



A.S.No.259 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2024

PRONOUNCED ON : 01.07.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.259 of 2007

&

Cross Objection No.1 of 2011

[A.S.No.259 of 2007]

1.T.Mallika
2.Sankariammal
3.Saraswathi
4.Latha

... Appellants

V.s

1.K.Mathivanam
2.Fathimabibi
3.Vijaya
4.Sannasi
5.Mathialagan
6.Arivazhagan
7.Mosili Veeran



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8.Kasi

9.M.Venkatesan

10.G.Baskaran

11.Peter

... Respondent

[Cross Objection No.1 of 2011]

K.Mathivanam

... Cross Objector

Vs.

1.T.Mallika

2.Sankariammal

3.Saraswathi

4.Latha

5.Fathimabibi

6.Vijaya

7.Sannasi

8.Mathialagan

9.Arivazhagan

10.Mosili Veeran

11.Kasi

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12.M.Venkatesan

13.G.Baskaran

14.Peter

[Respondents 5 to 11 herein are given up as necessary parties]

Prayer in A.S.No.259 of 2007: First Appeal is filed under Section 96 of C.P.C to set aside the Judgement and Decree made in O.S.No.56 of 2004 on the file of the Additional District Judge (Fast Track Court No.1) at Salem dated 28.04.2006 whereby granting preliminary decree declaring 1/5th share to the plaintiff, defendants 1, 3, 4 and 5 each.

Prayer in Cross Objection No.1 of 2011: Cross Objection is filed Under Order 41 Rule 22 of CPC to set aside the Judgement and Decree made in O.S.No.56 of 2004 on the file of the Additional District Judge (Fast Track Court No.1) at Salem dated 28.04.2006.

For Appellants : Mr.V.Ayyadurai, Senior Counsel
for appellant (in A.S.No.259/2007)
and for R.1 to R.4 (in Cross Obj. No.1
of 2011).

For Respondents : Mr.T.Murugamanickam, Senior Counsel
for M/s/Zeenth Begum for R.1



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(in A.S.No.259/2007) and for Cross Objector
(in Cross Obj.No.1/2011)

: R.2 - Dismissed vide order dated 20.01.2012
(in A.S.No.259/2007)

: R.3 to R.6 -Given up vide memoSR.No.35083
dated 29.11.2022
(in A.S.No.259/2007) & For R.5 to R.14
(Given up vide Cross Objection No.1 of 2011)

JUDGEMENT

The defendants 1, 3 to 5 in a suit for partition are the appellants before this Court. They seek to challenge the judgement and decree of the Additional District Judge (Fast Track Court No.1) at Salem in O.S.No.56 of 2004. The facts which have culminated in the filing of the above First Appeal are herein below set out and the parties are being referred to in the same ranking as before the Trial Court.

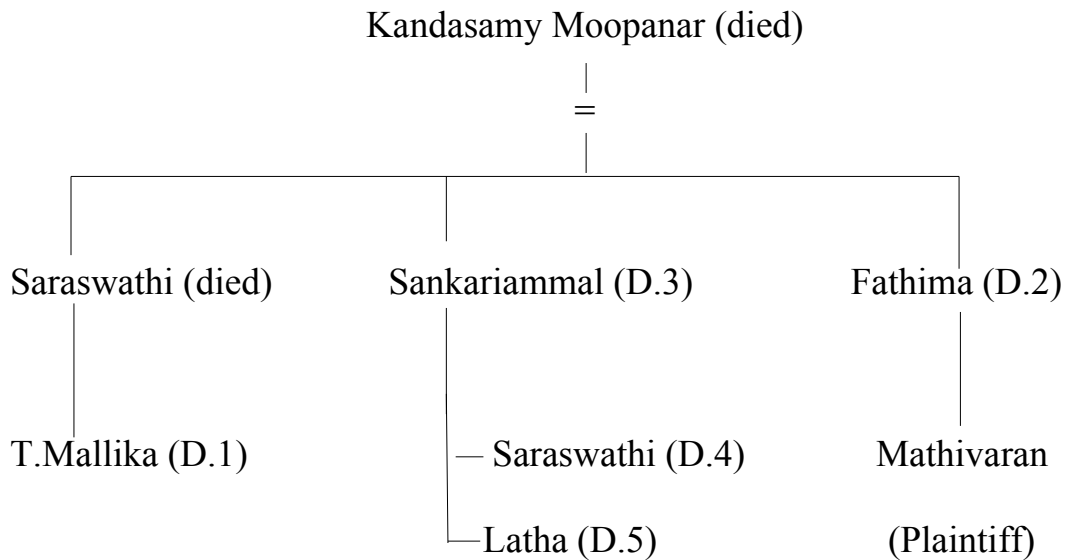
2. The plaintiff has filed the above suit seeking a partition of his 6/10th share in the suit schedule properties. The A schedule consists of



30 items of property and the B schedule consists of 9 items of property.

The genealogy given below will demonstrate the relationship:-

Genealogy



Plaintiff's Case:-

3. It is the case of the plaintiff that the suit properties were the ancestral properties of his father Kandasamy Moopanar. The said Kandasamy Moopanar had married one, Saraswathi through whom the 1st defendant was born. Thereafter, Saraswathi had passed away and the said Kandasamy Moopanar had married the plaintiff's mother,



Fathimabibi in the year 1965 and the plaintiff was born to them in the year 1966.

4. It is the case of the plaintiff that while his marriage with Fathimabibi was subsisting, the said Kandasamy Moopanar had developed an illicit relationship with one Sankariammal through whom defendants 4 and 5 were born. The plaintiff would submit that the properties are all ancestral properties in which the plaintiff and Kandasamy Moopanar had a half share each.

5. The said Kandasamy Moopanar died on 05.06.1988 living behind him surviving the plaintiff and the defendants 1 to 5. The 3rd defendant who is not a legally wedded wife is not entitled to any share in the suit properties. Therefore, on the death of the said Kandasamy Moopanar, his half share devolved equally on the plaintiff, defendants 1, 2, 4 and 5 each being entitled to a 1/10th share in the suit schedule properties and the plaintiff is entitled to a 6/10th share.



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6. The plaintiff would submit that since he is a police constable he is constantly away from the suit property and taking advantage of his absence from the property, the defendants 1, 3 to 5 have alienated portions of the property to defendants 6, 10, one Manickam and Kodappan under sale deeds dated 22.11.1990, 23.08.1993, 29.01.1992 and 17.08.1994. The said Manickam had died leaving behind him surviving defendants 7 to 10 and Kodappan and Anarkali had together sold portions of the suit property to the 11th defendant. Therefore, the plaintiff has impleaded the purchasers and the legal heirs of the purchasers. The plaintiff would submit that the sale deeds are not binding on his share in the suit schedule properties. Further, defendants 12 to 14 are tenants under the plaintiff.

7. He would submit that on 05.05.1999, he had first made a demand to the defendants to partition the suit schedule properties. However, there was no response. The plaintiff had sent several reminders asking the defendants to partition the suit properties and had



also attempted to convene a Panchayat on 04.11.2001. However, the defendants refused to cooperate in the same. Therefore, the plaintiff has been constrained to file the above suit.

Written statement of the 1st defendant:-

8. The 1st defendant had filed a written statement inter alia denying the fact that the plaintiff was born to Kandasamy Moopanar through the 2nd defendant. The 1st defendant had contended that the plaintiff was not the legal heir of the said Kandasamy Moopanar, as Kandasamy Moopanar had married the 3rd defendant after the death of Saraswathi, the 1st defendant's mother. The 1st defendant would contend that the plaintiff has come to Court suppressing the true facts. The 1st defendant would contend that Kandasamy Moopanar had not married the plaintiff's mother and the plaintiff's mother was married to one Sardar Sahif of Kadambur village and she has not been divorced by him. Since the plaintiff is not the legal son of Kandasamy Moopanar, there is no question of him seeking a partition. That apart, the concept of ancestral property is alien to Mohammedan Law. The 2nd defendant



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was only a concubine of Kandasamy Moopanar and is therefore not entitled to any share in the suit schedule properties. The 1st defendant would submit that on the death of Kandasamy Moopanar only defendants 1, 3 to 5 succeeded to the estate of Kandasamy Moopanar. The plaintiff is not entitled to any share in the suit properties.

Written statement of the 2nd defendant:-

9. The 2nd defendant, the mother of the plaintiff had filed a written statement inter alia contending that she had married Kandasamy Moopanar in the year 1964 and has been living with him since then and had adapted the Hindu customs in her day to day living. The plaintiff is born out of this wedlock and he has been brought up only as a Hindu. The 2nd defendant denied the contention that she was married to another person. She would submit that she has only married Kandasamy Moopanar. It is also her further contention that after marrying her, the said Kandasamy Moopanar had married Sankariammal 4 or 5 years later and by that time the plaintiff was already born to the 2nd defendant and Kandasamy Moopanar. It is also



her contention that in all the registered documents Kandasamy Moopnar had recognized her and the plaintiff as his legal heirs. The 2nd defendant ultimately submitted herself to the decree.

Trial Court:-

10. The Trial Court had framed the following issue which are being translated into the English language as follows:-

- 1. Whether the plaintiff has a right to claim a 6/10th share in the suit properties?*
- 2. Whether the suit properties have been properly described?*
- 3. Whether the plaintiff is entitled to a preliminary decree for partition?*
- 4. To what other relief is the plaintiff entitled to?*

11. The plaintiff had examined himself as P.W.1 and one Perumal and Muthuswamy as P.W.2 and P.W.3 respectively and



marked Ex.A.1 to A.10. On the side of the defendants, the 2nd defendant had examined herself as D.W.1, the 1st defendant had examined herself as D.W.2, the 3rd defendant as D.W.3, the 5th defendant as D.W.4 and one Vivekanandan and Thangaraj as D.W.5 and D.W.6 respectively and marked Ex.B.1 to B.14.

12. The learned Additional District Judge, on considering the evidence on record and the arguments had partly decreed the suit granting a 1/5th share in the suit properties to the plaintiff. Challenging the said judgement, the defendants 1, 3 to 5 are before this Court. Against the judgement giving only a 1/5th share, the plaintiff has filed Cross Objection.

Submissions:-

13. The main contention of the learned Senior Counsel Mr.V.Ayyadurai appearing on behalf of the counsel for the appellants/defendants 1, 3 to 5 is that the very suit is not maintainable since the plaintiff has no right to the suit properties which he has



himself described as an “ancestral joint family properties”. He would contend that the plaintiff is not entitled to any right over the ancestral properties in the light of the provisions of Section 16 of the Hindu Marriage Act (hereinafter referred to as the "HMA") read with Sections 5, 7 and 8 of the Hindu Succession Act (hereinafter referred to as the "HSA").

13.1. The learned Senior counsel would submit that the legitimacy which would be conferred on a person as per Section 16 of the HMA extends only to properties of the parents and not to the properties belonging to others as in the case of ancestral properties. He would submit that by reason of the judgement reported in **(2020) 9 SCC 1 - Vineeta Sharma Vs. Rakesh Sharma and others**, the daughters get a right to the ancestral property by birth. The plaintiff who is born out of a marriage which is not a legal one cannot claim any share in the ancestral properties of Kandasamy Moopanar.

13.2. The learned Senior counsel would submit that Section 16 of



the HMA would not apply to the plaintiff since he is an off-spring born out of a inter religious marriage. He would submit that Section 2 of the HMA and the similar provision of the Hindu Succession Act makes it clear that the Act would apply only to Hindus. Section 16 of the HMA would not apply to an inter religious marriage. He would therefore contend that the plaintiff is not entitled to any share in the ancestral property as he cannot claim any right under the Hindu law.

13.3. He would further submit that the Trial Court has failed to frame issues on the basis of the pleadings that have been let in by either party and has simply framed the issues stated above in Paragraph No.10 which does not bring out the real issue involved in the suit. The Trial Court has not framed any issue as to whether the plaintiff is a legitimate son of Kandasamy Moopanar.

13.4. The learned Senior counsel would also submit that on the death of the father, the remaining family members have entered into a partition under a Koorchit (which has not been exhibited). He would



submit that since the marriage of the plaintiff's mother with the said Kandasamy Moopnar had taken place when the 3rd defendant, Sankari Ammal, the wife of Kandasamy Moopnar was very much alive and their marriage was still subsisting, the said marriage is an illegal one. Therefore, the plaintiff is not entitled to any share in the ancestral properties.

13.5. The learned Senior counsel relied upon the judgement reported in *2024 SCC Online SC page 55 - Raja Gounder and Others V.s M. Sengodan and Others* which follows the judgement in *Revanasiddapaa Vs. Mallikarjun reported in (2011) 11 SCC 1* and submitted that the plaintiff who is not born out of a legally valid marriage is not entitled to any share in the suit property.

14. Per contra, the learned Senior counsel for the plaintiff would place his argument on the following points:-

a) Proof of marriage of Kandasamy Moopnar with the 2nd



defendant.

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14.1. The learned Senior counsel would rely upon the evidence of P.W.2 and P.W.3 who have cogently and clearly talked about the marriage of Kandasamy Moopanar and the plaintiff's mother, Fatima Bibi. Both the witnesses have spoken about attending the marriage at a temple and their evidence has not been rebutted in the cross examination. Both the witnesses are well acquainted with the testator, Kandasamy Moopanar. The learned Senior counsel would submit that nothing has been shown to discredit the evidence of these witnesses. In this regard, he would rely on the judgement of the Hon'ble Supreme Court reported in *(1978) 3 SCC 527 - Badri Prasad Vs. Dy. Director of Consolidation and Others.*

14.2. He would submit that Section 16(1) of the HMA creates a legal fiction of legitimacy of a child born out of a marriage which is null and void under Section 11 of the HMA and it is his case that when Section 16(1) is applied to the plaintiff's case, the marriage between his mother and his father was void under Section 11 and the plaintiff was



born out of this marriage. Therefore, applying the provisions of Section 16 of the HMA, his legitimacy stands proved and further since the plaintiff was born on 28.05.1965 before the Marriage Laws Amendment Act 1976 had been introduced, the same would not make any difference to the applicability of Section 16 of the HMA. In this regard, he would rely on the judgement of the Hon'ble Supreme Court reported in ***(1996) 4 SCC 76 - Parayankandiyal Eravath Kanapraavan Kalliani Amm (SMT) & Ors Vs. K.Devi and Ors.*** He would therefore submit that once the plaintiff is the legitimate son of Kandasamy Moopnar then by operation of Section 16(3) of the HMA, he would be entitled to the property of his father, Kandasamy Moopnar.

b. Proof of Kandasamy Moopnar and the 2nd defendant living as husband and wife in consequence of marriage:-

14.3. He would further draw the attention of the Court to Section 50 of the Indian Evidence Act in support of his contentions that Kandasamy Moopnar and the 2nd defendant had been living as husband and wife pursuant to a marriage between the two. That



Kandasamy Moopanar had treated the 2nd defendant as his wife is evident from the SSLC Certificate, Ex.B.1 produced by the plaintiff where Kandasamy Moopanar has been described as the plaintiff's father and the 2nd defendant as his mother. This certificate has been signed by Kandasamy Moopanar himself. In addition to the above document, the following documents are filed to prove that the Kandasamy Moopanar and the 2nd defendant are husband and wife:-

(i) Ex.B.2, Community Certificate of the plaintiff obtained on an application made by Kandasamy Moopanar, (ii) Ex.B.3 and Ex.B.4, Voter's List showing Kandasamy Moopanar and the 2nd defendant were residing at Attur in 1980. It is also the contention of the learned Senior counsel that though under Ex.B.7 settlement deed, Kandasamy Moopanar has described the 2nd defendant as “வைப்பு மனைவி”, the judgement of the Division Bench of this Court reported in *(1987) 100 LW 58 - Seerangammal (died) and others vs. E.B.Venkatasubramanian & ors* would indicate that such word would not take away the status as a wife. In this regard, he would also rely on



the judgement reported in *2017 (5) CTC page 41 - Dharmasam Varthini and Others Vs.Selvakumar and Others.*

c. Recognition of plaintiff by Kandasamy Moopanar:-

14.4. He would also rely upon the fact that Kandasamy in Ex.A.2 sale deed and Ex.B.7 settlement deed has referred to the plaintiff only as his son. In addition to that he would draw the attention of the Court to the Judgement of this Court reported in *1993 II L.W. page 559 - Subbaraya Pillai and another Vs. Lakshmiammal and others*, wherein the learned Judges have held that a father can make provision of property for an illegitimate son.

d. Recognition of plaintiff as family member by defendants 1, 3 to 5.

14.5. He would submit that even the defendants have recognized the plaintiff as their sibling. Under Ex.A.9, legal notice issued by the 5th defendant to other members of the family, the plaintiff is described as the son of Kandasamy Moopanar. He would also rely upon the



admissions of D.W.1 regarding Ex.B.11, which is the plaintiff's marriage photo. The said photograph would show the active participation of the 1st and the 5th defendants in the marriage. Therefore, there is an acceptance by the defendants 1, 3 to 5 that the plaintiff is the son of Kandasamy Moopanar. In this regard, he would rely on the judgement of this Court reported in ***1969 SCC Online Mad 234 - Raghuvir Kumar (minor) and others Vs. Smt. Shanmughavadivu and others.***

e. Allegation that the 2nd defendant had married one Sathar

Sahib:-

14.6. He would also contend that the allegation made by the defendants that the 2nd defendant had married one Sathar Sahib and that she continues to be his wife have all remained on paper and there is no proof of the same.

f. How plaintiff derives title to the property:-

14.7. He would further submit that after the partition under



Ex.A.1, the property which fell to the share of Kandasamy Moopanar has to be treated as his separate properties. Therefore, the succession would be governed by the provisions of Section 8 of the HSA and not by Section 6 of the HSA. In this regard, he would rely upon the judgement of the Hon'ble Supreme Court reported in **(2013) 9 SCC page 419- Rohit Chauhann Vs. Surinder Singh and others.**

14.8. He would highlight the fact that Sections 8 to 13 of the HSA does not draw any distinction between the legitimate and illegitimate male Hindus by birth. In this regard, he would rely upon the judgement of the Hon'ble Supreme Court reported in **(1976) 4 SCC 489 - Commissioner of Wealth Tax, Madras and Others Vs. Later R.Sirdharan by Lrs.**

14.9. The defendant's contention that the suit properties are not the self acquired properties of Kandasamy Moopanar but it is the ancestral properties over which the plaintiff cannot claim a right is no longer available in the light of the judgement of the Hon'ble Supreme



Court reported in **(2013) 9 SCC page 419 - Rohit Chauhan Vs.**

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Surinder Sing and others and therefore it is only Section 8 of the HSA that would apply and therefore, the plaintiff is entitled to the share declared by the Trial Court.

14.10. The fact that the plaintiff is professing the Hindu religion is evident from Ex.A.1, A.2 and B.6. That apart, it is the plaintiff who had done the obsequies of his father. Therefore, the learned Senior counsel would submit that the judgement and decree passed by the Trial Court is correct and does not require any re-consideration and has to be confirmed.

14.11. The learned Senior Counsel for the defendants/appellants in response to the above contention of the learned Senior counsel appearing for the plaintiff would contend that the marriage between Kandasamy Mooppanar and Fatima Bibi was not a marriage in the eye of law since the two of them had not registered their marriage under the Special Marriage Act. One of the conditions for applying the



provisions of Section 16 is the existence of a marriage. Therefore, the plaintiff cannot claim legitimacy.

Points for consideration:-

15. The points that arise for consideration in the above First Appeal are:-

1. Whether there is a presumption of marriage between the Kandasamy Moopanar and Fatima Bibi?

2. Whether by virtue of Section 16(1) of the Hindu Succession Act the plaintiff is the legitimate son of late Kandasamy Moopanar?

3. Since the marriage between Kandasamy Moopanar and the 2nd defendant was a void marriage under Sections 5 and 11 of the Hindu Marriage Act, whether the plaintiff is entitled to claim a share in the property of Kandasamy Moopanar?



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4. Whether after the amendment to the Hindu Succession Act by the Hindu Succession Amendment Act, 2005, the plaintiff would still have a right to claim a share in the ancestral family property by reason of amended section (6) of the Hindu Succession Act?

16. Heard the learned counsels on either side.

Discussion:-

17. The main challenge to the decree is that the plaintiff is not entitled to any share in the properties because:-

(a) the plaintiff is an illegitimate child; and

(b) the properties are ancestral joint family properties and therefore, the plaintiff cannot claim a right to the property which does not belong exclusively to his father.

18. In order to appreciate the above arguments, it is necessary to



extract the provisions of Section 16 of the HMA and Section 6 of the HSA as they stood earlier and as they now stand amended.

18.a. Section 16 of the HMA as it was originally enacted provided as follows:-

"16. Legitimacy of children of void and voidable marriages - Where a decree of nullity is granted in respect of any marriage under Section 11 or Section 12 any child begotten or conceived before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of having been declared null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity:

Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared null and void or annulled by a decree of



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nullity any rights in or to the property of any person other than the parents in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

18.b. Section 16 of the HMA was amended by Act 68 of 1976.

As amended, Section 16 would read as follows:-

16. Legitimacy of children of void and voidable marriages:

(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.



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(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in Sub-Section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."



18.c. Prior to its amendment, Section 6 of the HSA, 1956 would

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6. Devolution of interest in coparcenary property.

When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1. For the purposes of this section, the



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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.

Explanation 2. Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

18.d. After the amendment, Section 6 was further sub-divided into 5 sub-sections and for the case on hand Sections 6(1) and 6(3) alone would be relevant. Section 6(1) of the HSA would read as follows:-

6. Devolution of interest in coparcenary property:

(1) On and from the commencement of the Hindu



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Succession (Amendment) Act, 2005, in a JointHindu family governed by the Mitakshara law, the daughter of a coparcener shall:

(a) by birth become a coparcener in her own right in 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.



18.e. Section 6(3) which has been introduced is reproduced

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"(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 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:

(a) the daughter is allotted the same share as is allotted to a son.

(b) the share of the pre-deceased son or a predeceased 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 predeceased daughter.

(c) the share of the pre-deceased child of a pre-



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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."

19. The first issue that requires the attention of the Court is the issue regarding the legitimacy of a child born to parents whose marriage is null and void under Section 11 of the HMA. Such a child is declared to be legitimate by the provisions of Section 16(1) of the HMA. The Section contemplates that any child born out of such a



marriage should be considered legitimate by presuming his status as if the marriage had been valid. Likewise, if a decree of nullity has been obtained under Section 12 of the HMA, a child who was born or conceived before the decree is made is also deemed to be a legitimate child. This is also on account of the fact that the child would have been a legitimate child of the parties to the marriage if the marriage had been dissolved instead of being annulled. Section 16(3) of the HMA provides that a child born out of a marriage that is null and void or which is annulled by a decree of nullity would have a right only in respect of the property owned by the parent and not in the property belonging to any other person.

20. In the light of the conflicting judgments of the Hon'ble Supreme Court, both by two judge benches, reported in **(2003) 1 SCC 730- Jinia Keotin Vs. Kumar Sitaram Manjhi** and **Revanasiddapaa Vs. Mallikarjun reported in (2011) 11 SCC 1**. In the case of **Jinia Keotin**, the learned Judges had held that the preserved of legitimacy provided to a child born out of a void and illegal marriage has been



safeguarded by the provisions of Section 16 of the HMA. However, this judgment held that such children cannot be treated on par with children born out of a lawful marriage for the purpose of inheritance of the ancestral property. The decision of the *Jinia Keotin* cited supra was followed by another two judges bench in the case of *Neelamma Vs. Sarojamma reported in (2006) 9 SCC page 612* and also in the case reported in *(2010) 11 SCC 483 - Bharatha Matha Vs. R.Vijaya Renganathan*. This judgement laid down the ratio that a child born out of a void or voidable marriage is not entitled to claim inheritance in the ancestral coparcenary property but is entitled only to claim a share in the self-acquired property.

21. These two judgments were doubted by a Coordinate Bench in *Revanasiddapaa Vs. Mallikarjun reported in (2011) 11 SCC 1*. The learned judges had proceeded to refer the correctness of the earlier decisions of Jinia Keotin which was followed by others to a larger Bench. While making its reference, the learned Judges had premised their doubt on the following basis:-



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(i) Section 16(3) does not qualify the expression 'property' either with 'ancestral or self-acquired property. It sets out an express mandate that such children are only entitled to the property of their parents and not of any other relations.

(ii) Once children born from a void marriage (or a voidable marriage which has been declared to be nullity) are declared to be legitimate by sub-sections (1) and (2) of Section 16, they cannot be discriminated against and will be on par with other legitimate children for the purpose of all the rights in the property of their parents, both self-acquired and ancestral.

(iii) Section 16 was amended by Act 68 of 1976. As a consequence of the amendment, the common law view that children of a marriage which is void or voidable 'are illegitimate' ipso jure' has to change completely. [At Para



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36 Page 10] *The law has a socially beneficial purpose of removing the stigma of illegitimacy faced by children of such marriages, since the children themselves are innocent.*

(iv) The benefit of Section 16(3) is available only when there is a marriage but the marriage is either void or voidable in view of the provisions of the legislation.

(v) In the case of joint family property, children born from a void or voidable marriage will only be entitled to a share in their parents' property but not in their own right:

(vi) While the relationship between the parents may not be sanctioned by law, the birth of a child in such a relationship has to be viewed independently of such relationship. The interpretation of Section 16(3) must be based on the constitutional values of equality of status and opportunity as well as individual dignity.



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(vii) A child born in such a relationship is innocent and is entitled to all the rights which are given to other children born in a valid marriage subject to the limitation that the right is confined to the property of the parents.

(viii) Section 16(3) as amended does not impose any restriction on the property rights of the children born of a void or voidable marriage except limiting it to the property of their parents. Hence, such children will have a right to whatever becomes the property of their parents, whether self acquired or ancestral.

22. The reference was sought primarily to wipe out the illegitimacy thrust upon an innocent child owing to the language adopted by the legislature. Section 16 of the HMA as it originally stood protected the legitimacy of a child born out of a void or voidable marriage provided the following four requirements were fulfilled ,



namely:-

(i) The existence of a marriage;

(ii) The marriage should be void under Section 11 or voidable under Section 12;

(iii) There must be a decree annulling the marriage under Section 11 or Section 12; and

(iv) The child should have been begotten or conceived before the decree was made.

23. Therefore, the language of the provision as it then stood gave rise to an anomaly in as much as the status of legitimacy to a child born out of a void or voidable marriage was dependent upon the marriage being declared null and void by a decree of annulment of a Court of law. If a decree was not obtained, then a child born out of such a marriage would continue to be illegitimate as the protection under Section 16 of the HMA was available only if there was a decree of annulment. Secondly, the children born from such void or voidable marriages were artificially divided into two categories, one for those



born before its enactment and those born after its enactment. The anomalies of this Sections have been very succinctly described in the judgment reported in **(1996) 4 SCC - 76 Parayankandiyal Eravath Kanapraavan Kalliani Amma Vs. K.Devi**. The Hon'ble Supreme Court had noted as follows:-

58. In spite of the foresightedness of the legislators, the intention of Parliament could not be fully reflected in the Act which unfortunately suffered at the hands of persons who drafted the Bill and the various provisions contained therein. The results were startling. Since the Rule of Legitimacy was made dependent upon the marriage (void or voidable) being annulled by a decree of annulment, the children born of such marriage, would continue to be illegitimate if the decree of annulment was not passed, which, incidentally, would always be the case, if the parties did not approach the court. The other result was that the illegitimate children came to be divided in two groups; those born of marriage held prior to the Act and those born



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of marriage after the Act. There was no distinction between these two groups of illegitimate children, but they came to suffer hostile legislative discrimination on account of the language employed therein. Indeed, language is an imperfect instrument for the expression of human thought."

24. Thereafter, the Law Commission of India in its 59th Report elaborated on the status of a child born out of a void marriage and the amendment to Section 16 of the HMA was amended by Act 68 of 1976.

As amended, Section 16 would read as follows:-

16. Legitimacy of children of void and voidable marriages:

(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is



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granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in Sub-Section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have



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been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

25. The reference by the 2 judge Bench in the judgement in ***Revanasiddapaa Vs. Mallikarjun reported in (2011) 11 SCC 1*** was heard by a 3 Judge Bench and the same has been reported in ***2023 (10) SCC page 1- Revanasiddappaa and Anothers Vs. Mallikarjun & Others***. Ultimately the three Judges bench after traversing through the various judgments and the provisions of law ultimately held and formulated their conclusion as follows in Paragraph No.81.

81.1. *In terms of Sub-Section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or after the commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is*



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held to be void otherwise than on a petition under the enactment.

81.2. In terms of Sub-Section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child "begotten or conceived before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity.

81.3. While conferring legitimacy in terms of Sub-Section (1) on a child born from a void marriage and under Sub-Section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person.



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81.4. *While construing the provisions of Section 3(1)(j) of the HSA 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA 1956. In other words, a child who is legitimate under Sub-Section (1) or Sub-Section (2) of Section 16 of the HMA would, for the purposes of Section 3(1)(j) of the HSA 1956, fall within the ambit of the explanation "related by legitimate kinship" and cannot be regarded as an 'illegitimate child' for the purposes of the proviso.*

81.5. *Section 6 of the HSA 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of*



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Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by Sub-Section (1) of Section 6.

81.6. Section 6 of the HSA 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9 September 2005 by the Amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class 1 claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of Sub-Section (3) of Section 6 as amended, on a Hindu dying



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after the commencement of the Amending Act of 2005 his interest in the property of a Joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by Mitakshara law has been made the norm.

81.7. Section 8 of the HSA 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu.



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81.8. While providing for the devolution of the interest of a Hindu in the property of a Joint Hindu family governed by Mitakshara law, dying after the commencement of the Amending Act of 2005 by testamentary or intestate succession, Section 6 (3) lays down a legal fiction namely that 'the coparcenary property shall be deemed to have been divided as if a partition had taken place'. According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition.

81.9 For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the



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coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place.

81.10. The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under Sub-Sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be



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*ascertained in terms of the Explanation to Sub- Section (3),
as interpreted above.*

26. To put the above in perspective, the learned judges had observed that harmonizing the provisions of the Hindu Succession Act 1956 with the mandate in Section 16(3) of the HMA, a child who is conferred legitimacy under Sub Sections 1 and 2 of Section 16 of the Hindu Marriage Act will not be entitled to rights in the property of any person other than the parent. In cases where a parent has an interest in joint Hindu family property, the provisions of the explanation to Sub Section 3 would apply. A notional partition just prior to the death of the parent has to be assumed and the child who is conferred with legitimacy would be entitled to a share in the property. This is similar to the language adopted in Section 6 (1) of the HSA as it stood earlier

27. This has undergone a subtle change after the commencement of the Hindu Succession Amendment Act 2005. By reason of the amending act, Section 6(3) of the HSA provides that an interest of a



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Hindu in the property of a joint Hindu family governed by Mitakshara Law on his death would devolve by testamentary or intestate succession and not by survivorship by presuming that the coparcenary properties had been divided and the share of the deceased Hindu male devolves by succession. Earlier the property would devolve through succession only if he had left surviving a female relative specified in Class I of the Schedule or a male relative specified in that class claiming through the female relative. Otherwise the property would devolve only by Survivorship.

28. Coming to the case on hand, it is the contention of the defendants that the plaintiff is not the legitimate child of late Kandasamy Moopnar since he was born to the 2nd defendant who had not converted as a Hindu and continued to profess the Muslim religion. That apart, they had argued that the marriage between the plaintiff's father, Kandasamy Moopnar and the 2nd defendant had not been established and P.W.2 and P.W.3 who had adduced evidence are



interested witnesses.

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29. Therefore as a first step, this Court has to consider whether the plaintiff continues to be the legitimate son of late Kandasamy Moopnar. As set out in Paragraph No.9 of the judgment reported in ***Revanasiddapaa Vs. Mallikarjun*** cited supra i.e; **2023 (10) SCC page 1** the 4 requirements that are to be fulfilled for protecting the legitimacy of a child born out of a void and voidable marriage are :-

- (i) *The existence of a marriage;*
- (ii) *The marriage should be void under Section 11 or voidable under Section 12;*
- (iii) *There must be a decree annulling the marriage under Section 11 or Section 12; and*
- (iv) *The child should have been begotten or conceived before the decree was made.*

These conditions are no longer required to be satisfied since the amended Section 16 of the HMA as amended by Act 68 of 1976 has



done away with these requirements.

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30. In the instant case, in order to prove the marriage between Kandasamy Moopnar and the 2nd defendant, the plaintiff had examined P.W.2 and P.W.3 who are acquaintances of late Kandasamy Moopnar right from his childhood. P.W.2 is a childhood acquaintance of Kandasamy Moopnar and P.W.3 is a paternal cousin married to Kandasamy Moopnar elder brother's son. Both of them had described that the marriage between the plaintiff and the 2nd defendant had taken place at the Pillaiyar Koil Arasanatham river Bank. Their evidence has not been shaken in cross examination. However, the Trial Court has chosen not to believe the evidence only on the ground that they are interested witnesses. The minor aberrations in the evidence of P.W.1 to P.W.3 with reference to factum of marriage has been dilated upon with considerable force by the learned Judge.

31. In the judgment reported in *(1978) 3 SCC 527 - Badri*



Prasad Vs. Dy. Director of Consolidation and Others, the Hon'ble

Supreme Court had held that where a man and woman have lived as husband and wife in the eyes of society for several years and even if witnesses to the actual ceremony have not been examined the same is not fatal to the case. However, in the instant case, P.W.2 and P.W.3 have uniformly spoken about a marriage ceremony that has taken place in a temple. Despite the witnesses adducing evidence in this regard, the learned Trial Judge has not considered their evidence on a presumption that since the plaintiff's mother was a Muslim and the said Kandasamy Moopanar was a Hindu, there could not have been a marriage in the temple. The Trial Court has substituted its view to the oral evidence of the witnesses which has not been diluted in cross examination.

32. Further, the plaintiff's SSLC certificate Ex.B.1 described Kandasamy Moopanar as the father and the 2nd defendant as the mother. This is the document which has been signed by Kandasamy Moopanar himself. The Community Certificate Ex.B.2 standing in the



name of the plaintiff has been obtained on an application made by Kandasamy Moopanar. Ex.B.3 and B.4 voter lists prove that the 2nd defendant and the said Kandasamy Moopanar were residing in the same house at Attur as early as in the year 1980 itself. In the legal notice issued by the 5th defendant, Ex.A.9 the 2nd defendant has been described as the wife of Kandasamy and a partition has been sought for even for her. The defendants who have pleaded that the 2nd defendant was married to one Sathar Sahib has attempted to establish it by examining the witness D.W.6. During his cross-examination, D.W.6 clearly admitted that he does not know who Sathar Sahib is and that he is totally unaware of the person named Sathar Sahib. Therefore, it is crystal clear that this person is a tutored witness. Once the factum of the marriage and the fact that the parents are living together are established, the legitimacy of the plaintiff has to necessarily be upheld. Therefore, the recognition of the plaintiff as the son of Kandasamy Moopanar has to necessary be upheld. Therefore, the point for consideration Nos.1 and 2 are answered in favour of the plaintiff.



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33. Now as the Court has come to the conclusion that the plaintiff is the legitimate son of Kandasamy Moopanar, the next issue that requires the consideration of this Court is whether the plaintiff is entitled to claim a share in the property of Kandasamy Moopanar. The amended Section 16 of the HMA would say that the child whose birth has been legitimized is entitled to claim a right in the property belonging exclusively to the parent. The language adopted makes it clear that it is only in the property of the parents that a child would derive a right.

34. The plaintiff has come to Court clearly stating that the suit properties are the ancestral properties and he and his father were coparceners and therefore he is entitled to a half share in the suit properties and the other half belonged to his father. Therefore, there is no iota of doubt about the character of the property being ancestral in nature. Had the plaintiff been a son born to the said Kandasamy Moopanar under a valid marriage, he along with Kandasamy Moopanar



would have constituted a coparcenary. Now, with the amendment to Section 6 of the HSA, a daughter also becomes a coparcener in the ancestral properties like a son. Therefore, in the year 1960 when the property had been partitioned between the plaintiff's father and his nephews, the 1st defendant was already born. By reason of the amending act and the judgment in *Vineeta Sharma's* case, she would automatically become a coparcener along with her father Kandasamy Moopanar.

35. The amendment to Section 6 of the Hindu Succession Act has been conceptualized in order to bring gender equality between sons and daughters. Section 6 of the HSA prior to its amendment provides that where a Hindu male coparcener died prior to 1956 his interest in the property would devolve by survivorship. The only exception being where he leaves a female relative in class 1 or a male relative specified in class 1 claiming under such female relative then the interest of the coparcener would devolve by testamentary or intestate succession.



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36. After the amendment to Section 6 of the HSA there were conflicting judgements concerning the interpretations of Section 6 of the Hindu Succession Act as amended by the Hindu Succession Amendment Act, 2005 which was referred to the larger bench. The conflict was with reference to the date of commencement of the provisions of the amendment act whether it has a retrospective effect or a prospective effect. The reference to the larger bench was considered in the case of *Vineeta Sharma* cited supra. The learned Judges after setting out the provisions of law, the statement of objections and reasons, the historical background for the amendment, the concept of coparcenary and joint Hindu family had observed as follows:-

68. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in section 6 is that she becomes coparcener in the same



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manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of section 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in section 6(1), it is not necessary that there should be a living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment, i.e., 9.9.2005 with saving of past transactions as provided in the proviso to section 6(1) read with section 6(5).



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69. *The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted section 6(3).*

37. A reading of the above clearly spells out that it is immaterial whether the father or other coparceners were alive on 09.09.2005 as the



right of the daughter opens from her birth and is not dependent on her father being alive. In this regard, the learned Judges had observed as follows:-

73. It is by birth that interest in the property is acquired. Devolution on the death of a coparcener before 1956 used to be only by survivorship. After 1956, women could also inherit in exigencies, mentioned in the proviso to unamended section 6. Now by legal fiction, daughters are treated as coparceners. No one is made a coparcener by devolution of interest. It is by virtue of birth or by way of adoption obviously within the permissible degrees; a person is to be treated as coparcener and not otherwise.

38. Ultimately, the bench had answered the reference as follows:-

137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of



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coparcener on the daughter born before or after 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 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 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



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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.

137.5. 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



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alone cannot be accepted and to be rejected outrightly.

39. Therefore, from a reading of the provisions of amended Section 6 of the HSA and the aforesaid judgment in the case of ***Vineeta Sharma*** cited supra, it is clear that the daughters, namely, the defendants 1, 4 and 5 had acquired a right in the co-parcenary property on their birth. In fact, even before the partition had taken place in 1960, the 1st defendant was born to Kandasamy Moopanar through his first wife Saraswathi Ammal. As already held the plaintiff is born to the said Kandasamy Moopanar through the 2nd defendant whose marriage is void in terms of Section 11 of the HMA, therefore the plaintiff would be entitled to claim a share only from the share of Kandasamy Moopanar.

40. Now, let us examine as to whether Kandasamy Moopanar's share is available for partition. Section 6 of the HSA prior to its amendment contained a proviso that where the deceased leaves behind



a female relative specified in class 1 of the schedule or male relative specified therein claiming through a female relative then his interest in the coparcenary property would devolve by testamentary or intestate succession and not by survivorship. The class 1 relative included the widow. However, the language has undergone a change after the amendment. Proviso to Section 6(1) has been done away with and a new Section 6(3) has been introduced which reads as follows:-

"(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 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:

(a) the daughter is allotted the same share as is allotted to a son.

(b) the share of the pre-deceased son or a predeceased daughter, as they would have got had they



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been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such predeceased daughter.

(c) 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.

41. The introduction of Section 6(3) sounds the death knell for the coparcenary system. Since Section 6(3) automatically recognizes that where a Hindu male dies post 09.09.2005 his share in the property will only devolve by succession – Intestate or Testamentary. Perforce there is a notional partition and the Hindu males property gets divided as per the provisions of Section 8 of the HSA by treating it as his separate property. However, Section 6(3) is silent about how a Hindu female's share would devolve after the commencement of the Act



where she is a coparcener. Therefore, the word “his interest” has to be read as “her interest” as well, her share would then devolve on her legal heirs as per the language of Section 6 of the HSA. Therefore, by operation of the provisions of Section 6(3) of the HSA the coparcenary on the death of the Hindu male or Hindu female with effect from 09.09.2005 comes to an end. Section 6 of the HSA in so far as the family is concerned thereafter has no operation.

42. A reading of the statement of objects and reasons which has been extracted in the judgement reported in *Vineeta Sharma's* case cited supra would read as follows:-

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 Mitakashara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the



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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.

43. Section 6(3) of the HSA contemplates succession in respect of the properties of a Hindu who dies after the commencement of the Amendment Act i.e; 09.09.2005. The new Act by virtue of the repeal of the earlier Section 6 is silent about how the share of a Hindu male in a Joint Hindu Family dying prior to 09.09.2005 has to be treated . The Amendment Act prior to 09.09.2005 has completely repealed the



earlier Act. However, the saving clause as set out in Section 4 of the Repealing and Amending act, 2015, Act 17 of 2015 which came into effect on 13.05.2015 reads as follows:-

" The repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to; and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued"

44. Therefore, by reasons of this saving clause Kandasamy Moopanar's share devolves on his Class I legal heirs by virtue of the proviso to Section 6(1) and by virtue of the language of the Amended Section 16(3) of the HMA the plaintiff will be entitled to a 1/5th share in the 1/4th share of Kandasamy Moopanar. Therefore, the 3rd point for consideration is answered as holding that the plaintiff would be entitled to claim a share in Kandasamy Moopanar's share in the coparcenary



property. The 4th point for consideration is answered against the plaintiff.

45. The above discussions can be summed up as follows:-

(i) Section 16 of the HMA confers legitimacy to a child born to parents whose marriage is null and void under Section 11 of the HMA or where a decree of nullity has been granted under Section 12 of the MHA.

ii) Such children who obtain legitimacy by virtue of the provision of Section 16 of the HMA will be entitled only to the property of the parents, in other words the self acquired property of the parents.

iii) Section 6(1) of the HAS confers a right by birth to daughter to the coparcenary property of the father by birth.

iv) Where a male or a female coparcener dies after 09.09.2005, their share in the coparcenary property devolves not by survivorship but only by Succession – Testamentary or Intestate.



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v) Since Section 6(3) of the HSA specifically talks about a situation where a coparcener dies after 09.09.2005 and is silent about the period prior to 09.09.2005, the Savings Clause would provide succession as contemplated under Section 6(1) of the old HSA.

46. In fine, the First Appeal is partly allowed. The plaintiff shall be entitled to a preliminary decree granting him a 1/5th share in the 1/4th share of Kandasamy Moopanar in the suit schedule properties i.e; a 1/20th share in the suit properties and the Cross Objection is allowed. No costs.

01.07.2024

Index: Yes/No
Speaking order/non-speaking order
shr

To,
1. The Additional District Judge
(Fast Track Court No.1) at Salem.

2. The Section Officer,

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P.T.ASHA, J.,

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