



S.A.No.1283 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.1283 of 2019

Tmt.Banumathi,
W/o.Balaraman, D/o.Venkatesa Koundar,
Residing at Kanisapakkam Village,
Panruti Taluk,
Cuddalore District.

... Appellant/Plaintiff

/versus/

1. Mr.Subramanian,
S/o.Venkatesa Koundar.

2. Mr.Narayanan,
S/o.Venkatesa Koundar.

Respondents 1 & 2 both are residing at
Kanisapakkam Village,
Panruti Taluk.

3. Mrs.Divya,
W/o.Ponnambalam,
Residing at Vakoor Village,
Villupuram Taluk.

4. Mrs.Vasanthi,
W/o.Sundramurthy, D/o.Venkatesa Koundar,
Residing at Mariamman Koil Street,
Maharajapuram, Villupuram Taluk.

... Respondents/Defendants.



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Prayer: Second Appeal has been filed under Section 100 of C.P.C., by setting aside the decree and judgment of the Principal District Judge, Cuddalore District, Cuddalore dated 31.07.2019 made in A.S.No.56 of 2017 which confirming the decree and judgment of the Lower Trial Court Subordinate Judge Panruti, dated on 15.02.2017 made in O.S.No.146 of 2012.

For Appellant : Mr.B.Gandhi

For R1 & R2 : Ms.R.Meenal

For R3 : Served

J U D G M E N T

The appellant is the plaintiff in a suit for partition. The trial Court as well as the First Appellate Court dismissed the suit filed by the appellant on the ground that the suit property was ancestral in nature and admittedly the appellant having been married before 1989, in view of the Tamil Nadu State Amendment to Section 29, she was not entitled to a share in the suit property, holding that such female heirs were not coparceners.



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2. The above Second Appeal was admitted on 20.12.2023 on the

following substantial question of law:

*“Whether the findings of the Courts below that the appellant/plaintiff was not entitled to share in the suit property by virtue of amendment introduced to Hindu Succession Act in the year 2005 is sustainable, in the light of law laid down by the Hon'ble Apex Court in **Vineeta Sharma vs. Rakesh Sharma and Others** reported in (2020) 9 SCC 1?”*

3. I have heard Mr.B.Gandhi, Learned Counsel for the appellant and the Ms.R.Meenal, Learned Counsel for the respondents.

4. The Learned Counsel for the appellant would state that in view of the change in legal position as settled by the judgment of the Hon'ble Supreme Court in **Vineeta Sharma -vs- Rakesh Sharma and Others** reported in (2020) 9 SCC 1, a daughter would also become a coparcener, irrespective of the date of her marriage or the date of death of her father. The only ground on which the appellant has been non-suited in the present case is that she was married before 1989. In view of the pronouncement of the Hon'ble Supreme Court, the appellant



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is certainly to be treated as a coparcener, on an equal footing along with her brothers and the appellant would be entitled to a share.

5. Per contra, Ms.R.Meenal, Learned Counsel for the respondents would contend that both the Courts have concurrently found that the properties are ancestral property and the respondents have also specifically taken a stand that the plaintiff's share stood ousted in view of her own conduct. She would also bring to my notice the fact that the plaintiff herself had admitted in cross examination that she was given properties.

6. Firstly, I do not find the plea of ouster to be specifically taken in the written Statement. In the written statement, the only defence raised against the claim for partition is that the properties were ancestral in nature and there was an oral partition of the joint family properties before the Village Panchayat, in the presence of the plaintiff and therefore, the plaintiff had personal knowledge and constructive notice and was thus estopped to claim any share in the property. The said claim of oral partition before the Panchayat has not been established by the respondents and admittedly, there was no written relinquishment of the share of



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the plaintiff. In fact, the specific case of the respondents is that the plaintiff was not entitled to any share in the first place.

7. Thus, I am unable to accept the contentions advanced by the Learned Counsel for the respondents. The substantial question of law is answered in favour of the appellant/plaintiff. The judgment and decree passed by the Courts below are set aside and there shall be a preliminary decree granting 1/5th share in the suit property in favour of the appellant/plaintiff.

8. In fine, this ***Second Appeal is allowed.*** There shall be no order as to cost.

08.02.2024

Index : Yes/No.
Speaking Order/Non-Speaking order
bsm

Copy to:-

1. The Principal District Judge, Cuddalore District.
2. The Subordinate Judge, Panruti.
3. The Section Officer, V.R Section, High Court, Madras.

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P.B.BALAJI, J.

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