



AS.No.562 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.11.2023**

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**  
**and**  
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

**A.S.No.562 of 2017**  
**and CMP No.18764 of 2017**

K.Kailasamoorthy ... Appellant/1st Defendant

vs.

1. N.Indiradevi ... Plaintiff / 1st Respondent

2. Vijyalakshmi

3. K.N.Muthusamy

4. Murugambigai Muthusamy

5. C.Shankarappan

6. C.Duraisamy ... Defendants 2 to 6/Respondents 2 to 6

Appeal suit has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, against the judgment and decree of the I Additional District Court at Coimbatore, dated 03.04.2017 in OS. No.20 of 2015.



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For Appellant : Mr.P.Valliappan, Senior Counsel  
for Mr.S.M.S.Shriram Narayanan

For Respondents : Mr.G.Arivarasan, for R1

Dr.C.Ravichandren, for R2

RR3 to 6 - served - No appearance

## **J U D G M E N T**

*(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)*

The first defendant in OS No.20 of 2015 assails the decree for partition granted by the Trial Court by way of this Appeal.

2. The said suit was initiated by one of the daughters of Kandhasamy, who died on 13.08.1965 leaving behind his wife Lakshmiammal, two daughters viz. Vijayalakshmi and Indiradevi, the second defendant and the plaintiff in the suit respectively, and Kailasamoorthy, the first defendant/appellant herein. It is not in dispute that Lakshmiammal died in 1997. The other defendants are the alienees from the first defendant, after 09.09.2005 viz. the date on which the



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Hindu succession Amendment Act 39 of 2005, came into force.

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3. The plaintiff laid the suit primarily contending that the suit properties were ancestral Properties belonging to the joint family consisting of Kandhasamy, herself and defendants 1 and 2. She based her claim on the fact that the suit properties were allotted to Kandhasamy at a partition that took place between him and his brothers on 29.07.1959. Contending that after the introduction of the Hindu succession Amendment Act 39 of 2005, she would be a coparcener and she would be entitled to equal share with that of the son, she had claimed 1/3<sup>rd</sup> share in the suit properties.

4. The first defendant Kailasamoorthy, the son, resisted the claim, while the second defendant daughter Vijayalakshmi sided with the plaintiff. The claim was resisted principally on the ground that Kandhasamy having died even in the year 1965, the plaintiff would not become a coparcener, the Amending Act would apply only if the Hindu father was alive on the date of its coming into force viz. 09.09.2005. The



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first defendant in fact if we can say so, with fairness, conceded the share of the plaintiff in the  $\frac{1}{2}$  share that would have belonged to Kandhasamy, if a partition had taken place just before his death (Notional Partition under Section 6 of the Hindu succession Act 1956). It was also contended that the suit was hit by limitation.

5. On the above pleadings, the learned Trial Judge framed the following issues:

*1. Whether the sale by 1st defendant in respect of 22 cents in favour of 3<sup>rd</sup> and 4<sup>th</sup> defendant is legally valid and bind on the plaintiff;*

*2. Whether the suit properties are ancestral coparcenary property belonging to the coparcenary consisting the plaintiff and defendants 1 and 2;*

*3. Whether the plaintiff is entitled for  $\frac{1}{3}$  share in the suit property; and*

*4. What other relief the plaintiff is entitled to.*



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**6.** At trial, the plaintiff was examined as P.W.1 and Exhibits A1 to A10 were marked. The defendants did not let in any evidence either oral or documentary.

**7.** The learned Trial Judge took up issues 2 and 3 together and on appreciation of the evidence concluded that the properties in the hands of Kandhasamy were his self-acquisition and not ancestral in nature. In order to come to the said conclusion, the learned Trial Judge relied heavily upon the partition that had taken place in 29.07.1959 between Kandhasamy and his brothers to conclude that property allotted to Kandhasamy at a partition between him and his brothers would be his self-acquisition.

**8.** Upon the said conclusion, the learned Trial Judge held that as heirs of Kandhasamy, the plaintiff and defendants 1 and 2 would be entitled to 1/3<sup>rd</sup> share each. On the prayer for declaration that the alienations by the first defendant are invalid, the learned Trial Judge



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concluded that they would be valid to the extent of the 1/3<sup>rd</sup> share of the first defendant viz. the alienor. Aggrieved the first defendant is on Appeal.

9. We have heard Mr.P.Valliappan, learned Senior Counsel appearing for Mr.Sriram Narayanan, for the appellant Mr. G.Arivarasan, learned counsel appearing for the first respondent and Dr.C.Ravichandran, learned counsel appearing for the second respondent. The other respondents though served are not appearing either in person or through counsel duly instructed.

10. Mr.Valliappan, learned Senior Counsel appearing for the appellant would vehemently contend that the conclusion of the learned Trial Judge that the properties are self-acquired properties is palpably wrong. Drawing our attention to the judgment of this Court in *The Additional Commissioner of Income Tax, Madras-I v. P.L.Karuppan Chettiar*, reported in *AIR 1979 Mad 1*, the learned Senior Counsel would contend that the property allotted to Kandhasamy at a



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partition between him and his brothers would be ancestral vis-à-vis Kandhasamy and his son or daughter. If only a partition had taken place between Kandhasamy and kailasamoorthy/the son, the property that was allotted to Kandhasamy at such partition would be the self-acquisition of Kandhasamy.

**10.1.** The learned Senior Counsel would also point out that the judgment of the Full Bench of this Court in *P.L.Karuppan Chettiar*'s case was approved by the Hon'ble Supreme Court in *Yudhishter v. Ashok Kumar*, reported in *1987 (1) SCC 204*, the judgment in *P.L.Karuppan Chettiar* itself was confirmed by the Hon'ble Supreme Court in *Commissioner of Income Tax v. P.L.Karuppan Chettiar*, reported in *1993 Supp (1) SCC 580*. Therefore, according to the learned Senior Counsel, the law is settled on the character of the property in the hands of Kandhasamy which was allotted to him at the partition between him and his brothers. Therefore, the conclusion of the learned Trial Judge that the property having been allotted at the partition that took place on 29.07.1959 between Kandhasamy and his brothers would have the effect



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of terminating the coparcenary and Kandhasamy would be the absolute owner of the property is incorrect.

**10.2.** Arguing further the learned Senior Counsel would submit that since Kandhasamy had died even in the year 1965, the claim of the plaintiff to a share as a coparcener is a stale claim and therefore, it should not be revived. The learned Senior Counsel would also rely upon Article 110 of the Limitation Act to contend that the suit is barred by limitation. The next contention of the learned Senior Counsel is that the Hon'ble Supreme Court in *Vineeta Sharma V. Rakesh Sharma*, reported in **2020 (9) SCC 1**, as in paragraph 69 observed that in order that a daughter would become a coparcener along with her father, the coparcenary must have existed as on 09.09.2005. Drawing our attention to the facts of the case where Kandhasamy died leaving behind his only son and two daughters, as the law stood at the time of his death on 13.08.1965, the coparcenary stood dissolved and there was no coparcenary and therefore, the Amending Act would not apply.



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**10.3.** The learned Senior Counsel would also try to draw support from para 70 of the judgment in ***Vineeta Sharma V. Rakesh Sharma***, which reads as follows:

*70. Under the proviso to Section 6 before the amendment made in the year 2005 in case a coparcener died leaving behind female relative of Class I heir or a male descendant claiming through such Class I female heir, the daughter was one of them. Section 6, as substituted, presupposes the existence of coparcenary. It is only the case of the enlargement of the rights of the daughters. The rights of other relatives remain unaffected as prevailed in the proviso to Section 6 as it stood before amendment.*

**10.4.** According to the learned Senior Counsel, if para 70 of the judgment in ***Vineeta Sharma V. Rakesh Sharma***, is to be reckoned, then the share of the mother Lakshmiammal should remain unaffected. Therefore, according to him, wherever the share of the mother is affected by making the daughter a coparcener with the Hindu father, the Act would not apply.



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**10.5.** The learned Senior Counsel would also draw our attention to the judgment of the Supreme Court in *Prasanta Kumar Sahoo and others v. Charulata Sahu and others*, reported in **2023 (2) MWL(C) 100**, wherein the Hon'ble Supreme Court has reiterated the position in *Vineeta Sharma V. Rakesh Sharma*, to the effect that the coparcenary must exist on 09.09.2005. The learned Senior Counsel would also draw our attention to para 73, wherein it was observed that at a partition of the coparcenary property between the Hindu father and the Hindu son, the wife of the father as well as the widowed mother of the father would get one share equal to that of a Hindu son or a daughter. Therefore, according to the learned Senior Counsel, once the coparcenary is terminated by the death of the Hindu father, the Amending Act would not apply and therefore, the suit must fail. The learned Senior Counsel would also press into service a judgment of the Two Judge Bench of the Hon'ble Supreme Court dated 01.09.2023, wherein the Hon'ble Supreme Court has held that the Hindu son would be entitled to a larger share.

**11.** Contending contra, Mr.G.Arivarasan and Dr.C.Ravichandran,



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would submit that even assuming the properties are held to be coparcenary properties or ancestral properties, in view of the judgment of the Larger Bench of the Hon'ble Supreme Court in ***Vineeta Sharma V. Rakesh Sharma***, the daughters would be entitled to an equal share and therefore, even if the conclusion of the learned District Judge on the character of the properties is held to be wrong, the final result viz. the decree for 1/3<sup>rd</sup> share will have to be sustained, in view of the pronouncement of the Larger Bench of the Hon'ble Supreme Court.

**12.** We have considered the rival submissions.

**13.** From the arguments advanced, the following points arise for determination:

*1)What is the character of the properties in the hands of Kandhasamy Gounder?*

*2)Whether the death of Kandhasamy Gounder terminates the Coparcenary;*

*3). Whether the suit is barred by limitation under*



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*Article 110 of the Limitation Act.*

*4)Whether the plaintiff would be entitled to a 1/3<sup>rd</sup> share as claimed.*

**Point No.1:**

**14.** As far as the first question is concerned, we are very clear that the conclusions of the learned Trial Judge are incorrect. The learned Trial Judge has proceeded on the footing that the property allotted to a Male Hindu at the partition would become his self-acquisition. This conclusion of the learned Trial Judge overlooks the settled position of law regarding the character of properties in the hands of a Male Hindu. The same question arose before this Court in *The Additional Commissioner of Income Tax, Madras I v. P.L.Karuppan Chettiar*, reported in *AIR 1979 Mad 1*, where the Full Bench concluded that the property that is allotted to the Hindu son at the partition between the Hindu father and the Hindu son would assume the character of ancestral property vis-à-vis the Hindu son and his children. It was also held that that the property that is allotted to the Hindu father at a partition between



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the Hindu son and the Hindu father would be his self-acquisition in his hands and if it is inherited by the Hindu son on the death of the Hindu father it would partake the character of self-acquisition in his hands also.

The question that was referred to the Full Bench is as follows:

*Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the properties inherited by Karuppan Chettiar from his divided father constituted his separate and individual properties, and not the properties of the joint family consisting of himself, his wife, sons and daughters, and hence the income therefrom is not assessable in the hands of the assessee-Hindu undivided family?"*

and the same was answered in the affirmative.

**14.1.** The facts in *The Additional Commissioner of Income Tax, Madras I v. P.L.Karuppan Chettiar*, are as follows:

*One Palaniappa Chettiar who along with his wife Anandavalli Achi, their son Karuppana Chettiar and their daughter-in-law,*



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*constituted a Hindu undivided family. There was a partition in this family on 22.03.1954, in and by which, Palaniappa Chettiar was allotted certain properties for his share and he got separated. The partition was recognized by the Income Tax Department under Section 25-A of the Income Tax Act, 1922. Thereafter, Karuppan Chettiar, the son, his wife and their subsequently born sons and daughters constituted a Hindu Undivided family and that Hindu undivided family was the assessee.*

*The properties that were allotted to Karuppan Chettiar at the partition that took place on 22.03.1954, were shown as the properties belonging to the Kartha viz. Karuppan Chettiar, who was also the Manager of the Hindu Undivided Family. Palaniappa Chettiar died after the commencement of the Hindu Succession Act on 09.09.1963 leaving behind his widow Ananthavalli Achi and the only son Karuppan Chettiar. Karuppan Chettiar inherited the property that were allotted to Palaniappa Chettiar in the partition dated 22.03.1954 as a Class I heir under Section 8 of the Hindu Succession Act, 1956.*

*When Karuppan chettiar wanted to have two assessments, one as a HUF consisting of the properties that were allotted to him at a*



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*partition dated 22.03.1954 and the other as an individual as owner of the properties that were inherited by him under Section 8 of the Hindu Succession Act, on the death of his father Palaniappa Chettiar, the Department refused to recognize it. The Department wanted to assess all the properties together as the joint family properties of Karruppan Chettiar which would be assessed at the hands of the HUF headed by Karuppan Chettiar in which his wife and children were the members. When this issue came up before this Court a reference was made under Section 256(1) of the Income Tax Act, 1961 and the case was heard by a Division Bench.*

*Upon reference by the Division Bench to the Full Bench, citing conflicting opinions expressed by Guwahati High Court and Allahabad High Court, the matter was placed before the Full Bench, where the Full Bench answered the question referred to it as follows:*

*6. The question is whether when succession opens under S. 8, Karuppan and his son will take the property in the same manner. Clearly, this is not so. When we search for the relatives mentioned in Class I of the Schedule, which is attracted by virtue of S. 8, we find no son's sons are mentioned at all though the grandson of a deceased*



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*son is mentioned. What would be the effect when such a grandson comes into the picture need not be dealt with in this case. But where the son as well as his son are the persons concerned, by applying S. 8, we have to come to the conclusion that the father alone, namely, Karuppan in this case will inherit the property to the exclusion of the grandson. This being the effect of the statutory provision, no interest will accrue to the grandson in the property which belonged to Palaniappa. Even, assuming Palaniappa's property is ancestral property in the hands of Karuppan, still because of the effect of the statute, Karuppan's son will not have an interest in the property. This is directly derogatory of the law established according to the principles of the Hindu Law and this provision in the statute must prevail in view of the unequivocal expression of the intention in the statute itself which says that to the extent to which provisions had been made in the statute, those provisions shall override the established provisions in the texts of Hindu Law. This is what M.N. Beg, J. as he then was, said in the decision in Commissioner of Incometax v. Ram Rakshpal. Commenting on this Divan, C.J. In Commissioner of Incometax v. Babubai Mansukhbai made the following observations.*



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*“The Division Bench there held that in view of the provisions of S. 6 and S. 8 of the Hindu Succession Act, the old position no longer prevailed and the income from assets inherited by a son from his father must be held to be his individual and not the income of the Hindu undivided family consisting of himself and his son. Main reliance in support of this conclusion was placed by the Allahabad High Court on the provisions of Ss. 6 and 8 of the Hindu Succession Act. The Allahabad High Court accepted the principle that if it had not been for the Hindu Succession Act, on the death of a father whatever was inherited by his son by way of succession became ancestral property in the son's hands and this ancestral property in the hands of the son belonged to the coparcenary or the joint Hindu family consisting of the son and his own male issue...”*

*After discussing the matter at some length the learned Chief Justice observed at page 422—*

*“...With respect to the learned Chief Justice of the Allahabad High Court, it is impossible to read into the words of S. 8 any provision which inteferes with the scheme of Hindu Law as it prevailed prior to the enactment of the Hindu Succession Act. Neither S. 6 nor S. 8 nor S. 30 affect this principle of Hindu Law as to in*



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*what capacity or in what character the son would enjoy the property once he received it from his father in succession”,*

*Proceeding further, the learned Chief Justice, referred to a passage from Mullah's Principles of Hindu Law, 14th Edn. edited by S.T. Desai. Illustration (a) at page 849 of the Commentary is then extracted and the learned Chief Justice agreed with the Commentary and the Illustration., With very great respect, we are unable to agree with the view expressed by the learned Chief Justice. The passage quoted from the commentary did not deal with the effect of S. 8 of the Act. What has been illustrated also is the position under the Hindu Law untrammelled by statutes, and it occurs in the commentaries to S. 6 of the Act which deals with survivorship, and the saving by S. 6 of that principle to the extent to which it had been done. This passage is of no assistance in determining the impact of S. 8 on the principles of devolution of property on the death on the principles of inheritance. We have dealt with the effect of S. 8 earlier and it is clear that here Karuppan alone took the properties of his father Palaniappa, which the latter had obtained in the partition, and irrespective of the question whether it was ancestral property in the hands*



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*of Karuppan or not, he would exclude his son. Since the existing grand-son at the time of the death of the grandfather has been excluded, we think that an after-born son of Karuppan will also not get any interest which Karuppan inherited from his father. Thus, the principles of Hindu Law are not applicable. It is impossible to visualise or envisage any Hindu undivided family in regard to the property which Karuppan got. This is the view that we have taken in the decision in *The Additional Commissioner of Income-tax, Madras-II v. V.R.A. Manicka Mudaliar (died) and others*, to which one of us was a party. We respectfully agree with the view expressed in that decision and answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Department. The Revenue will pay the costs of the assessee including counsel's fee of Rs. 500.*

This judgment was approved by the Hon'ble Supreme Court in *Yudhishter v. Ashok kumar*, reported in **1987 (1) SCC 204**, and the Appeal against the judgment in *The Additional Commissioner of Income Tax, v. P.L.Karuppan Chettiar*, was also eventually dismissed and the same is reported in **1993 Supp (1) SCC 580**.



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**14.2.** In view of the above, categorical pronouncements of the Hon'ble Supreme Court as well as the Full Bench of this Court, the conclusion of the learned District Judge regarding the character of properties in the hands of Kandhasamy which were allotted to him at a partition that took place on 29.07.1959 between him and his brothers would be only ancestral and not self-acquired.

**Point No.2:**

**15.** Once it is concluded that the properties are ancestral properties, the next question that would arise is whether the plaintiff would claim as a coparcener. According to the learned counsel Mr.G.Arivarasan and Dr.C.Ravichandran, the issue is squarely covered by the decision of the Hon'ble Supreme Court in *Vineeta Sharma V. Rakesh Sharma*. Mr.P.Valliappan, learned Senior Counsel appearing for the appellant, however, would make a valiant effort to persuade us to deviate from the conclusions of the Hon'ble Supreme Court in *Vineeta Sharma V. Rakesh Sharma*. He would by drawing our attention to para



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69 of the judgment in ***Vineeta Sharma V. Rakesh Sharma***, where the Hon'ble Supreme Court has held that the coparcenary must be shown to be in existence on 09.09.2005, the learned Senior Counsel would submit that on the death of Kandhasamy, the first defendant being the sole surviving coparcener, the coparcenary ceased to exist and hence the plaintiff cannot be allowed to contend that she would become a coparcener with effect from 09.09.2005. He would however, concede that the share of Kandhasamy in the coparcenary would devolve under Section 8 of the Hindu Succession Act, 1956 on the mother, daughters and the first defendant equally.

**15.1.** The learned Senior counsel would also draw our attention to paragraph 70 of the judgment in ***Vineeta Sharma V. Rakesh Sharma***, where again the Hon'ble Supreme Court points out that the effect of the Act is to only enlarge the rights of the daughters and the rights of the other relatives would remain unaffected as provided in the proviso to Section 6 as it stood before the amendment. The learned Senior Counsel would point out that in the case on hand, if the shares of the daughters is



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enlarged, the share that vested in Lakshmiammal on the death of Kandhasamy would necessarily reduce. Therefore, according to the learned Senior Counsel, these contingencies will have to be taken into account and the enlargement of the share of a daughter is not automatic. It has to be subject to (i) the existence of the coparcenary as on 09.09.2005; and (ii) the same should not affect the share of the other relatives, particularly the widow of the deceased.

**15.2.** The learned Senior Counsel would also rely upon Sub Section 3 of Section 6 of the Hindu Succession Act, to contend that in order to apply Sub Section 3, the death will have to be after the commencement of the Hindu Succession Amendment Act, 2005 i.e. 09.09.2005. Assistance is also sought to be drawn from the judgment of the Hon'ble Supreme Court in *Prasanta Kumar Sahoo and others v. Charulata Sahu*, reported in **2023 (2) MWN (Civil) 100**, wherein the Hon'ble Supreme Court has reiterated the position that the coparcenary must exist on 09.09.2005.



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**15.3.** The learned Senior Counsel would also seek to draw our attention to paragraph 73 (B) of the judgement in ***Prasanta Kumar Sahoo***, to contend that the law as stated in the said paragraph is the law relating to Bombay School of Mitakshara Law and not the Madras School. As per the Madras School of Mitakshara Law, the share of the widow will definitely be reduced if the share of the other coparceners is enlarged and that was not contemplated by Act 39 of 2005.

**15.4.** Though the learned Senior Counsel would seek to rely upon the another judgment of the Hon'ble Supreme Court in ***Derha v. Visha & another***, made in Civil Appeal No.4494 of 2010 dated 01.09.2023, wherein the Hon'ble Supreme Court had applied the law as it stood prior to the enactment of Act 39 of 2005, we do not think we can safely take the judgment to be a precedent on the question of the right of a daughter as per the Amending Act 39 of 2005, since we do not find any reference to the Amending Act or the judgment in ***Vineeta Sharma V. Rakesh Sharma***, in the said case. No doubt, we find some force in the submissions of the learned Senior Counsel, but we must concede that our



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hands are tied, in view of the categorical pronouncement of the Hon'ble Supreme Court in ***Vineeta Sharma V. Rakesh Sharma***, wherein the reference was answered 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 the 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 the 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.*

***137.4.*** *The statutory fiction of partition created by the 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*



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*female heir, of Class I as specified in the Schedule to the 1956 Act 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.*

*137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, 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 effected (sic effected) 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.*

**15.5.** Though it could be said that the coparcenary got dissolved on



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the death of Kandhasamy by virtue of the interpretation placed by the Hon'ble Supreme Court on the provisions of the Amended Section 6, we will have to assume that the coparcenary continued. We are therefore, unable to countenance the submissions of the learned Senior Counsel Mr.P.Valliappan. Hence Point No.2 is answered against the appellant.

**Point No.3:**

**16.** The next contention of the learned Senior Counsel is that is based on Article 110 of the Limitation Act 1963. Article 110 of the Limitation Act reads as follows:

| <i>Description of appeal</i>                                                               | <i>Period of Limitation</i> | <i>Time from which period begins to run</i>       |
|--------------------------------------------------------------------------------------------|-----------------------------|---------------------------------------------------|
| 110. By a person excluded from a joint family property to enforce a right to share therein | Twelve years                | When the exclusion becomes known to the plaintiff |

**16.1.** Of course, there is no plea in the written statement regarding limitation, even then as mandated by Section 3 of the Limitation Act 1963, the Court is bound into look into the question of Limitation. The



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starting point of Limitation for Article 110 of the Limitation Act is the date of knowledge of exclusion. In order to enable the defendant in the suit for partition to invoke Article 110 of the Limitation Act *dehors* ouster, it will have to be established that the right of the plaintiff was denied to the knowledge of the plaintiff and the plaintiff did not sue for partition for 12 years thereafter. No doubt, para 7 of the plaint is as vague as vagueness can be, the plaintiff though says the first defendant denied her share, she had not chosen to state that the date on which the share was denied. We however, find that the defendant by his written statement as lent a helping hand to the plaintiff to sustain the suit or to wriggle out of the rigour of Article 110 of the Limitation Act.

**16.2.** The defendant has in fact admitted the right of the plaintiff to the share of Kandhasamy which would devolve under Section 8 of the Hindu Succession Act. That would mean that he never excluded the plaintiff from the enjoyment of the properties or he never denied the plaintiff's share to at least a portion of the property at any point of time. This would save the plaintiff and in fact aid the plaintiff to get over the



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question of Limitation under Article 110 of the Limitation Act.

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**Point No.4:**

17. Once we conclude that the properties were ancestral properties and the plaintiff is entitled to sue for partition despite her father having died 50 years prior to the suit for partition, she would automatically be entitled to a share as a coparcener which would be  $1/3^{\text{rd}}$ . It becomes unnecessary for us to get into the Nitty Gritties of the partition to assume a notional partition prior to the death of Kandhasamy allot  $1/4^{\text{th}}$  share to Kandhasamy, then again divide it between the four heirs of Kandhasamy at  $1/12$  each and again divide the  $1/12^{\text{th}}$  share that Lakshmiammal would be entitled to under Section 15 of the Hindu Succession Act 1956, amongst her children viz. the plaintiff and defendants 1 and 2, since the net result would be each one of them would be entitled to a  $1/3^{\text{rd}}$  share.

18. In fine we affirm the judgment and decree of the learned Trial



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Judge not for the same reasons assigned by the learned Trial Judge, we conclude that the character of property in the hands of Kandhasamy was ancestral and the plaintiff would be entitled to seek partition as a coparcener after 09.09.2005. In fine, the Appeal is **dismissed**. However, in the circumstances we make no orders as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (N.SENTHILKUMAR, J.)  
21.11.2023

Index : Yes  
Internet : Yes  
Neutral Citation : Yes  
Speaking order  
jv

To

1. The I Additional District Court,  
Coimbatore.
2. The Section Officer,  
V.R.Section,  
Madras High Court.



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**R.SUBRAMANIAN, J.**  
**and**  
**N.SENTHILKUMAR, J.**

jv

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**and CMP No.18764 of 2017**

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