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S.A.No.385 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.385 of 2017

R.Kala

... Appellant

Vs.

1.Sundaramoorthi

2.Gnanasekar

3.Vedhanayaki

4.Lakshmiammal

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed by the Subordinate Judge, Vellore, Vellore District in A.S.No.18 of 2014 on 27.02.2015 as confirming the judgment and decree passed by the Principal Munsif Court, Vellore, Vellore District in OS.No.499 of 2008 dated 28.11.2013.

For Appellant : Mr.R.Govindasamy

For Respondents : Mr.K.Krishnan



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JUDGMENT

The plaintiff in the suit for partition is the appellant. The suit filed by her was partly decreed by granting 1/15th share in the 'A' Schedule suit property. Aggrieved by the same, she filed an appeal and the same was dismissed. Hence, she has come up with this Second Appeal.

2. According to the appellant/plaintiff, suit 'B' Schedule property originally belonged to her father Ranganathan. He had two wives, the appellant is the daughter of deceased first wife of Ranganathan. The respondents 1 to 3 are the children born to Ranganathan through his second wife namely, the fourth respondent. The appellant claimed that after the death of Ranganathan, the children are entitled to equal share. It was also averred that the fourth respondent herein was allowed to receive the pension of Ranganathan in lieu of her interest over the suit 'A' Schedule property and therefore, she is not entitled to any share.



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3. It was also averred that after the death of Ranganathan, the appellant was allowed to enjoy the suit 'B' Schedule property tentatively and the respondents prevented the appellant from ploughing 'B' Schedule suit property. In this circumstances, the appellant was constrained to file a suit claiming 1/4th share in 'A' Schedule property. She also prayed for injunction restraining the defendants from putting up any construction in item Nos.7 & 8 in 'A' Schedule property. Alternatively she prayed for declaration of her title to 'B' Schedule property which was part of 'A' Schedule property and for consequential injunction.

4. The first respondent filed a written statement and the same was accepted by the fourth respondent and the respondents 2 & 3 remained *ex parte* before the trial Court. It was contended by the respondents 1 & 4 that the suit 'A' schedule property was ancestral property of Ranganathan. Therefore, the said Ranganathan, the respondents 1 & 2 constituted Hindu Undivided Family. Therefore, the respondents claimed that the appellant was not entitled to equal share in the suit property as she got married in the year 1989 prior to the coming into force of the Act giving equal share to the



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daughters in coparcenary property. The respondents also denied that the fourth respondent received pension in lieu of her interest over the suit properties. The plea raised by the appellant that as if the suit 'B' Schedule property was tentatively given to her for her enjoyment was also denied. Thus, the main contention of the respondents is that Ranganathan and the respondents 1 & 2 constituted Hindu Joint Family and each of them is entitled to 1/3rd share in the suit property and on the death of Ranganathan, his 1/3rd share alone would devolve upon the plaintiff and the defendants. On these pleadings, they sought for dismissal of the suit.

5. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant failed to prove tentative allotment of 'B' Schedule property to her and hence, she was not entitled to the relief of declaration and injunction in respect of 'B' Schedule property. The trial Court also came to the conclusion that the suit 'A' Schedule properties were ancestral properties of Ranganathan and the appellant got married in the year 1989 prior to Tamil Nadu Amendment Act, 1 of 1990 and hence, the appellant was entitled to equal share only in the 1/3rd share of Ranganathan. As a consequence, the suit was decreed in part by



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granting preliminary decree for partition of 1/15th share in respect of suit 'A'

Schedule property. Aggrieved by the same, the appellant preferred an appeal in A.S.No.18 of 2014 on the file of the Subordinate Judge, Vellore. The first Appellate Court also affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the appellant has come up with this Second Appeal.

6. At the time of admission, this Court formulated the following substantial question of law:

“Whether the appellant is entitled to equal share in the co-parcenary property along with the respondents 1 & 2 by virtue of amendment of Hindu Succession Act by Act 39 of 2005?”

7. The learned counsel for the appellant submitted that by virtue of amendment to the Hindu Succession Act, the date of death of father of the appellant is irrelevant and hence, the appellant is entitled to be treated as coparcener along with the respondents 1 & 2.

8. In support of the contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court in **Vineeta**



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Sharma vs. Rakesh Sharma and Ors, reported in ***(2020) 9 SCC 1***.

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9. The learned counsel for the respondents submitted that the appellant got married in the year 1989 and she got settled at her husband place and therefore, by virtue of Tamil Nadu Amendment Act, 1 of 1990 the appellant cannot be treated as coparcener on the date of coming into force of the Central Amendment Act.

10. It is not in dispute that both the Courts below came to factual conclusion based on the evidence available on record that the suit 'A' Schedule properties were ancestral properties. As per the law declared by the Hon'ble Apex Court in ***Vineeta Sharma vs. Rakesh Sharma and Ors***, reported in ***(2020) 9 SCC 1***, the date of death of father is irrelevant for the purpose of giving effect to the benefit of the Amending Act. Therefore, irrespective of date of death of father of the parties, the appellant being a daughter is entitled to be treated as coparcener on par with the respondents 1 & 2, who are the sons.

11. It is pertinent to refer the judgment of the Hon'ble Apex Court



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in the case of *Vineeta Sharma vs. Rakesh Sharma and Ors*, reported in

(2020) 9 SCC 1. The relevant observations made by the Hon'ble Apex Court

in the said judgment 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.(Emphasis Supplied)

(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



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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.”

12. By virtue of coming into force of the Central Act in the year 2005 giving equal coparcenary rights to the daughters and all sons, the date of marriage of daughter as fixed in Tamil Nadu Amendment Act has also become irrelevant. Therefore, applying the law laid down by the Hon'ble Apex Court



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in *Vineeta Sharma vs. Rakesh Sharma and Ors*, reported in (2020) 9 SCC 1,

I hold that the appellant is entitled to be treated as coparcener along with the respondents 1 & 2 and their sister/third respondent. In such circumstances, the appellant and the respondents 1 to 3 are entitled to $1/5^{\text{th}}$ share each. The $1/5^{\text{th}}$ share of the deceased Ranganathan will devolve upon appellant and the respondents equally. Therefore, the appellant is entitled to $1/5 + 1/25 = 6/25$ share in the suit 'A' Schedule property. The judgment and decree passed by the Courts below are liable to be modified accordingly.

13. As far as 'B' Schedule property is concerned that both the Courts below concurrently held that the tentative allotment pleaded by the appellant was not proved and consequently dismissed the suit regarding alternative prayer. The learned counsel for the appellant has not made any complaint regarding dismissal of the suit in respect of 'B' Schedule property.

14. In view of the discussions made earlier, the substantial question of law framed at the time of admission is answered in favour of the appellant and the Second Appeal is allowed by holding that the appellant is entitled to $6/25^{\text{th}}$ share in the suit 'A' Schedule property. The judgment and



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decree passed by the Courts below are modified accordingly.

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S.SOUNTHAR, J.

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15. a) In nutshell, the Second Appeal is partly allowed by modifying the judgment and decree passed by the Courts below, as indicated above with regard to suit 'A' Schedule. In other respects the judgment and decree of Courts below are confirmed.

b) In the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1.The Subordinate Court, Vellore, Vellore District



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2.The Principal Munsif Court, Vellore, Vellore District.

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