



WEB COPY

S.A.No.141 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

Coram:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.No.141 of 2020
and
C.M.P.No.3155 of 2020

Vedhavalli (died)

1. Alamelu
2. Lalitha
3. Sudha
4. Kumar

... Appellants / Plaintiffs

Vs.

Venkatesan

... Respondent / Defendant

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure praying to set aside the Judgment and Decree dated August 1, 2018 passed in A.S.No.69 of 2011 on the file of the learned Additional District (Fast Track Court), Villupuram, partly allowing the Judgment and Decree dated October 27, 2010 passed in O.S.No.64 of 2009 on the file of the Principal Subordinate Judge, Villupuram.

For Appellants : Mr.N.Suresh
For Respondent : Mr.T.R.Sathiyamohan



S.A.No.141 of 2020

J U D G M E N T

WEB COPY

This Second Appeal has been preferred against the Judgment and Decree passed by the ‘learned Additional District Judge (Fast Track Court) Villupuram’ [‘First Appellate Court’ for short] in A.S.No.69 of 2011 modifying the Judgment and Decree passed in O.S.No.64 of 2009 on the file of the ‘Principal Sub Court, Villupuram’ [‘Trial Court’ for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Case of the Plaintiffs:

3. The Suit Properties along with some other properties belonged to one Adhimoolam. The said Adhimoolam died intestate 40 years before the date of Plaint. Govindasamy and Krishnan were the sons of said Adhimoolam.

3.1. The Suit ‘A’ Schedule is the genealogy representing the relationship between the parties. The Suit ‘B’ Schedule properties were ancestral properties in hands of said Adhimoolam. After his demise, they were allotted to Govindasamy in an Oral Partition held between he and his brother – Krishnan, and since then Govindasamy is in possession and enjoyment of the same. The Suit ‘C’ Schedule properties are all ancestral



S.A.No.141 of 2020

properties. It contain 11 items out of which Item Nos.4 to 7 were allotted to the share of Govindasamy along with half share in Item Nos. 1 to 3 in the aforesaid Oral Partition. The remaining half share in Item Nos. 1 to 3 were allotted to the share of Krishnan in the said Oral Partition, which were later sold by Krishnan to Govindasamy. The Suit 'D' Schedule properties were purchased from and out of the income derived from the Suit 'B' and 'C' schedule properties. Thus, all the Suit Properties are ancestral properties.

3.2. Govindasamy died intestate on January 8, 2003 leaving behind the 1st plaintiff (his wife), 2nd plaintiff (his daughter) and the defendant (his son). The Plaintiff Nos. 3 to 5 are the defendant's children born through his wife - Mayavathi. The 3rd plaintiff got married in January 22, 1999 that is to say after the commencement of Tamil Nadu Act No.1 of 1990. The defendant neglected and refused to maintain his wife – Mayavathi and Plaintiff Nos.3 to 5 and got into a relationship outside of marriage with one Vellachi. Further, with a view to defeat and defraud the plaintiffs rights over the Suit Properties, the defendant attempted to alienate the same. The plaintiffs caused Notice dated January 20, 2009 to the defendant seeking partition of Suit Properties. The defendant sent



S.A.No.141 of 2020

Reply dated February 14, 2009 refusing to partition the Suit Properties.

Hence, this Suit for partition.

Case of the Defendant:

4. The defendant filed Written Statement stating that the genealogy in Suit 'A' schedule is not described relationship correctly. The 2nd plaintiff is born before the commencement of the Hindu Succession Act, 1956 ['H.S.Act' for short] and hence, the 2nd plaintiff is not entitled to any share in the Suit Properties. During the lifetime of Govindamsamy, the 2nd plaintiff received jewels and cash along with some movable properties and after his demise, she relinquished her rights over the Suit Properties orally. Further, the defendant's wife - Mayavathi deserted him 25 years before the date of Plaint without any reason. Thereafter, the defendant began living with one widow named Vellachi as husband and wife. Through the said Vellachi, the defendant has one son namely Sasikumar and one daughter namely Tamizharasi. The said Sasikumar and Tamizharasi are also having shares in the Suit Properties, who are necessary parties to the Suit. Hence, the Suit is bad of non-joinder of necessary parties. Furthermore, plaintiffs concealed a house property of an extent of 108 *sq.mtr.* in Grama Natham R.Survey No. 403 /10 including



S.A.No.141 of 2020

the house therein, as well as a house site of an extent of 18½ Cents in Survey No.76/6 and 76/7. Since they are in possession and enjoyment, the same have not included in the Plaint schedule. Hence, the suit is bad for partial partition. Accordingly, he prayed to dismiss the Suit.

Trial Court:

5. At trial, the 1st plaintiff - Vedhavalli was examined as P.W.1 and Ex.A.1 to Ex.A.8 were marked on the side of the plaintiffs. On the side of the defendant, the defendant - Venkatesan was examined as D.W.1 and Ex.B.1 to Ex.B.8 were marked. One Velayudham was examined as D.W.2.

6. The Trial Court after full-fledged trial came to the conclusion that the plaintiffs 1 and 2 each are entitled to 1/6 share, and the plaintiffs 3 to 5 as well as the defendant are each entitled to 2/12 share in the Suit Properties except Item No.9 of Suit 'B' schedule. The Trial Court dismissed the Suit *qua* 9th Item in Suit 'B' Schedule as both sides failed to adduce evidence to prove that it belong to their family. Accordingly, it passed a Preliminary Decree.



S.A.No.141 of 2020

First Appellate Court:

WEB COPY

7. Feeling aggrieved, the defendant filed appeal in A.S.No.69 of 2011 on the file of the First Appellate Court, which after hearing both sides, concluded that the defendant married Vellachi during the subsistence of his first marriage and therefore, it is void. Hence, the said Sasikumar and Thamizharasi are not co-parceners along with the plaintiffs and they are not entitled to claim any share in the Suit Properties. Hence, they are not necessary parties to the Suit. Further, it held that the said house property in R.Survey No.403 /10 stands in the name of Mayavathi and since the defendant failed to establish that the it is a joint family property, the same is separate property of Mayavathi. The said house site in Survey Nos.76/6 and 76/7 are found in Item No.4 of Suit 'B' Schedule. Hence, the Suit is not bad for partial partition. Further, it concluded that the Plaintiff Nos.3 to 5 are each entitled to 1/8 share in the Suit Properties. Accordingly, the First Appellate Court partly allowed the appeal and modified the Trial Court's Judgment and Decree to the effect that the plaintiffs 3 to 5 are entitled to each 1/8 share in the Suit Properties.



S.A.No.141 of 2020

WEB CC

Substantial Question of Law:

8. Feeling aggrieved with the Judgment and Decree passed by the First Appellate Court, the plaintiffs have preferred this Second Appeal which was admitted on 09.08.2024 on the following Substantial Question of Law:

*"Whether the judgment and decree of the trial Court as well as the first appellate Court are correct in view of the amendment made in Section 6 of the Hindu Successions Act, 1956 (Act No.39 of 2005) and in view of the decision of Hon'ble Supreme Court in **Vineeta Sharma V. Rakesh Sharma and Others** reported in (2020) 9 SCC Page 1?"*

Arguments

9. The learned Counsel for the plaintiffs submits that the Suit Properties are ancestral properties. The 2nd plaintiff who is the daughter of Govindasamy and a co-parcener by birth is entitled to equal share along with the defendant in view of the H.S.Act as amended by the Central Act No.39 of 2005. He further submits that the dismissal by the Trial Court in respect of 9th Item of Suit 'B' Schedule property is erroneous. The First Appellate Court without appreciating the facts and circumstances and without considering the Central Act No. 39 of 2005 in the right



S.A.No.141 of 2020

perspective, passed its Judgment and Decree. He also submits that the 1st plaintiff died intestate after the First Appellate Court's Judgment and Decree. Hence, as per the dictum laid down in the case of *Vineeta Sharma -vs- Rakesh Sharma and Others* reported in (2020) 9 SCC 1, the 2nd plaintiff is entitled to 6/12 share and the plaintiffs 3 to 5 are entitled to 1/12 share each (collectively 3/12). Thus, totally the plaintiffs are entitled to 9/12 share and the defendant is entitled to 3/12 share. He further submits that the alleged marriage between the defendant and the said Vellachi has not been proved. Hence, the children born to the defendant through Vellachi, namely Sasikumar and Thamizharasi are not entitled to any share in the Suit Properties. Hence, they are not necessary parties to this Suit. Accordingly, the learned Counsel prays to allow this Second Appeal.

9.1. He would rely on the following decision:

- (i) *M.M. Kumaresan's Case* – [M.M. Kumaresan -vs- M. Shanmugavadivu, reported in 2024 SCC OnLine Mad 2863]



S.A.No.141 of 2020

10. In response, the learned Counsel for the defendant submits that the Trial Court passed the Preliminary Decree granting 1/6 share each to the plaintiffs 1 and 2, and 2/12 share each to the plaintiffs 3 to 5 as well as the defendant in the Suit Properties. Against which, the plaintiffs did not prefer any appeal. Under these circumstances, the Trial Court's findings reached finality as far as the plaintiffs are concerned. Hence, this Second Appeal is not maintainable. He further submits that the First Appellate Court after considering the evidence and documents, rightly passed the Judgment and decree in which there is no need for interference of this Court.

10.1. He further submits that the defendant's grandfather - Adhimoolam died in or about 1969-1970. On the date of death of Adhimoolam, the defendant had already been born. Hence, the defendant was a co-parcener along with his father Govindasamy and grandfather - Adhimoolam. Hence, immediately after the death of Adhimoolam, the defendant, as a co-parcener would be entitled to 1/4 share. He further submits that though the marriage between the defendant and the said Vellachi is a void one, the children born to them namely Sasikumar and Thamizharasi are entitled to share in the Suit Properties. Hence, the above

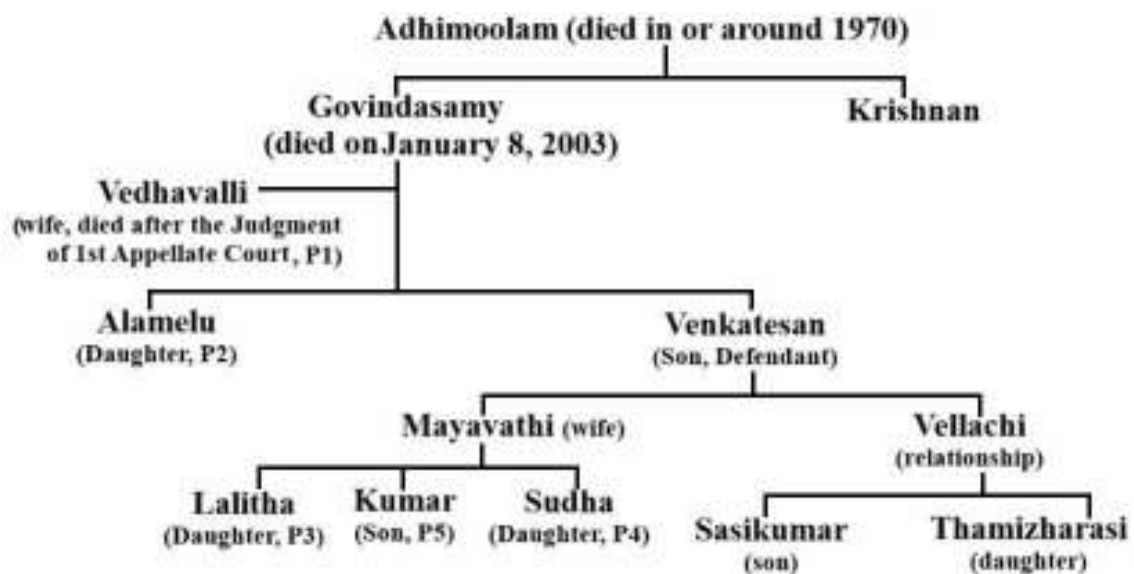


S.A.No.141 of 2020

said persons are necessary parties to the Suit. But they have not been added as parties. Hence, the Suit is bad for non-joinder of necessary parties. Accordingly, he prays to dismiss this Second Appeal.

Discussion:

11. Based on the pleadings, the following Genealogy chart is drawn to show the relationship between the parties:



12. The Suit Properties are ancestral properties. Govindasamy died on January 8, 2003. The original owner - Adhimoolam, grandfather of the 1st plaintiff and the defendant passed away around 1970, leaving behind two sons – Govindasamy and Krishnan. After the demise of Adhimoolam, Govindasamy and Krishnan orally divided their ancestral



S.A.No.141 of 2020

properties, whereby Suit 'B' Schedule properties were allotted to

Govindasamy. Further, in the said Oral Partition, Item Nos.4 to 7 of Suit

'C' Schedule properties were allotted to the share of Govindasamy along

with half share in Item Nos. 1 to 3 thereof. The remaining half share in

Item Nos. 1 to 3 were allotted to the share of Krishnan in the said Oral

Partition, which were later sold by Krishnan to Govindasamy. The Suit 'D'

Schedule properties were purchased from and out of the income derived

from the Suit 'B' and 'C' schedule properties. There is no dispute with

respect to the above said facts. Further, there is no dispute with respect to

the fact that the 2nd plaintiff is the sister of the defendant and Plaintiff Nos.

3 to 5 are children of the defendant born through his wife – Mayavathi;

and that Sasikumar and Thamizharasi were born to the defendant through

Vellachi. The dispute lies in whether Sasikumar and Thamizharasi were

born in a wedlock or not. The defendant contends that he and the Vellachi

are living as husband and wife after his wife – Mayavati deserted him and

only in the said relationship Sasikumar and Thamizharasi were born to

them. Admittedly, during the subsistence of marriage with the first wife,

the defendant got into a relationship with Vellachi. Hence, even while

assuming that the defendant and Vellachi had got married, the marriage is



S.A.No.141 of 2020

void, and the children born in void marriage would not be entitled to the

property of any co-parcener other than that of their parents. It is pertinent

to cite the decision of Hon'ble Supreme Court in **Revanasiddappa -vs-**

Mallikarjun, reported in (2023) 10 SCC 1, whereby the Hon'ble Supreme

Court has settled the law in this regard. Relevant extract is hereunder:

“81.We now formulate our conclusions in the following terms:

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 the amending Act, 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is 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 avoid 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;

81.4.*While construing the provisions of Section 3(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 avoid 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(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 recognise 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 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 9-9-2005 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 I 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 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;

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



S.A.No.141 of 2020

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 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; and

81.10.The provisions of the HSA, 1956 have to be harmonised 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 ascertained in terms of



S.A.No.141 of 2020

the Explanation to sub-section (3), as interpreted above.

82. Before concluding, it would be necessary to clarify that the reference to the three-Judge Bench in this batch of cases is confined to joint Hindu families governed by Mitakshara law. This Court has, therefore, dwelt on the interpretation of the provisions of the HSA, 1956 in relation to joint Hindu families of that class.”

(Emphasis supplied by this Court)

13. Thus, it is clear that Sasikumar and Tamizharasi born in the relationship between the defendant and Vellachi, are not entitled to any right/interest in the coparcenary property. They can claim share only in their parents’ share after their lifetime. Hence, Sasikumar and Tamilzharasi are not necessary parties to the Suit. The First Appellate Court rightly concluded so and there is no need for interference with the said finding.

14. As regards the defendant’s contention of partial partition, the First Appellate Court in its Judgment under Point No.(2) has held thus:

“On perusal of Ex.B.6, it is found that that patta no. 825 in S.no. 403/2010 stands in the name of Mayavathi W/o. Venkatesan. The defendant not produced any evidence that alleged property was purchased from the income of Govindhasamy padaiyatchi. Therefore it was only her separate property. On perusal of Ex.B.7 and Ex.B.8 with respect to the



S.A.No.141 of 2020

property in R.S.no. 76/6 and 76/7 ad measuring 18 1/2 cents changed as R.S.no. 385/5, 385/6 as per patta no. 728, 826. The plaintiff included the alleged property as item 4 in B schedule of property. Therefore the contention of the defendant that the suit was bad for partial partition is not sustainable and the point is answered accordingly.”

15. The above findings are based on evidence on record, namely Ex-B.6 – Patta and the Plaint. This Court does not find any illegality or infirmity with the same. Hence, as regards the defendant’s contention of partial partition, the First Appellate Court’s finding holds good.

16. Another contention of the defendant is that the 2nd plaintiff has no right in the Suit Properties as she relinquished the same at the time of demise of father – Govindasamy in 2003. It is a settled legal position that when the law postulates that transfer must be in writing and registered, it can be done that way only. If law does not require a written document, then transfer can be made orally. As per the Transfer of Property Act, 1882, relinquishment need not be in writing. Hence, oral relinquishment is valid. But it has to be proved and the burden is upon the



S.A.No.141 of 2020

person who asserts oral relinquishment [*See Ramdas Chimna Vs.*

Pralhad Deorao reported in AIR 1965 Bom 74]. In this case, the defendant failed to adduce any oral or documentary evidence to prove the oral relinquishment. Mere pleading does not amount to proof. Hence, the contention of the defendant regarding partial partition deserves to be rejected.

17. As far as the finding regarding Item No.9 of the Suit “B” Schedule Properties is concerned, during the course of arguments both sides contended that it belongs to their family. To be noted, this is a Suit for partition. Either the plaintiff or the defendant ought to have filed document to show that the Item No. 9 belongs to their family. But they have failed to do so. No doubt that in a Final Decree proceeding, a property inadvertently omitted in the Suit may even be included on proof. Similarly, on proof by either side, Item No.9 shall be included for partition in the Final Decree Proceedings. If the said property does not belong to them, or if not proved that it belongs to their family by either side, the same shall be excluded during final decree proceedings.

18. Yet another contention of the defendant is that since the



S.A.No.141 of 2020

2nd plaintiff was born before the commencement of the H.S.Act, she is not a co-parcener. Further contentions is that in this case, Preliminary Decree was passed on October 27, 2010 against which no appeal was preferred by the plaintiffs. Hence, the benefit of ***Vineeta Sharma's Case (supra)*** cannot be extended to the plaintiff.

19. There is no evidence available on record to assert that the 2nd plaintiff was born before 1956 *i.e.*, before the commencement of the H.S.Act. Even while assuming that she was born before 1956, she would still be entitled to coparcenary property as a coparcener. The answers to the above contentions of the defendant are found in ***Vineeta Sharma's Case (supra)***. Relevant extract is hereunder:

"129.Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.



S.A.No.141 of 2020

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.”

(Emphasis supplied by this Court)

19.1. At this juncture, it is fruitful to cite a division bench Judgment of this Court in **M.M. Kumaresan’s Case** (*supra*) relied on by learned Counsel for the plaintiffs, wherein this Court relying on **Vineeta Sharma’s Case** has held thus:

“18.1. The Hon’ble Supreme Court in **Vineetha Sharma’s case** (*supra*), has held that daughter of coparcener, just like son of coparcener, becomes a coparcener at the very moment of their birth; however, the right conferred at the



S.A.No.141 of 2020

very moment of their birth is exercisable prospectively on and from the date of commencement of the Section 6 of the H.S. Act as amended by 2005 H.S. Amendment Act i.e., on and from September 9, 2005. Relevant extract is hereunder:

“73. It was vehemently argued that if the daughter is given the right to be a coparcener by birth and deemed to become a coparcener at any point in the past, in the normal working of the law, uncertainty would be caused. In our opinion, no uncertainty is brought about by the provisions of section 6 as the law of Mitakshara coparcenary makes the share of surviving coparceners uncertain till actual partition takes place. Uncertainty in the right of share in a Mitakshara coparcenary is inhered in its underlying principles, and there is no question of upturning it when the daughter is treated like a son and is given the right by birth; to be exercised from a particular date, i.e., 9.9.2005. It is not to resurrect the past but recognising an antecedent event for conferral of rights, prospectively.”

(Emphasis supplied)”

20. From the above, it is clear that *Vineeta Sharma’ Case* places the daughter on equal footing with the son. A son regardless of whether he is born before or after the commencement of the H.S.Act is



S.A.No.141 of 2020

considered as a coparcener by birth. When the daughter is placed on equal footing with son, it can only be that whether or not the daughter is born after the commencement of the H.S.Act, she is entitled to the coparcenary property as a coparcener by birth, just like the son.

21. Admittedly, the Suit Properties were ancestral properties in the hands of Govindasamy. During the life time of Govindasamy, he, his daughter – Alamelu and the defendant were co-parceners each entitled to 1/3 share in the Suit Properties as per Section 6 of the H.S.Act. Govindasamy died on January 8, 2003, leaving behind his 1/3 share in the Suit Properties. Upon his demise, his 1/3 share shall devolve upon his wife – Vedavalli / 1st plaintiff, his daughter – Alamelu / 2nd plaintiff and his son – Venkatesan / defendant under Section 8 of the H.S.Act. In other words, each are entitled to 1/9 share in the Suit Properties under Section 8 of the H.S.Act. This Court was informed by both sides that the 1st plaintiff died intestate after the pronouncement of the First Appellate Court's Judgment. Hence, her 1/9 share in the Suit Properties shall devolve upon the 2nd plaintiff and the defendant under Section 15(1)(a) of H.S.Act *i.e.*, each would be entitled 1/18 share. As regards the defendant's 1/3 share in the



S.A.No.141 of 2020

Suit Properties acquired under Section 6 of the H.S.Act, it retains the character of coparcenary property *qua* Plaintiff Nos.3 to 5. Hence, the Plaintiff Nos. 3 to 5 are entitled 1/12 share each in the Suit Properties.

22. To sum up, the 2nd plaintiff is entitled to $1/3 + 1/9 + 1/18 = 18/36 = 1/2$ share in the Suit Properties. The Plaintiff Nos.3 to 5 are entitled to $1/12 + 1/12 + 1/12 = 9/36 = 1/4$ share in the Suit Properties. The defendant is entitled to $1/12 + 1/9 + 1/18 = 9/36 = 1/4$ share in the Suit Properties.

23. As regards the contention of the defendant that Preliminary Decree has been passed by the Trial Court and rights of the parties have been determined and since the plaintiffs did not prefer an appeal under Section 96 of Code of Civil Procedure, 1908 over the Judgment and Decree of the Trial Court, they cannot seek redetermination of shares in accordance with *Vineetha Sharma's Case*. This contention is rejected on two grounds. Firstly, the appeal is a continuation of the Suit. Secondly, a Suit for partition is not disposed of by a Preliminary Decree. It is apposite to cite the decision of Hon'ble Supreme Court in *Ganduri*



S.A.No.141 of 2020

Koteshwaramma v. Chakiri Yanadi, reported in **(2011) 9 SCC 788**,

wherein *inter alia* relying on **S.Sai Reddy -vs- Narayana Reddy**, reported in **(1991) 3 SCC 647**, it was held thus:

“14.A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation.

15.We are fortified in our view by a three-Judge Bench decision of this Court in Phoolchandv.Gopal Lal [AIR 1967 SC 1470] wherein this Court stated as follows: (AIR p. 1473, para 7)

“7. We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the



S.A.No.141 of 2020

preliminary decree some parties die and shares of other parties are thereby augmented. ... So far therefore as partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so; ... There is no prohibition in the Code of Civil Procedure against passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Code of Civil Procedure does not contemplate such a possibility. ... for it must not be forgotten that the suit is not over till the final decree is passed and the court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties. ... a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf and that dispute is decided the decision amounts to a decree."

16.*This Court in S. Sai Reddy v. S. Narayana Reddy [(1991) 3 SCC 647] had an occasion to consider the question identical to the question with which we are faced in*



S.A.No.141 of 2020

the present appeal. That was a case where during the pendency of the proceedings in the suit for partition before the trial court and prior to the passing of final decree, the 1956 Act was amended by the State Legislature of Andhra Pradesh as a result of which unmarried daughters became entitled to a share in the joint family property. The unmarried daughters Respondents 2 to 5 therein made application before the trial court claiming their share in the property after the State Amendment in the 1956 Act. The trial court by its judgment and order dated 24-8-1989 rejected their application on the ground that the preliminary decree had already been passed and specific shares of the parties had been declared and, thus, it was not open to the unmarried daughters to claim share in the property by virtue of the State Amendment in the 1956 Act. The unmarried daughters preferred revision against the order of the trial court before the High Court. The High Court set aside the order of the trial court and declared that in view of the newly added Section 29-A, the unmarried daughters were entitled to share in the joint family property. The High Court further directed the trial court to determine the shares of the unmarried daughters accordingly.

17.The appellant therein challenged the order of the High Court before this Court. This Court considered the matter thus: (S. Sai Reddy case[(1991) 3 SCC 647] , SCC pp. 651-52, para 7)

“7. ... A partition of the joint Hindu family can be effected by various modes viz. by a family settlement, by a registered instrument



WEB COPY



S.A.No.141 of 2020

of partition, by oral arrangement by the parties, or by a decree of the court. When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (ii) of Section 29-A of the Act became applicable. This intervening event which gave shares to Respondents 2 to 5 had the effect of varying shares of the parties like any supervening development. Since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women which is a vulnerable section of the society in all its strata, it is necessary to give a liberal effect to



WEB COPY



S.A.No.141 of 2020

it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment. Spurious family settlements, instruments of partitions not to speak of oral partitions will spring up and nullify the beneficial effect of the legislation depriving a vast section of women of its benefits.” ”

(Emphasis supplied by this Court)

24. In view of the above judicial pronouncement, even though the plaintiffs did not file any appeal under Section 96 of the Code of Civil



S.A.No.141 of 2020

Procedure, 1908 against the Judgment and Decree passed by the Trial Court, this Second Appeal filed by the plaintiffs seeking to redetermine their rights over the Suit Properties is maintainable in view of the change in circumstances viz., the interpretation of Section 6 of the H.S.Act as amended by the Central Act No.39 of 2005 in *Vineetha Sharma's Case*.

25. In view of the narrative thus far, this Court is of the view that the Judgment and Decree of the Trial Court as well as the First Appellate Court are not in accordance with *Vineeta Sharma's Case*. The Substantial Questions of Law arising in this Second Appeal are answered accordingly.

Conclusion

26. Resultantly, this Second Appeal is **allowed**. The Judgment and Decree of the Trial Court as well as the First Appellate Court are hereby modified and a Preliminary Decree is passed in the following terms:

- (i) The second plaintiff is entitled to 18/36 share in all items of the Suit Properties
- (ii) The plaintiffs 3 to 5 are collectively entitled to 9/36



S.A.No.141 of 2020

share in all items of the Suit Properties.

WEB COPY

27. Considering the relationship between the parties, there shall be no order as to the costs. Consequently, connected Miscellaneous Petition is closed.

23.10.2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
ksa-2/tk



S.A.No.141 of 2020

To
WEB COPY

1. The Additional District Judge
(Fast Track Court)
Villupuram
2. The Principal Subordinate Judge
Villupuram.
3. The Section Officer,
VR Section,
High Court,
Madras.



WEB COPY



S.A.No.141 of 2020

R.SAKTHIVEL, J.

Ksa-2/tk

S.A.No.141 of 2020

23.10.2024