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C.R.P.(NPD)No.2699 of 2012 & S.A.No.832 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.2699 of 2012 and
S.A.No.832 of 2012 and
MP.Nos.1 & 1 of 2012

CRP(NPD)No.2699 of 2012

1.V.Jayachandra (Died)
2.B.Gurupathi
3.B.Krishnaraj
4.Kousalya Nehru
5.B.Sundarraaj .. Petitioners
(Petitioners 2 to 5 brought on record as LR's of the deceased Sole
Petitioner viz V.Jayachandra vide court order dated 08.08.2022 made in
CMP.Nos.10137, 10139 & 10141 of 2022 in CRP.No.2699 of 2012)

VS

1.Velankanni Gabriel
2.R.Chellammal
3.V.Savithri
4.Mallika .. Respondents

Petition filed under Section 115 of the Code of Civil Procedure
against the Fair and Final Order dated 30.03.2012 made in CMA.No.29
of 2010 on the file of IV Additional Sub-Ordinate Judge, Coimbatore,
confirming the Fair and Final Order dated 25.04.2010 made in



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IA.No.2022 of 2008 in IA.No.1600 of 2004 in O.S.No.965 of 1988 on
the file of Principal District Munsif Court, Coimbatore.

AND

S.A.No.832 of 2012

1.V.Jayachandra (Died)
2.B.Gurupathi
3.B.Krishnaraj
4.Kousalya Nehru
5.B.Sundarraaj .. Appellants
(A1 died, A2 to A5 brought on record as LR's of the deceased A1 vide
court order dated 08.08.2022 made in CMP.Nos.10132 of 2022 in
S.A.No.832 of 2012)

VS

R.V.Velusamy (Died)

1.V.Savithri
2. Mallika
3.Velankanni Gabrial .. Respondents

Petition filed under Section 100 of the Code of Civil Procedure
against the Judgment and Decree dated 30.03.2012 made in A.S.No.12 of
2011 on the file of IV Additional Sub-Ordinate Judge, Coimbatore,
confirming the Fair and Final Order dated 23.04.2010 made in
I.A.No.1600 of 2004 in O.S.No.965 of 1988 on the file of Principal
District Munsif Court, Coimbatore.



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Case Nos.	For Petitioners/ Appellants	For Respondents
CRP(NPD)No. 1332 of 2017	Mr.P.Raja	Mr.R.Govindaraj (for R3 and R4) No Appearance (for R1 and R2)
SA.No.832 of 2012	Mr.P.Raja	Mr.R.Govindaraj (for R1 and R2) R3 – Not ready notice

COMMON ORDER

The suit is for partition filed by the son against the father. The father got the property pursuant to a decree of the Court in O.S.No.801 of 1974. There is no dispute that a share was allotted to the father. There is no dispute that the subject matter of the suits are ancestral properties.

2.At the time of presentation of the plaint, the daughter did not have a right. The parliament amended Section 6 of the Hindu Succession Act, 1956 and granted coparcenary status to the daughter by virtue of the amendment made in 2006.

3.It is the admitted case of the petitioner as well as the respondent that final decree had not been passed. Therefore, the daughter took out an application in I.A.No.2022 of 2008 in O.S.No.965 of 1988 claiming the relief of passing a further preliminary decree by virtue of the amendment to the Hindu Succession Act. That application came to be dismissed and



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the appeal there from also ended in dismissal. Against these finding, the present revision has been presented.

4.Heard Mr.P.Raja, learned counsel appearing for the petitioner in Civil Revision Petition and appellant in the Second Appeal and Mr.R.Govindaraj, learned counsel for the respondents 3 and 4 in CRP.No.2699 of 2012 and respondents 1 and 2 in SA.No.832 of 2012 and perused the records.

5.The issue raised is no longer *res integra*. It has been settled by a three Judges Bench of the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma and others [(2020) 9 SCC 1]***. The relevant portion of the judgment at paragraph 129 reads as follows:-

'129. Resultantly, we answer the reference as under:

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

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



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

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

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.'



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6.Since it is admitted by both sides that the partition between the family has not attained finality by way of a registered partition deed or by way of passing of final decree, the female who has been given a share by the amendment, is entitled to her share in the property. In this case, she is entitled to 1/3rd share.

7.The learned counsel for the respondent would submit that an application has been filed only to amend the final decree and not the preliminary decree. While factually the application for final decree has been given in the cause title, in effect, the prayer is to pass a further preliminary decree.

8.Be that as it may, it matters not since the parliamentary amendment to Section 6 of the Hindu Succession Act, rips open all the preliminary decrees which have been passed hitherto, till the proceedings have not attained a finality by way of a passing of the final decree. Therefore, following the three Judges Bench, I have to conclude that the petitioner is entitled to have 1/3rd share in the property which has been admittedly held to be ancestral. Consequently, the order of the Court below is set aside. The learned District Munsif, Coimbatore shall pass the preliminary decree declaring 1/3rd right in favour of the petitioner. The Court below shall not wait for an application to pass the final decree. The



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petitioner shall be impleaded in I.A.No.1600 of 2004 as a party claiming independent right. The Court shall take up the application and appoint an Advocate Commissioner and pass the final decree within a period of eight (8) weeks from today.

9. S.A.No.832 of 2012:

The Second Appeal arises against the concurrent findings in petition filed for final decree in I.A.No.1600 of 2004 dated 23.04.2010 as confirmed by the judgment and decree in A.S.No.12 of 2011 on the file of the IV Additional Subordinate Judge, Coimbatore. The application in I.A.No.1600 of 2004 had been filed for passing of a final decree on the basis of the preliminary decree passed by the Court below in O.S.No.965 of 1988. The question of law that has been framed for consideration is question Nos. 'B' and 'C'.

10.I have concluded in CRP.No.2699 of 2012, based on the judgment passed by the Supreme Court in *Vineeta Sharma v. Rakesh Sharma and others [(2020) 9 SCC 1]* that the daughter has a share and she is entitled to have the preliminary decree amended declaring her 1/3rd share.

11.Since the preliminary decree has been modified by the order in the revision, the final decree passed also has to be in compliance with the



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preliminary decree. Since the Supreme Court has declared that a daughter has a share in the property, necessarily the final decree has to be set aside. Accordingly, the Second Appeal is allowed. The final decree passed by the Courts below are set aside.

12.The matter is remanded to the file of the learned District Munsif at Coimbatore. The learned District Munsif shall take up the final decree application after impleading the daughter as a party to the suit and not in her capacity as legal representative of the deceased first defendant. It shall appoint an Advocate Commissioner and pass the final decree within a period of nine (9) months from the date of receipt of a copy of this order.

13.With the above directions, the civil revision petition and second appeal are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.07.2023

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
vs

To



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1.The IV Additional Sub-Ordinate Judge,
Coimbatore,

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2.The Principal District Munsif Court,
Coimbatore.



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V. LAKSHMINARAYANAN,J.

VS

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S.A.No.832 of 2012 and
MP.Nos.1 & 1 of 2012**

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