



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

**A.S(MD)No.116 of 2014
and
M.P(MD)No.1 of 2014**

Tamilselvi

... Appellant/Plaintiff

.Vs.

Karumbachalam

... Respondent/Defendant

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code r/w Order 41 Rule 1 and 2 of Civil Procedure Code to set aside the judgment and decree made in O.S.No.54 of 2012, dated 28.2.2014, on the file of Principal District Judge, Pudukkottai regarding the fraction of share and decree the suit as prayed for.

For Appellant : M/s.Divya Bharathy

For Respondent : Mr.N.Balakrishnan



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JUDGMENT

(Order of the Court was made by **P.VELMURUGAN,J**)

The Appeal Suit is directed against the judgment and decree made in O.S.No.54 of 2012, dated 28.02.2014, on the file of Principal District Judge, Pudukkottai regarding the fraction of share and to decree the suit as prayed for.

2.The plaintiff is the appellant. The defendant is the respondent. The appellant filed O.S.No.54 of 2012, on the file of Principal District Judge, Pudukkottai for partition. The said suit was partly decreed and though the appellant sought for half share in the suit property, however, the trial Court granted a decree for $\frac{1}{4}$ share in a preliminary decree for partition. Aggrieved over the same, the plaintiff has filed the present appeal suit.

3.The case of the plaintiff before the trial Court is that the suit property originally belong to one Vankatachalam.The said Venkatachalam had two wives namely, Dhanalakshmi and Backiathammal. The father of the plaintiff Rengarajan born through Dhanalakshmi. The said Rengarajan got children by name Tamilselvi, the plaintiff herein and the defendant Kaumbachalam and one



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Sumathi, who died before filing of the suit. Through Backiatammal, Venkatachalam got three children and they are Gopalakrishnan, Radhakrishnan and Janakalakshmi. Both Gopalakrishnan and Radhakrishnan died as bachelors. Therefore the property of Venkatachalam goes to Rengarajan and Janakalakshmi. Apart from the suit property, one another property situated at Oorappatty village and there was partition between Backiathammal and her daughter Janakalakshmi. The suit property was allotted to the share of Rengarajan and other properties were allotted to the share of Janakalakshmi and her mother. The father of the appellant Rengarajan died on 14.8.1983 and after the demise of their father, the plaintiff and defendant are enjoying the suit property and there is a misunderstanding between the plaintiff and defendant and therefore, the plaintiff sought for half share in the suit property, since the plaintiff and defendant are the legal heirs of Rengarajan and hence, both are entitled to half share in the suit property. Since the defendant evade to settle her share in the suit property with metes and bounds, she has filed the suit for partition.

4. The case of the defendant is that the alleged partition, dated 20.10.1980 is false and the same has to be proved by the appellant. The father of the



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defendant Rengarajan died in the year 1983 itself. The defendant at the time of death of his father is aged only three years. Thereafter, the defendant was studying in an Orphanage School at Thirupalathurai run by Vivekananda Mutt. The respondent's mother also died in the year 1994. Even the death of the mother was also not intimated to the respondent. The appellant has suppressed the existence of the respondent and obtained employment of her father on compassionate grounds, shown as a dependant. The defendant got another sister by name, Sumathi and she became insane in the year 1985 itself. The appellant even did not give any appropriate treatment to her sister Sumathi. The appellant obtained the signature of the respondent when he was only 18 years and obtained the sinature of their sister Sumathi, when she was insane and sold the family properties and the appellant appropriated all the sale consideration for her personal benefits. The sale proceeds was not utilized for the benefit of all the persons of the family and even she did not spend a single pie towards medical expenses of her sister Sumathi. The appellant also divorced her husband and remarried in the year 2000. The appellant did not care about the respondent's marriage. The appellant created a registered partition deed, dated 10.10.2008 and valuable propeties were allotted to her share and only the valueless properties



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were allotted to the share of the respondent. Even after the death of the mother of the defendant, the appellant is in possession and enjoyment of the property and a small extent of the properties have not been partitioned and those properties were not included in the suit and the properties covered in the partition, dated 10.10.2008 also has to be included in the suit, since no partition has taken place on 10.10.2008, as alleged by the plaintiff. Since their father died on 14.08.1983 even prior to the new amended Succession Act came into force, the respondent and his father Rengarajan each are entitled to half share in the joint family properties including the suit property. After the death of the father, father share goes to the appellant and respondent and the respondent is entitled to $\frac{3}{4}$ share in the said property. The appellant is entitled to $\frac{1}{4}$ share ie, half share from the share of the father. Therefore the appellant is entitled to $\frac{1}{4}$ share and the description of properties as shown in the plaint is also not correct. The appellant has approached the Court with unclean hands. She has suppressed several material facts and therefore the suit is liable to be dismissed. Even assuming that the plaintiff is entitled to only $\frac{1}{4}$ share and not half share as pleaded by the plaintiff.



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5. Based on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to get half share in the suit property?
2. Whether the plaintiff is entitled to get $1/4^{\text{th}}$ share in the suit property?
3. To what other relief, the plaintiff is entitled to?

6. After framing of issues, during trial, on the side of the appellant, the appellant herself examined as P.W.1 and four documents were marked as Ex.A1 to Ex.A4. On the side of the defendant, the defendant himself examined as D.W.1 and three documents were marked as Ex.B1 to Ex.B3.

7. On conclusion of trial and hearing of the arguments advanced on either side, the trial Court passed a preliminary decree for partition in favour of the appellant for $1/4$ share in the suit property. Aggrieved over the same, the plaintiff in the suit has filed the present appeal before this Court.

8. The learned counsel for the appellant would submit that admittedly when the new Amended Act, 2005 of Succession came into force, the appellant and



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respondent are alone the co-parcenors. As per the new Amended Act, 2005 of Succession, all the family members have become co-parcenors and hence the appellant is entitled to share on par with the respondent and thus the appellant is entitled to half share in the suit property. However, the trial Court failed to consider the same and hence, the appeal suit to be allowed.

9.The learned counsel for the respondent would submit that the properties are of small extent and the appellant had suppressed the existence of the respondent and on the death of their father, the appellant has shown herself as the only dependant and got compassionate appointment, as the respondent who is a small boy at the relevant point of time and studying in an Orphanage school run by Vivekananda Mutt. Even when the respondent was aged 18 years, the appellant got several properties as if they were partitioned and all the valuable properties were allotted to the share of the appellant plaintiff and the suit property was of small extent. The learned counsel further submit that their father died on 14.08.1983 and on the date of death of their father, the succession opens. Therefore their father is entitled to half share and the respondent is entitled to half share and hence the appellant is entitled to only $\frac{1}{2}$ share from the share of her



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father. Therefore, the trial Court decreed the suit for partition by passing a preliminary decree in respect of $\frac{1}{4}$ share in the suit property and as such, there is no merit in the appeal. Moreover, the learned counsel for the respondent placing reliance in the decision of *Vineeta Sharma and Rakesh Sharma and others reported in (2020) 9 Supreme Court Cases 1* and submitted that as on the date of death of their father, succession opens and the notional partition effected and therefore there is no merit in the appeal suit.

10.The points for determination that arose for consideration in this appeal suit is :

1.Whether the appellant is entitled to half share in the suit property and whether the preliminary decree passed by the trial Court in respect of $\frac{1}{4}$ share in the suit property, is correct?

2.Whether succession opens as on the date of death of their father on 14.08.1983 and whether there is any significance for the date of death of their father?

11.The specific case of the appellant is that the suit property is an ancestral



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property and the father of the appellant and defendant is Rengarajan and the said Rengarajan died on 14.8.1983 and the mother also died thereafter in the year 1994. One of the sisters Sumathi also died prior to the filing of the suit. So after the demise of all the persons abovementioned, the suit property was enjoyed by the appellant and respondent as co-parcenors. The appellant requested the respondent to partition the suit property with metes and bounds. Since the respondent denied for the same, the plaintiff has filed the suit. Since the appellant is a co-parcenor and the new amended Act of Succession on the date of partition came into force, the property was undivided joint family property and therefore both the appellant and respondent are each entitled to half share in the suit property.

12. The specific case of the respondent is that the appellant suppressed several material facts and has not included the other properties for partition. However, the father died on 14.08.1983 prior to the new amended Act of Succession came into force. Therefore, on the date of death of their father, the notional partition effected and therefore, their father is entitled to half share and respondent is entitled to half share in the suit property. The appellant is entitled to



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half share from the half share of her father and hence, the appellant is entitled to only $\frac{1}{4}$ share and the respondent is entitled to $\frac{3}{4}$ share. The trial Court has rightly held that there is no merit in the appeal.

13. Point No.1:

Admittedly the suit property belongs to Venkatachalam and the appellant and respondent are the grand-son and grand-daughter of Venkatachalam and the father of the appellant and respondent Rengarajan died on 14.08.1983. Admittedly after the death of the father of the appellant and respondent, the suit property continue to be an undivided joint family property. Admittedly, the appellant filed the suit for partition claiming half share in the suit property since the appellant is also a co parcenor and from the date of amendment of Central Act, 2005 and according to the plaintiff, she is a co parcenor and hence, she is entitled to half share on par with the respondent. After the amendment, the appellant as a female heir, is also a co parcenor on par with the male member in the undivided joint family property. Since the respondent did not divide and hand over the half share in the suit property to the appellant, she filed the suit for partition.



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14. According to the respondent, since the suit property is a joint family property, as a male member of the family, father Rengarajan is entitled to half share and the respondent is entitled to half share in the suit property and on the demise of the father on 14.08.1983, father's half share goes to the appellant and respondent. Therefore, the appellant is entitled to $\frac{1}{4}$ share in the suit property from the share of her father. The respondent is also entitled to $\frac{1}{4}$ share from the share of his father. Already the respondent is entitled to $\frac{1}{2}$ share as a coparcenor and therefore, the respondent is entitled to $\frac{3}{4}$ share and the appellant is entitled to $\frac{1}{4}$ share. The further case of the respondent is that father died and soon after the death of the father on 14.08.1983, succession opens and therefore if at all the appellant is having any right, she can get the right from her father's share and the Amended Act came into force much later in the year 2005. Since succession opens in the year 1983 on the death of their father and therefore, she is not entitled to half share.

15. Admittedly, the amended Act came into force in the year 2005 and admittedly, on the date of the amended Act came into force, the suit property was an undivided joint family ancestral property and therefore, on the date of



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amendment, the appellant has become a co parcenor and since the property was not divided on the date of the amendment, the appellant is entitled to share on par with the respondent. As per the amended Act, 2005, female member has become co parcenor on par with the male member. Though the learned counsel for the respondent would submit that succession opens on the date of death of the father itself, however, in the case of **Vineeta Sharma** as cited supra, the date of death of the father is immaterial and admittedly, the suit property is an ancestral property and father died in the year 1983 and the property continued to be an undivided property even after the amended Act, 2005 came into force and therefore, as per the amended Act, 2005, the appellant is also entitled to equal share on par with the respondent, since the appellant has become a co parcenor. The property is also admittedly an ancestral property. Therefore, on the date of amended Act, 2005 came into force, admittedly the property continued to be an undivided joint family property. As per the provisions of Section 6 of the amended Act, 2005, the appellant has become a co parcenor and she is entitled to equal share on par with the male member. Section 6 of the amended Act, 2005, reads as under:



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51. *The substituted provision of Section 6 by the 2005 Amendment Act is extracted hereunder:*

“6. Devolution of interest in coparcenary property.—*(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall—*

(a) by birth become a coparcener in her own right 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 20th day of December, 2004.

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



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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 and—*

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

(b) the share of the predeceased 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 predeceased son or of such predeceased daughter; and

(c) the share of the predeceased child of a predeceased son or of a predeceased 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 predeceased child of the predeceased son or a predeceased daughter, as the case may be.

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

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father,



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grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

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

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

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

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

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

16. Therefore, in this case, from the oral and documentary evidence, it is



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seen that the appellant as a daughter of Rengarajan and grand-daughter of Venkatachalam and on the date of amended Act, 2005 came into force, the property continued to be a joint family property. Therefore, in these circumstances, in view of the Amended Section 6 of the Hindu Succession(Amendment) Act, 2005, since the appellant has become a co parcenor, she is entitled to half share on par with the respondent and this point is answered accordingly and as such, the appellant is entitled to half share in the suit property.

17.As far as second point is concerned, admittedly, as already decided by this Court that the suit property is an ancestral property and in view of the amendment to Hindu Succession(Amendment)Act, 2005, the female members have become a co parcenor and hence, she is entitled to half share in the suit property on par with the respondent. However, the learned counsel for the appellant would submit that the father of the appellant died on 14.08.1983 and on that date, the mother of the appellant was also alive and one of the sisters was also alive and further, on the date of death of the father of the appellant Rengarajan succession opens. Therefore, as a male member, by birth, the respondent is entitled to half share and the father of the appellant is entitled to



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half share and therefore the appellant, respondent, mother and sister of the appellant, they are all entitled to $\frac{1}{4}$ share from the share of the father of the appellant and respondent. In the meanwhile, mother of the appellant died in the year 1994 and sister also died. Therefore, their share comes to both the appellant and respondent. However, the appellant is entitled to $\frac{1}{4}$ share in the suit property and the respondent is entitled to $\frac{3}{4}$ share. In this regard, the contention of the learned counsel for the respondent is not acceptable, for the reason that once the property is continued to be a joint family property when the amended Act, 2005 came into force, the property was undivided property and the female heir became a co-parcener on par with the male member and mother and sister also died intestate prior to amendment Act came into force, therefore, since the property was an undivided property, both the appellant and respondent alone are co-parceners, both are entitled to half share each and the death of the father of the appellant is immaterial and in this regard, it is pertinent to refer to para 74 of the Vineet Sharma's case as cited supra which reads as under:

“74. The argument raised that if the father or any other coparcener died before the 2005 Amendment Act, the interest of the father or other coparcener would have already merged in the



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surviving coparcenary, and there was no coparcener alive from whom the daughter would succeed. We are unable to accept the submission because it is not by the death of the father or other coparcener that rights accrue. It is by the factum of birth. It is only when a female of Class I heir is left, or in case of her death, male relative is left, ⁵⁸ the share of the deceased coparcener is fixed to be distributed by a deemed partition, in the event of an actual partition, as and when it takes place as per the proviso to unamended Section 6. The share of the surviving coparcener may undergo change till the actual partition is made. The proviso to Section 6 does not come in the way of formation of a coparcenary, and who can be a coparcener. The proviso to Section 6 as originally stood, contained an exception to the survivorship right. The right conferred under substituted Section 6(1) is not by survivorship but by birth. The death of every coparcener is inevitable. How the property passes on death is not relevant for interpreting the provisions of Section 6(1). Significant is how right of a coparcener is acquired under Mitakshara coparcenary. It cannot be inferred that the daughter is conferred with the right only on the death of a living coparcener, by declaration contained in Section 6, she has been made a coparcener. The precise declaration made in Section 6(1) has to be taken to its logical end; otherwise, it would amount to a denial of the very right to a daughter expressly



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conferred by the legislature. Survivorship as a mode of succession of property of a Mitakshara coparcener, has been abrogated with effect from 9-9-2005 by Section 6(3).”

18.From the above said decision, it is seen that the date of death of the father is not significant and only the Court has to see as to whether the property continued to be a joint family property on the date of amended Act, 2005 came into force. Admittedly, in this case, father of the appellant died on 14.8.1`983 and other members also died prior to 2005 new amended Act came into force, but the property continued to be joint family property even on the date of new amended Act, 2005 came into force and therefore, on the date of the new amended Act, 2005 came into force, the female member becomes co parcenor. In this case, the appellant has become co parcenor. Therefore, she is entitled to get equal share on par with the respondent. Therefore, both the appellant and respondent are each entitled to half share in the suit property and this point is answered accordingly.

19.As per the decision of the Honourable Supreme Court in the case of ***Kattukandi Edathil Krishnan and another .vs. Kattukandi Edathil Valsan and***

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others reported in **2022 LiveLaw (SC) 549**, the Trial Court is directed to comply with para 33 of the said Judgment in case the plaintiff has not filed application for final decree so far. The relevant portion of the said Judgment reads as follows:

“33. We are of the view that once a preliminary decree is passed by the Trial Court, the Court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The Courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.”



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20. In the result, the Appeal Suit is allowed and the judgment and decree passed by the trial Court is set aside and modified to the extent as indicated above and a preliminary decree is passed in respect of half share in the suit property in favour of the appellant. No costs. Consequently, connected Miscellaneous Petition is closed.

[P.V.,J.] [K.K.R.K.,J.]
28.08.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

1. The Principal District Judge,
Pudukkottai.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

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