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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.699 OF 2012

1. Maruti Janu Mhaskar
age- 64 years, Occ- Agriculturist
r/at Manjarli Village, Taluka Ambernath,
District-Thane
and more particularly at
Mhaskar Bungalow,
Jijai Mhaskar Nagar,
Valivali road, Badlapur (West),
Opp. Sonal Paradise CHS Ltd,
Manjarli Village,
Taluka – Ambernath,
District-Thane.
(Through Deceased his Legal Heirs)
- 1A. Mrs. Sneha Sunil Misal
age-38 years, Occ-Housewife,
r/at Shreenathji Apartment,
Matheran road, Neral, Taluka-Karjat,
District Raigad.
- 1B. Mrs. Shilpa Datta Rasal
age-33 years, Occ-Housewife,
r/at Mukkam & post - Kohojgaon village.
Taluka - Ambernath, District – Thane.
- 1C. Mr. Amit Maruti Mhaskar
age 25 years, Occ- service
r/at Mhaskar Bungalow,
Jijai Mhaskar Nagar,
Valivali road, Badlapur (West),

Opp. Sonal Paradise CHS Ltd,
Manjarli Village, Taluka - Ambernath,
District - Thane

2. Vimal W/o Maruti Janu Mhaskar
age- 54 years, Occ- Household
r/at Manjarli Village,
Taluka - Ambernath,
District Thane
and more particularly at
Mhaskar Bungalow, Jijai Mhaskar Nagar,
Valivali road, Badlapur (West),
Opp. Sonal Paradise CHS Ltd,
Manjarli Village, Taluka - Ambernath,
District – Thane. ... Appellant

Versus

1. Muktabai Suryakant Bhoir
age - 51 years, Occ- Household,
r/at C-585/1170,
section 25, Ulhasnagar no.4,
District - Thane
and more particularly at
C-585/1170, Manera Village road,
Krishna Nagar, section 25,
Ulhasnagar no.4,
District - Thane
2. Ganpat Janu Mhaskar
age- 62 years, Occ- Agriculturist
r/at Manjarli Village,
Taluka - Ambernath,
District Thane

and more particularly at
Ganpat Mhaskar House,
Jijai Mhaskar Nagar, Valivali road,
Badlapur (West), Opp. Sonal Paradise CHS Ltd,
Manjarli Village, Taluka Ambernath,
District Thane

3. Gulab Jairam Mhatre
age-60 years, Occ- Household
r/at C/o Jairam Maruti Mhatre,
Manjarli Village, Taluka - Ambernath,
District - Thane
and more particularly at
C/o Jairam Maruti Mhatre,
Sharad Mhatre House, Badlapur (West)
Manjarli Village,
Taluka - Ambernath,
District - Thane

4. Hirabai Sitaram Shelke
age- 59 years, Occ- Household
r/at C/O Nitin Shelke
Village - Kasgoan,
Taluka – Ambernath,
District – Thane

...

Respondents

**ALONG WITH
INTERIM APPLICATION NO. 9801 OF 2022
IN
SECOND APPEAL NO. 699 OF 2012**

1. Muktabai Suryakant Bhoir
age 51 years, Occ- Household,
r/at C-585/1170, section 25,
Ulhasnagar no.4, District-Thane

2. Ganpat Janu Mhaskar
age-62 years, Occ- Agriculturist
r/at Manjarli, Tal.-Ambernath, ... Applicants

IN THE MATTER BETWEEN

1. Maruti Janu Mhaskar,
age- 64 years, Occ- Agriculturist,
r/at Manjarli Village, Taluka Ambernath,
District-Thane
and more particularly at
Mhaskar Bungalow,
Jijai Mhaskar Nagar,
Valivali road, Badlapur (West),
Opp. Sonal Paradise CHS Ltd.,
Manjarli Village,
Taluka – Ambernath,
District-Thane.
(Through Deceased his Legal Heirs)
- 1A. Mrs. Sneha Sunil Misal,
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r/at Mukkam & post - Kohojgaon village.
Taluka - Ambernath, District – Thane.
- 1C. Mr. Amit Maruti Mhaskar,
age 25 years, Occ- service,
r/at Mhaskar Bungalow,

Jijai Mhaskar Nagar,
Valivali road, Badlapur (West),
Opp. Sonal Paradise CHS Ltd.,
Manjarli Village, Taluka - Ambernath,
District - Thane

2. Vimal W/o Maruti Janu Mhaskar,
age- 54 years, Occ- Household,
r/at Manjarli Village,
Taluka - Ambernath,
District Thane,
and more particularly at
Mhaskar Bungalow, Jijai Mhaskar Nagar,
Valivali road, Badlapur (West),
Opp. Sonal Paradise CHS Ltd,
Manjarli Village, Taluka - Ambernath,
District – Thane. ... Appellant

Versus

1. Muktabai Suryakant Bhoir,
age - 51 years, Occ- Household,
r/at C-585/1170,
section 25, Ulhasnagar no.4,
District - Thane,
and more particularly at
C-585/1170, Manera Village Road,
Krishna Nagar, section 25,
Ulhasnagar No.4,
District - Thane
2. Ganpat Janu Mhaskar,
age- 62 years, Occ- Agriculturist
r/at Manjarli Village,

Taluka - Ambernath,
District Thane
and more particularly at
Ganpat Mhaskar House,
Jijai Mhaskar Nagar, Valivali road,
Badlapur (West), Opp. Sonal Paradise CHS Ltd,
Manjarli Village, Taluka Ambernath,
District Thane

3. Gulab Jairam Mhatre,
age-60 years, Occ- Household
r/at C/o Jairam Maruti Mhatre,
Manjarli Village, Taluka - Ambernath,
District - Thane
and more particularly at
C/o Jairam Maruti Mhatre,
Sharad Mhatre House, Badlapur (West)
Manjarli Village,
Taluka - Ambernath,
District - Thane

4. Hirabai Sitaram Shelke,
age- 59 years, Occ- Household
r/at C/O Nitin Shelke
Village - Kasgoan,
Taluka – Ambernath,
District – Thane

... Respondents

Mrs. Seema Sarnaik a/w. Ms. Sangeeta Salvi and Aseem Sharma for Appellants.

Mr. Vijay Killedar for Respondents in Second Appeal and for the Applicant in the Interim Application.

CORAM : RAJESH S. PATIL, J.
RESERVED ON : 12 DECEMBER,2023
PRONOUNCED ON : 13 MARCH,2024

JUDGMENT :-

1. This second Appeal is filed by legal heirs of Original Defendant No.1, challenging the concurrent findings recorded by Civil Judge Junior Division, Ulhasnagar and as confirmed by District Court, Kalyan. Respondent no.1 in this second appeal is the Original Plaintiff being the sister of Original Defendant no.1 to 4, who had filed Regular Civil Suit No.258 of 1991, in the Court of Civil Judge Junior Division, Ulhasnagar praying for declaration that she has 1/5 share in the properties of her deceased father Janu, and for possession of the said 1/5 share of her's, and further for a declaration that her brother Maruti (Defendant No.1) and brother Gannupath (Defendant No.2), and her two sisters Gulab (Defendant No.3) and Hirabai (Defendant No.4), also have 1/5 share, in each of the properties of their father.

2. For the sake of brevity, parties are referred as per their

original nomenclature in the Trial Court. It was the case of the plaintiff (who is the sister of Defendant) in her suit for partition, that her father died somewhere in the year 1959. And subsequently, thereto even her mother died in the year 1982. The said suit being R.C.S. No. 258/1991, filed by Plaintiff was decreed and the plaintiff was granted 1/5 share in suit property. An Appeal preferred by Original Defendant No.1 along with his wife (Defendant No.5) was dismissed. Hence, the present Second Appeal is filed, by Defendant No.1 (who is the brother of Plaintiff), challenging concurrent findings.

3. The present second appeal has been 'Admitted' by an Order dated 17/8/2012 and two Questions of Law were framed;

(a) Whether Respondent No.1 entitled to claim any share in the property of her father who had expired in 1951, when the Respondent No.1 has married in the year in 1976 as per section 29 A (iv) of the Hindu Succession (Maharashtra Amendment) Act, 1994?

(b) Whether the Hindu Succession (Maharashtra Amendment) Act, 1994 would apply to the daughter married before the date of commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994?

SUBMISSIONS :

4. Mrs. Seema Sarnaik, appeared for Appellant (Original Defendant No.1) and made her submissions :

(i) She submitted that she has two fold arguments. The first leg of her argument is that the suit properties are not ancestral properties, but are the self-acquired properties of the deceased Janu, who was the father of the both Plaintiff and Defendants. Therefore, these proceedings are not covered u/s. 6 of the Hindu Succession Act, 1956.

(ii) The second line of her argument is that there was an oral partition amongst the siblings after the death of their mother. Evidence to that effect was given by one Balu Dayre (defendant witness No2). Pursuant to the said oral partition, plaintiff got her share and on her piece of land which she received by oral partition, she built a chawl. So also, the other siblings built chawl on the portion which they received in the partition. Therefore, since there was already an oral partition, a suit for declaration of 1/5 share and further partition would not be maintainable.

5. Mr. Vijay Killedar appeared for the Respondent (original plaintiff) and made his submissions :

(i) Mr. Killedar submitted that as of today all the siblings are at one side and only Appellants who are legal heirs of original defendant No.1 are on the other side.

(ii) He submitted that in an admitted Second Appeal, the appellants have to argue on the question of law as formulated by the court. However, there is no bar to make submissions on the other question of law, provided such questions of law are formulated. Mr. Killedar submitted that the argument on behalf of the appellant as regard to the oral partition, cannot be considered, as no such questions of law, have been formulated and the submissions are made without formulating any question of law. Therefore, such submissions should be discarded.

(iii) Mr. Killedar submitted that the submission as regards to the oral partition are made across the bar however, in the Written Statement filed by the original defendant No.1, so also in the evidence lead, there is no mention of oral partition. Mr. Killedar further submitted that in fact no such issues were framed as to whether there was an oral

partition ?

(iv) Mr. Killedar also harped on the evidence of D. W. No. 1 - Maruti, where he stated that the partition was in the year 1980. He further submitted that in fact in the synopsis submitted by the Appellant before this court along with their gist of argument, the death of the mother has been shown in the year 1982. He therefore submitted that it is apparent that the Appellants have themselves made conflicting statements about the oral partition. He further submitted that evidence of D. W. No. 2 Balu Dayare, mentioned about the said oral partition.

(v) He submitted that the 7/12 extract of the suit property of the year 1964, shows the name of L.R.'s of deceased "Janu", as his widow and his sons. It does not state that pursuant to Oral Partition the name of L.R's are brought on record.

(vi) Mr. Killedar to buttress his submission laid emphasis on the judgment of *Vineeta Sharma V/s. Rakesh Sharma* reported in **2020 (9) SCC 1** delivered by the Supreme Court. He laid emphasize on paragraph No. 137 of the said judgment and more specifically paragraph No.137.5.

(vii) Mr. Killedar also laid emphasize on the last line of paragraph

No.137.5 of judgment of Vineeta Sharma (supra).

(viii) Mr. Killedar also took me through Section 85 of the Maharashtra Land Revenue Code, 1956 and laid emphasize on sub section 3 of Section 85 of the Maharashtra Land Revenue Code.

(ix) Mr. Killedar, also referred to the judgment of ***Arunachala Gounder (dead), by LRS, V/s. Ponnusamy and Others*** reported in ***(2022) 11 SCC 520***. He also referred to the judgment of Bombay High Court in the matter of ***Babu Jyotiram Jadhav Vs. Muktabai Somvanshi***, reported in ***2022 (1) Bom CR 294***. Supreme Court Judgment in ***State of Maharashtra Vs. Bharat Shah*** reported in ***(2008) 13 SCC 5***, and ***Hoechest Pharmaceuticals Ltd Vs. State of Bihar*** reported in ***(1983) 4 SCC 45***. He submitted that after insertion of Section 6 in the Central Act, the Maharashtra Amendment to Section 29 has become repugnant. He submitted that the Second Appeal has no merits and should be dismissed with costs.

ANALYSIS AND CONCLUSION :

6. I have heard both the sides and have considered the

submissions made by them and have also considered the documents on record.

7. The present second appeal has been admitted on two questions of law, which are as under :

(a) Whether Respondent No.1 entitled to claim any share in the property of her father who had expired in 1951, when the Respondent No.1 has married in the year in 1976 as per section 29 A (iv) of the Hindu Succession (Maharashtra Amendment) Act, 1994?

(b) Whether the Hindu Succession (Maharashtra Amendment) Act, 1994 would apply to the daughter married before the date of commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994?

8. Two submissions were made on behalf of Appellants. The first submission was that the suit properties are not ancestral properties of the deceased father. Therefore, these properties were not covered u/s. 6 of the Hindu Succession Act. The Second submission was that there was an oral partition amongst the siblings after death of their mother.

9. I pause to observe that on neither of these two submissions, a Question of Law, was formulated. Even though there is no bar to make

submissions on the other Questions of Law, which are not formulated; but such Questions of Law need to be formulated first. And initially submissions must be made on Questions of Law, which were formulated.

10. The counsel for the respondent (original plaintiff)has taken me through the 7/12 extract of the year 1964. The said 7/12 extract shows that the name of legal heirs of deceased Janu, are his widow and of his sons. The said 7/12 extract does not show *how* the names of legal heirs are taken on the record? Whether, it was pursuant to any oral partition. So also the written statement filed by the appellant does not anywhere mentions about the alleged oral partition.

Therefore, it is difficult to believe the theory of appellant (L.Rs of original defendant No.1) that there was an oral partition after the death of mother.

The Supreme Court judgment of ***Vineeta Sharma (supra)*** in paragraph No.137.5 clarifies that if there is a partition the same has to be a registered partition. Paragraph Nos.137.5 and 139 of the judgment of ***Vineeta Sharma (supra)*** reads as under :-

“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 recognized 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.”

*“139. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in Prakash V. Phulavati and Mangammal v. T. B. Raju. The opinion expressed in *Danamma v. Amar* is partly overruled to the extent it is contrary to this decision. Let the matter be placed before appropriate Bench for decision on merits.”*

[Emphasis supplied]

11. Page No.80 of the paper book, the evidence shows that appellant's predecessor (original defendant) himself stated in the evidence that after the death of the father Janu, the entire property was recorded in the name of the mother and brothers. And after the death of their mother, the entire property was recorded in the name of only original defendant No.1. Inconsistent statements are made by the Appellants in gist of arguments and synopsis. I am of the view there is no substance in the submission of Appellants, that there was oral partition

between the siblings after the death of their mother.

12. It is a matter of fact that the submission of oral partition made on behalf of Appellants was without framing any question of law. In my opinion such a submission cannot be taken up at the time of hearing of Second Appeal, without there being a question of law formulated.

13. As regards the submissions of Appellants that the properties are not covered u/s. 6 of the Hindu Succession Act, no such issue was raised in the Written Statement and even in the evidence led by the Defendant. This submission is made by the Appellant at the time of the hearing of this Second Appeal, and without there being a Question of Law formulated, on this submission.

14. I am of the opinion that there is no substance in the argument of the Appellant on the above two points.

15. Coming to the two Questions of Law framed at the time of admission of this Second Appeal.

16. It is an admitted fact that the Plaintiff (who is sister of Defendants) was married in the year 1976, so also the other two sisters

of the Plaintiff were married in the year 1966 and 1969 respectively.

16.1. The Hindu Succession Act, 1956 was enacted on 17 June 1956, at that time the daughters had no right of inheritance in coparcenary.

16.2. In the year 1994 the Maharashtra legislature inserted the Provision of Section 29-A to the Hindu Succession Act, which became applicable to the State of Maharashtra.

Section 29-A of Hindu Succession Act [Maharashtra Amendment], reads as under :-

*Sec.29A Equal rights to daughter in coparcenary property. -
Notwithstanding anything contained in Sec.6 of this Act, -*

(i) In a Joint Hindu Family governed by the Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) At a partition in a Joint Hindu Family referred to in Cl. (i), the coparcenary property shall be so divided as to allot to a daughter the same share, as is allottable to a son;

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allottable to the predeceased child of a pre- deceased son or a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the pre-deceased son or of the pre-deceased daughter, as the case may be;

(iii) Any property to which a female Hindu becomes entitled by virtue of the provisions of Cl. (i) shall be held by her with the incidents of coparcenary, ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(iv) Nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994 (Mah. XL of 1994) ;

(v) Nothing in Cl. (ii) shall apply to a partition, which has been effected before the date of commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994.

[Emphasis Supplied]

16.3. The said provision was progressive at the time of its insertion as it allowed daughters to be coparceners for the very first time and have a coparcenary share in the ancestral property. The only exception to the aforementioned rule is sub - section (iv) of Section 29-A. The said provision precluded daughters who were married before the commencement of the said amendment of 1994 from claiming coparcenary rights in ancestral property. So also sub - section (v) precluded any share to daughter, if there was a partition effected before

the date of commencement of 1994 Act. Thus, it sets a 'cut-off' date i.e. 22-6-1994 (as mentioned in the explanation to section 29-A) and withholds the benefits of the amendment to daughters married prior to the said date and also if there was partition prior to the said date.

16.4. Subsequently Parliament on 5 September 2005, introduced the Hindu Succession (Amendment) Act, 2005, thereby amending the original Hindu Succession Act, 1956, which extends to whole of India except the State of Jammu and Kashmir. The 2005 amendment of the Hindu Succession Act was revolutionary as it extended coparcenary status to daughters across India. The object of the said amendment was to treat daughters at par with the sons and to devolve property equally amongst them. The legislative intent behind amending the succession law can be clearly understood from the '***Statement of Objects and Reasons***' as reproduced herein below:

Amendment Act 39 of 2005-Statement of Objects and Reasons.-

The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide

rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the Murumakkattayam, Aliasantana and Nambudri laws. The Act applies to every person who is a Hindu by religion in any of its forms c developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counter-parts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution, having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

3. It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.

4. The above proposals are based on the

recommendations of the Law Commission of India as contained in its 174th Report on "Property Rights of Women: Proposed Reform under the Hindu Law".

5. *The Bill seeks to achieve the above objects.*

16.5. For Section 6 of the Principal Act, new Section 6 was substituted by the Hindu Succession (Amendment) Act, 2005, which reads as follows:

Section 6 - Devolution of interest in coparcenary property

(1) *On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,*

a by birth become a coparcener in her own right the same manner as the son;

b have the same rights in the coparcenary property as she would have had if she had been a son;

c. be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) *Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.*

(3) *Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and, the daughter is allotted the same share as is allotted to a son;*

a the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

b the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.--For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) *After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or greatgrandson for the recovery of any debt due from his father, grandfather or greatgrandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:*

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005. nothing contained in this sub-section shall affect —

(a) the right of any creditor to proceed against the son, grandson or greatgrandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable

under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation — For the purposes of clause (a), the expression “son”, “grandson” or great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation — For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

16.6 The amended section 6 resembles, Section 29-A Maharashtra Amendment not only in its language and phraseology but also in its legislative intent. Both legislations aimed to abolish the gender-biased system and grant uniform and indistinguishable rights to sons and daughters in the coparcenary property.

16.7. However, there is a stark difference between the two. Unlike the amended section 6 of the Hindu Succession Act; section 29-A and benefits thereunder apply to only those daughters who are unmarried as of 22-6-1994 i.e. the date of commencement of the Maharashtra amendment.

16.8. Nowhere does the amended section 6 limit the coparcenary

status of a daughter on the grounds that her marriage has taken place before the commencement of 2005 Act or if there is partition before the commencement of 2005 Act. As per Section 6, any daughter who is married or unmarried and/or is married before or after the commencement of the act can claim coparcenary status in ancestral property, unlike Sec. 29-A (iv) of the Maharashtra Amendment. The bare reading of the amended section 6 does not impose any kind of limitation on the daughter's coparcenary right.

16.9. In the case of *Prakash and Ors. Vs. Phulavati and Ors*, reported in **(2016) 2 SCC 36** the Supreme Court interpreted section 6 as it tried to read the condition that 'the daughter's father must be alive for the daughter to claim coparcenary share in Section 6. This meant that a daughter's coparcenary right was contingent to her father staying alive. The law laid down in *Prakash v. Phulavati (Supra)* treated daughters different from the sons who could inherit irrespective of the death of their father. Supreme Court clarified this portion in *Vineeta Sharma (Supra)* where it **overruled** *Prakash v. Phulavati (Supra)* and reiterated that the coparcenary rights is an 'unobstructed heritage' which cannot be

restricted by any conditions, and it applies uniformly to sons and daughters. In *Vineeta Sharma (Supra)*, it has been held that any daughter married or unmarried; a daughter's father may be alive or dead, will have a claim in the ancestral property.

16.10. Therefore, the question which seeks answer is whether in State of Maharashtra, Sec. 29 A of State Amendment will prevail or Sec. 6 of the Central Act will prevail. And *“Whether the state law is in a direct conflict with a law enacted by the central legislature?”* This leads me to consider the submission made by parties in the present proceedings:

“whether S. 29A (iv) Maharashtra Amendment of 1994 is repugnant to S.6 of the Hindu Succession Act (amendment) 2005? In other words, does the newly amended S.6 of the Hindu Succession Act by the Parliament have an overriding effect on Section 29A (iv) of Maharashtra Amendment?”

16.11. One has to therefore first consider Article 254 of the Constitution of India, which deals with Inconsistency between the laws made by Parliament and laws made by Legislatures of States. Article 254(1) reads as under :

Article 254 - Inconsistency between laws made by Parliament and laws made by the Legislatures of States :

“(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.”

16.12. List III (the Concurrent List) in the Seventh Schedule of the Constitution of India provides for entries over which both the State and the Centre have legislative competence i.e. both the tiers of government are eligible to pass laws on the said entries.

Entry 5 of List III reads as follows:

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

16.13. The question of repugnancy under Article 254(1)

between a law made by Parliament and a law made by the State Legislature arises, only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy become void.

16.14. The Supreme Court in the case of Bharat Shantilal Shah (Supra) has held in paragraph no. 48 as under:-

48. Article 254 of the Constitution succinctly deals with the law relating to inconsistency between the laws made by Parliament and the State Legislature.

The question of repugnancy under Article 254 will arise when a law made by Parliament and a law made by the State Legislature occupies the same field with respect to one of the matters enumerated in the Concurrent List and there is a direct conflict in two laws. In other words, the question of repugnancy arises only in connection with subjects enumerated in the Concurrent List. In such situation the provisions enacted by Parliament and the State Legislature cannot unitedly stand and the State law will have to make way for the Union law. Once it is proved and established that the State law is repugnant to the Union law, the State law would become void but only to the extent of repugnancy. At the same time it is to be noted that mere possibility of repugnancy will not make a State law invalid, for repugnancy has to exist in fact and it must be shown clearly and sufficiently that the State law is repugnant to the Union law."

[Emphasis Supplied]

16.15. Supreme Court in the case of ***M/s. Hoechst Pharmaceuticals Ltd. (Supra)*** has held in paragraph no. 67 as under :-

"67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the state law with the respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law

will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together.”

[Emphasis Supplied]

16.16. As explained in the aforementioned paragraph, section 29-A (iv) of the Maharashtra Amendment directly conflicts with the amended section 6 of the Hindu Succession Act.

16.17. The Hindu Succession Amendment Act 2005 may not expressly state that it is over-ruling section 29-A (iv) introduced by the Maharashtra Amendment. However, it is settled law that in the event of a repugnancy, the Parliamentary legislation shall prevail, and the State law shall “to the extent of the repugnancy” be void. Hence there need not be an express repeal to invalidate a repugnant law. The fulfillment of the aforementioned preconditions renders the state law as void. According to my view Section 6 clearly means ‘that any daughter’ including those daughters to whom 29-A (iv) previously applied are eligible to inherit equally as if she was a ‘son’ in a family.

16.18. Having regard to the above discussion, in my opinion

that section 29-A (iv) of Maharashtra Amendment is inoperative as it is repugnant to the amended section 6 of the Hindu Succession Act.

16.19. I am guided by judgment of Bombay High Court of ***Babu Jadhav (Supra)***, which puts forward that sec. 6 of the Hindu Succession Act post 2005 amendment is repugnant to S. 29A(iv) of Maharashtra State Amendment 1994. The relevant paragraph no.15 of the judgment reads as under:

“15. It can be seen that the law on the point of Succession is at Entry No. 5 of the Concurrent List, i.e. List No. III in the Seventh Schedule. Article 254 of the Constitution gets attracted only when both Central and State legislations have been enacted on any of the matters in the said List and there is conflict between two legislations. The basic principle is that the Central legislation will prevail as Article 254(1) of the Constitution gives supremacy to the law made by the Parliament... Now, it is to be seen that in the year 2005, the Union Government brought an amendment to Section 6 of the Hindu Succession Act and made the daughters as coparceners and this has been done with a view to give equal rights to the daughters in comparison to sons. When the Maharashtra State Amendment was restricted to unmarried daughters (excluding the daughters, who

were married prior to 1994), no such distinction has been made in Section 6 of the amended provision by the Union Government and, therefore, the repugnancy existed. In view of the proviso, when Parliament exercised its power to bring a new legislation, the said enactment will prevail. In view of the law laid down in the aforesaid three pronouncements, it was not necessary for the Parliament to repeal Section 29-A of the Hindu Succession (Maharashtra Amendment) Act. Taking into consideration both the enactments, i.e. Section 29-A and Section 6, as amended in 2005, they cannot stand together and, therefore, the law made by the Parliament would prevail over the State Law in view of Article 254(1) of the Constitution of India.”

[Emphasis Supplied]

16.20. In the case of ***Arunachal Gounder (Supra)***, similar issue had arisen, where the original propositors had died prior to the Hindu Succession Act, 1956 coming into force. The Supreme Court held in paragraph 66 as under:

"Our analysis

66. Right of a widow or daughter to inherit the self-acquired property or share received in partition of a coparcenary property of a Hindu male dying intestate

is well recognised not only under the old customary Hindu Law but also by various judicial pronouncements and thus, our answer to the Questions 1 and 2 are as under:

"If a property of a male Hindu dying intestate is a self-acquired property or obtained in partition of a coparcenary or a family property, the same would devolve by inheritance and not by survivorship, and a daughter of such a male Hindu would be entitled to inherit such property in preference to other collaterals."

67. In the case at hands, since the property in question was admittedly the self-acquired property of Marappa Gounder despite the family being in state of jointness upon his death intestate, his sole surviving daughter Kupayee Ammal, will inherit the same by inheritance and the property shall not devolve by survivorship."

In the present proceeding the devolution after the death of father shall be by succession and not by inheritance.

Therefore, after the death of father, the devolution of the interest in the suit property ought to have been as per Section 8 of the Hindu Succession Act, 1956 i.e. by intestate succession.

16.21. Section 8 [a] of the said Act gives preference to

succession to those who are specified in class I of the schedule appended to the said Act. Class I of schedule appended to the said Act. Class I of the Schedule includes daughter, son and widow on the same footing. Thus, when the suit was filed, there were 5 persons who were eligible under class I and therefore each of them shall get 1/5th share in the suit property.

16.22. The Appellants had contended that since the suit for partition was filed in the year 1991 and the trial Court's judgment was delivered on 31.10.2003, the position stood crystallized and the Respondent No. 1 could not take recourse to amended provisions of Section 6 of the said Act. In paragraph no. 137.4 of Vineeta Sharma, it is clearly held that 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. In the present proceedings the Regular Civil Appeal No. 133 of 2003 was filed on 11.12.2003 and was pending as on the date of commencement of the amendment to Section 6 of the said Act. The Regular Civil Appeal No. 133 of 2003 was decided on 26.06.2012 i.e. after the commencement of

amendment to Section 6. Thus, the contention of the Appellant that the Respondent No. 1 could not take recourse to Section 6 of the said Act because the suit was filed prior thereto cannot be countenanced.

16.23. Prior to the amendment to Section 6 of the said Act, the devolution of interest of a deceased male Hindu was by way of survivorship and not intestate succession. The exception carved out of the pre -amended section 6 provided that if the deceased male had left behind him a female of class I of the Schedule, she would inherit the interest by intestate or testamentary succession. In such circumstances, there would be deemed / notional partition prior to the death of the male Hindu and the female of class I shall only get her share through the male Hindu as being his class I heir. Thus, the female was not having her share in the property by birth.

16.24. I hold that it is not necessary for the Parliament to pass separate enactment repealing the State law. By virtue of amendment to Section 6 in 2005, the repugnancy with Section 29A [iv] was in 2005 created and therefore, from the date of commencement of the 2005 amendment, the state made law i.e. Section 29A [iv] stood impliedly

repealed.

16.25. Applying the various judicial principles, tests and precedents laid down by courts, it is held that section 6 of the Principal Act will have an overriding effect on section 29A (iv) of the Maharashtra State Amendment Act.

16.26. It is well settled law that the coparcenary right of a daughter is unconditional or is an unobstructed heritage which accrues the moment she takes birth in the family. It does not depend on the death of her father or any other persons in the family. Law as laid down by Supreme Court in ***Vineeta Sharma (Supra)*** holds ground. In accordance with the aforesaid judgment, a daughter is a *coparcener* irrespective of when she is born or when she marries.

16.27. Hence, section 29A (iv) is no longer operative in the State of Maharashtra. Section 6 read along with its interpretation in ***Vineeta Sharma (Supra)*** is undeniably the settled position of law.

16.28. Having considered the entire material available on record and findings recorded by the Trial Court as well as the first

Appellate Court, this Court finds no ground or reason warranting interference in the concurrent findings recorded. Therefore, the substantial questions of law framed by this Court by an order dated 17.08.2012 are answered in negative and the Second Appeal is accordingly dismissed. No cost.

16.29. In sequel, all Interim Applications pending, if any, are also disposed of, as dismissed.

(RAJESH S. PATIL,J.)

At this stage, Mrs. Sarnaik appearing for the Appellant seeks to continue the interim relief granted earlier for further 4 weeks, as her client may approach the Supreme Court to challenge this judgment. Mr. Killedar appearing for the Respondents opposes this request made by the Appellant. Request made by the Appellant is declined.

(RAJESH S. PATIL,J.)