

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

C.R.P.(MD)No.675 of 2023  
and  
C.M.P.(MD)No.3143 of 2023

T.S.Kamala (Died)  
1.T.S.Rajan  
2.T.S.Sivakumar  
3.T.S.Kannan  
4.L.J.Anjanaa

.. Petitioners

Versus

C.R.Jothi (Died)  
1.C.R.J.Sakunthala  
2.Ramakonda  
3.R.H.Vaishnavi  
4.C.R.Balan  
5.C.R.Harimoorthy  
C.N.Durge (Died)  
6.C.N.Thianeshwaran  
7.C.N.Ramesh

.. Respondents

**Prayer :-** Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.11.2022, made in I.A.No.296 of 2021 in I.A.No.708 of 2005 in O.S.No.687 of 2000, on the file of the II Additional Subordinate Court, Madurai.

For Petitioners : Mr.S.R.Sathan Boopathy

For R1 : Mr.V.Meenakshisundaram

For R5 : Mr.V.N.Arjun

**ORDER**

The present Civil Revision Petition has been filed against the fair and decreetal order dated 07.11.2022, made in I.A.No.296 of 2021 in I.A.No.708 of 2005 in O.S.No.687 of 2000, on the file of the II Additional Subordinate Court, Madurai.

2. The petitioners are the legal representatives of the third defendant in O.S.No.687 of 2000. The petitioners had filed I.A.No.296 of 2021 in I.A.No.708 of 2005 to amend the preliminary decree passed by the trial Court on 29.11.2004, declaring the shares of the plaintiff as 7/24. After the preliminary decree was passed on 29.11.2004, Section 6 of the Hindu Succession Act, 1956 was amended with effect from 09.09.2005. As per Section 6(5) of the Hindu Succession Act, 1956, it has been stated that nothing contained in the said Section shall apply to a partition, which has been effected before 20<sup>th</sup> day of December, 2004.

3. The petitioners filed I.A.No.296 of 2021 on the strength of the recent rulings of the Honble Supreme Court in **Vineeta Sharma vs. Rakesh Sharma and others** reported in **2020 (5) CTC 302**.

4. The learned counsel for the petitioners submitted that the trial Court has erred in declining to amend the preliminary decree by simply relying on the language of Section 152 of C.P.C. The learned counsel for the petitioners further submitted

that in terms of the decision of the Hon'ble Supreme Court in **Vineeta Sharma** referred to supra, the well-recognized principle of the Court that when the rights are subsequently conferred, the preliminary decree can be amended, and the benefit of law has to be conferred and therefore, irrespective of the language in Section 152 of C.P.C., the trial Court ought to have amended the preliminary decree passed on 29.11.2004, in terms of the decision of the Hon'ble Supreme Court in **Vineeta Sharma's case** referred to supra.

5. Per contra, the learned counsel appearing for the fifth respondent submitted that an unintentional mistake of the Court, which may prejudice the cause of any party, must be rectified. However, this does not mean that the Court is allowed to go into the merits of the case to alter or add to the terms of the original decree or to give a finding which does not exist in the body of the judgment sought to be corrected.

6. In support of his submission, the learned counsel has relied upon a decision of the Hon'ble Supreme Court in **Srihari (Dead) through LR. Smt.CH.Niveditha Reddy vs. Syed Maqdoom Shah and others** reported in **2015 (3) CTC 679**. A specific reference is made on the Latin maxim '*actus curiae neminem gravabit*' i.e. an act of Court shall prejudice no one.

7. I have considered the arguments advanced by the learned counsel appearing for the parties and perused the materials available on record.

8. In my considered view, the trial Court has committed an error in not discussing the applicability of the decision of the Hon'ble Supreme Court in **Vineeta Sharma's case** referred to supra. The law has been summarized by the Hon'ble Supreme Court after examining the decisions rendered till then in Paragraph 129, which reads as under:-

*"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 the 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 the 20<sup>th</sup> 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 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 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 rigour of provisions of Explanation to Section 6(5) of the Act of 1956t, 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 (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."*

9. Further, the trial Court ought to have examined Paragraph 106 of the said judgment, which reads as under:-

*"106. In the instant case, the question is different. What has been recognised as Partition by the legislation under Section 6, accordingly, rights are to be worked out. **This Court consistently held in various decisions mentioned above that when the rights are subsequently conferred, the preliminary decree can be amended, and the benefit of law has to be conferred.** Hence, we have no hesitation to reject the effect of statutory fiction of Proviso to Section 6 as discussed in *Prakash v. Phulavati* [*Prakash v. Phulavati*, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] and *Danamma* [*Danamma v. Amar*, (2018) 3 SCC 343 : (2018) 2 SCC (Civ) 385]. If a daughter is alive on the date of enforcement of the Amendment Act, she becomes a Coparcener with effect from the date of the Amendment Act, irrespective of the date of birth earlier in point of time."*

10. In view of the above, I am inclined to interfere with the fair and decreetal order, dated 07.11.2022, passed by the learned II Additional Subordinate Judge, Madurai, in I.A.No.296 of 2021 in I.A.No.708 of 2005 in O.S.No.687 of 2000. Accordingly, the fair and decreetal order is set aside and the case is remitted back to the trial Court to pass a fresh order in I.A.No.296 of 2021 in I.A.No.708 of 2005 in O.S.No.687 of 2000. within a period of three months from the date of receipt of a copy of this order, by applying the ratio of the Hon'ble Supreme Court in **Vineeta Sharma's case** referred to supra with the facts of the present case.

11. This Civil Revision Petition stands allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No  
Index : Yes/No  
Internet : Yes/No  
smn2

27.03.2023

To

The II Additional Subordinate Judge,  
Madurai.

C.R.P.(MD)No.675 of 2023

**C.SARAVANAN, J.**

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Order made in  
C.R.P.(MD)No.675 of 2023

27.03.2023