Vineeta Sharma Vs. Rakesh Sharma and Others]**, I do not propose to discuss at the length the pleadings, judgment of the Courts below and the submissions of the counsels except to briefly touch upon the same.

2. The plaintiff and the 4th defendant are daughters and defendants 1 to 3 are the sons of one Rathina Mudaliar. The case of the plaintiff was that the properties belonged to Rathina Mudaliar and on his death intestate the properties devolved equally upon the plaintiff and defendants 1 to 4.



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3. Defendants 1 to 3 on the other hand had filed a written statement contending that the properties are the ancestral properties. They had also stated that a portion of the suit schedule properties had been sold to one Janakiraman, Ramadoss and Meerabai even prior to filing of the suit. However, the plaintiff has not chosen to implead the purchasers.

4. A preliminary decree was passed on 13.08.2004 by the learned Principal District Munsif, Vellore in O.S.No.497 of 1996 granting a 1/20th share to the plaintiff. The said judgment and decree was taken up on appeal in A.S.No.16 of 2005 on the file of the Subordinate Court, Vellore. The defendants had also filed a cross appeal questioning the decree on the ground that since a division had taken place between Rathina Mudaliar and defendants 1 to 3 and there was nothing left for division after the death of Rathina Mudaliar. This contention has been rejected by the learned Subordinate Judge, Vellore and there is no challenge to the same. The learned Subordinate Judge has also confirmed the judgment and decree of the trial Court by judgment and decree dated 02.04.2007. Aggrieved by which, the plaintiff has filed the above second appeal.



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5. This second appeal has been admitted on 10.11.2022 on the following substantial questions of law:

(i) *Whether the plaintiff is a co-parcener entitled to claim the benefit in the same manner as defendants 1 to 3 by virtue of Section 6 of the Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act 2005 which came into force on 09.09.2005?*

(ii) *Whether the defendants have proved and discharged the onus that the suit properties are joint family properties?*

6. In the light of the judgment of the Hon'ble Supreme Court reported in **2020 (9) SCC 1 [Vineeta Sharma Vs. Rakesh Sharma and Others]**, the question as to whether a Hindu daughter has a right to the co-parcenary property is no longer *res integra*, the Hon'ble Supreme Court has held as follows:-

“137.1 The provisions contained in substituted [Section 6](#) of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after



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amendment in the same manner as son with same rights and liabilities.

137.2 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.

137.3 Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.”

7. In the instant case, the plea that a partition had taken place between the defendants 1 to 3 and their father has been negated by the lower appellate Court, against which, there is no challenge. Therefore, considering the above proposition laid down in the case of ***Vineeta Sharma Vs. Rakesh Sharma and Others***, the appellant / plaintiff is entitled to a 1/5th share in the suit schedule properties.

8. Accordingly, this Second Appeal is allowed. A preliminary decree is passed granting a 1/5th share in the suit schedule properties to the appellant / plaintiff. No costs. Consequently, connected miscellaneous



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petition is closed.

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To

1. The Subordinate Court, Vellore, Vellore District
2. The Principal District Munsif Court, Vellore, Vellore District.
3. The Section Officer, V.R.Section, High Court, Madras

P.T.ASHA.J.,

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