



AS 674 of 2012

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 02.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 674 of 2012

Rukmani

.. Appellant

Versus

1. Ponnusamy
2. Lakshmi
3. Selvi Divya
4. Manoj

.. Respondents

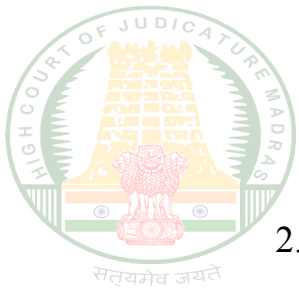
Appeal Suit is filed under Section 96 of Civil Procedure Code, to set aside the Judgment and Decree dated 14.07.2011 made in O.S. No. 591 of 2010 on the file of the learned Additional District Judge, Fast Track Court – No. III, Coimbatore.

For Appellant : Mr. M. Ravikiran
for Ms. A. Madhumathi

For Respondents : Mr. V. Anandha Moorthy for R1
Mr. S. Kumaresan for R2 to R4

JUDGMENT

This Appeal Suit is filed to set aside the Judgment dated 14.07.2011 made in O.S. No. 591 of 2010 on the file of the learned Additional District Judge, Fast Track Court – III, Coimbatore.



2. The brief facts, which are necessary for the disposal of this Appeal

Suit, are as follows:-

2.1. The Appellant had instituted the suit in O.S. No. 591 of 2010 for the relief of partition and separate possession in the suit property. According to the Plaintiff, her parents Palanisamy Gounder and Karuppathal were blessed with three children and they are (i) Rukmani (Plaintiff), Ponnusamy (first Defendant) and one Rathnakumar. It was stated that Rathnakumar died on 02.09.2004 leaving behind the Defendants 2 to 4 as his legal heirs. According to the Plaintiff, her father Palanisamy died before 1957. During his life time, her father was in possession of ancestral property. It was further stated that on 30.08.1957, a partition took place between her father on the one part and the deceased Rathnakumar represented by his mother Karuppathal. In that partition, "C" Schedule was allotted to first Defendant and Rathnakumar, who were minors by then. Subsequently, on 07.09.1959, the "C" Schedule property was sold to purchase the plaint schedule property by the minors. Thus, the suit property was ancestral in nature in which the Plaintiff has got a share. After the death of her mother Karupathal on 29.10.1993, the Plaintiff demanded 1/3 share in the plaint schedule property but the first Defendant did not accept it. Therefore, on 22.09.2008, a legal notice was issued demanding the first Defendant to give her due share. Though the notice dated 22.09.2008 was



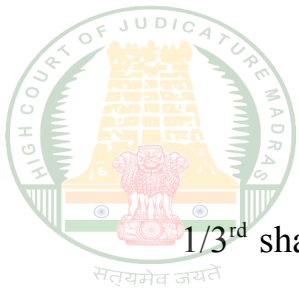
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received, the first Defendant did not come for an amicable partition.

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Therefore, the Plaintiff met the first Defendant in person on 01.08.2010 and demanded her legitimate share in the plaint schedule property. However, the first Defendant asserted that no share could be given to the Plaintiff, hence, the Plaintiff has come forward with the suit.

2.2. On notice, the first Defendant filed a written statement contending *inter alia* that it is true that a partition took place on 30.08.1957 in which the first Defendant and his brother Rathinakumar were allotted properties. It is equally true that the said property was sold on 07.09.1959 and the suit properties were purchased. The first Defendant also admitted that the property is an ancestral in nature, however, the claim of the Plaintiff for 1/3rd share in the plaint schedule property is not proper. According to the first Defendant, in the family partition that took place on 30.08.1957, he and his brother Rathinakumar were allotted 1/3 share and the remaining 1/3 share was allotted to his father Palanisamy Gounder. It was further stated that his father Palanisamy Gounder died before the Hindu Succession Act came into force on 17.06.1956. The Plaintiff had not specifically indicated the date of death of his father. Had Palanisamy Gounder died before 17.06.1956, then, his 1/3rd share would have been inherited by his wife Karuppathal. In such event, the



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1/3rd share of Palanisamy Gounder would have been inherited by Karuppathal and upon her death, it would further devolve upon her two sons viz., first Defendant, Rathinakumar and the daughter, Plaintiff. Consequently, the Plaintiff would have become entitled for 1/12 share. However, the Plaintiff is not even entitled to such share as his father died after 17.06.1956, on which date, The Hindu Succession Act came into force. If Palanisamy Gounder died after 17.06.1956, then his 1/3rd share would devolve upon his two sons, his wife and his only daughter, the Plaintiff. Therefore, even assuming that the Plaintiff has got any share, she is only entitled for 1/12 share. Subsequently, on the death of the mother, the Plaintiff would have got an additional 1/36 share. Thus, totally, the Plaintiff would get only $1/12 + 1/36$ share = $1/9$ share in the plaint schedule property. The claim of the Plaintiff that she would get the benefit of the Act 39 of 2005 is not correct. The benefit of the said Act will be extended to the Plaintiff only if the father is alive as on 09.09.2005 when the amendment came into force. But the father of the Plaintiff and first Defendant died before 1957. Therefore, the contention of the Plaintiff that the properties are still undivided and common is not correct. The benefit of a daughter becoming a co-parcener will be available only during the life time of the father and with his death, the co-parcenary had come to an end. A daughter can become a co-parcener only with the father and not with the brothers.

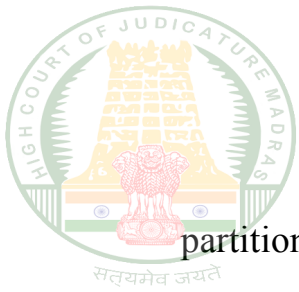


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Therefore, the claim of the Plaintiff that she is entitled to the provisions contained under The Hindu Succession Act, as amended by Central Act 39 of 2005 is not tenable. The Plaintiff is only entitled for 1/9 share in the plaint schedule properties and accordingly, the first Defendant prayed for passing a preliminary decree without costs.

2.3. The second Defendant also filed a written statement contending that even according to the Plaintiff, the suit property was purchased by the first Defendant, the deceased Rathnakumar and mother Karupathal through a sale deed dated 07.09.1959. By virtue of such purchase, the first Defendant, the deceased Rathnakumar and mother Karuppathal are entitled for 1/3 shares each. On the death of Rathinakumar on 02.09.2004, his 1/3rd share will devolve on the Defendants 2, 3 and 4 as his legal heirs. Thus, the Defendants 2 to 4 are put together entitled to 4/9 shares in the suit property and accordingly, the second Defendant prayed for passing a preliminary decree.

2.4. During trial, the Plaintiff examined herself as P.W-1 and marked documents under Ex.A-1 to Ex.A-17. On behalf of the Defendants, neither any witness was examined nor document was marked. The trial Court on analysing the oral and documentary evidence, passed a preliminary decree for



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partition on 14.07.2011 by holding that the suit properties shall be divided into 9 equal shares out of which 1/9 share shall be given to the Plaintiff, 4/9 share to the first Defendant and the remaining 4/9 share to the Defendants 2 to 5, who are the legal heirs of the second Defendant.

2.5. Aggrieved by the Judgment and decree dated 14.07.2011 passed in O.S. No. 591 of 2010, the present Appeal Suit is filed by the Plaintiff.

3. The learned Counsel for the Appellant submitted that the Plaintiff is the daughter of late. Palanisamy Gounder. She is admittedly a class I legal heir of the deceased Palanisamy Gounder. The female heirs such as wife and daughter are entitled to equal share in the self-acquired plaint schedule property. According to the learned Counsel, the property was jointly purchased by the father Palanisamy Gounder along with the first Defendant and another brother Rathinakumar (since deceased). In such circumstances, the provision which would be applicable in so for intestate succession is Section 8 of The Hindu Succession Act, 1956 and not Section 6 of the said Act. However, the trial Court mis-appreciated the evidence and relied on the decision in the case of *Sheela Devi vs. Lalchand* reported in **2007 (1) MLJ 797** wherein it was held that if the succession opened before the advent of the Act, 39 of 2005,



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then the benefit will not accrue to the female heir. In the present case, Section 8 of The Hindu Succession Act alone will be applicable, which clearly deals with the General Rules of Succession in case of male Hindu dying intestate. In such event, the property of a male Hindu dying intestate shall devolve firstly upon the heirs, being the Class I heir. The Plaintiff/Appellant herein is a class I heir and therefore, as has been contemplated under Section 8 of The Hindu Succession Act, the Plaintiff/Appellant is equally entitled to 1/3rd share in the suit property. This was not properly appreciated by the trial Court, while passing the impugned Preliminary decree.

4. The learned Counsel for the Appellant referred to the Ruling of the Hon'ble Supreme Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others*** reported in ***(2020) 9 SCC 1*** at Paragraph Nos.69 to 74 which reads thus:

“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\(3\)](#).

70. Under the proviso to [section 6](#) before the amendment made in the year 2005 in case a coparcener died leaving behind female relative of Class I



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heir or a male descendant claiming through such Class I female heir, the daughter was one of them. [Section 6](#), as substituted, presupposes the existence of coparcenary. It is only the case of the enlargement of the rights of the daughters. The rights of other relatives remain unaffected as prevailed in the proviso to [section 6](#) as it stood before amendment.

71. As per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death. It is the said principle of administration of Mitakshara coparcenary carried forward in statutory provisions of [section 6](#). Even if a coparcener had left behind female heir of Class I or a male claiming through such female Class I heir, there is no disruption of coparcenary by statutory fiction of partition. Fiction is only for ascertaining the share of a deceased coparcener, which would be allotted to him as and when actual partition takes place. The deemed fiction of partition is for that limited purpose. The classic Shastric Hindu law excluded the daughter from being coparcener, which injustice has now been done away with by amending the provisions in consonance with the spirit of the Constitution.

72. There can be a sole surviving coparcener in a given case the property held by him is treated individual property till a son is born. In case there is a widow or daughter also, it would be treated as joint family property. If the son is adopted, he will become a coparcener. An adoption by a widow of a deceased coparcener related to the date of her husband's death, subject to saving the alienations made in the intermittent period.

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.

74. The argument raised that if the father or any other coparcener died before the [Amendment Act](#), 2005, the interest of the father or other coparcener would have already merged in the 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, 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 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\(3\)](#).”

5. The learned Counsel for the Plaintiff/Appellant further contended that in the written statement filed by the first Defendant as well as the second Defendant, they have clearly admitted that the suit properties were ancestral in nature. In such circumstances, the trial Court ought to have allotted 1/3 share to the Plaintiff/Appellant, instead of 1/9 shares. The Judgment and Decree passed by the trial Court in O.S. No. 591 of 2010 is perverse and it is liable to be set aside. Accordingly, the learned Counsel for the Appellant seeks to allow this Appeal and set aside the Judgment of the learned trial Judge.

6. Per contra, the learned Counsel for the first Respondent/first Defendant that the property, which was ancestral in nature, was partitioned on 30.08.1957 and this was also admitted. In the partition, the properties were allotted to the two sons and the father got a share out of it. Thereafter, the said property was sold by virtue of a sale deed dated 07.09.1959 and the suit



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property was purchased from and out of joint funds derived from the sale of the properties of the family. Therefore, the first Defendant and the deceased Rathnakumar are entitled to $1/3^{\text{rd}}$ share each and remaining $1/3^{\text{rd}}$ share belonged to father of the Plaintiff/Palanisamy Gounder. On the death of Palanisamy Gounder his $1/3^{\text{rd}}$ share would be inherited by his wife Karuppathal. On her death, the property devolves upon two sons/first Defendant and Rathnakumar and daughter/Plaintiff. Therefore, the Plaintiff will get only $1/9^{\text{th}}$ share. The Defendants also admitted such a right of the Plaintiff. However, the claim of the Plaintiff appears to be that she is entitled to get the benefit of Hindu Succession Act, as amended in 2005. Such a claim of the Plaintiff cannot be considered for the reason that the benefit of the said Act will be available only if the father is alive as on 09.09.2005. Here the father died before 1957 and the notional partition had already taken place. It is settled law that if the partition effected prior to the Hindu Succession Amendment Act, 2005 then it cannot be disturbed. In this context, the learned Counsel for the first Respondent placed reliance on the decision of the Full Bench of Karnataka High Court in ***Pushpalatha N.V. vs. V. Padma*** reported in ***AIR 2010 Kar 124*** held that Section 6 of the Hindu Succession Act is retrospective in nature. Though having a retrospective effect, it is important that the property must be joint in nature. If partition had already taken place



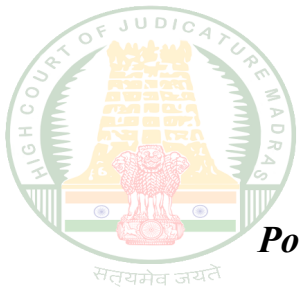
the ratio of this case will not be applicable. The Court also held that the

Provisions of alienation, partition and transfer shall remain undisturbed, to avoid the multiplicity of cases. Hence, it is clear that if Partition had already taken place then the amendment to the Hindu Succession Act in Section 6 will not be applicable. Further, In the ruling of the Hon'ble Supreme Court reported in **(2016) 4 SCC 68** in the case of **Uttam Vs. Saubhag Singh** reference was made to the proviso (I) to Section 6 of the amended Provision states that:

“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.”

7. Further, the Hon'ble Supreme Court in **Vineeta Sharma Vs. Rakesh Sharma [2020(9) SCC 1]** held that if registered partition effected prior the 20th day of December, 2004, then it is saved and cannot be disturbed. It is therefore submitted by the learned Counsel for the first Respondent that the Appeal lacks merits and is to be dismissed and the preliminary decree passed by the learned Additional District Judge, Fast Track Court No.III, Coimbatore in O.S. No. 591 of 2010 has to be confirmed.

8. On the above contentions, this Court heard the arguments advanced by the learned Counsel for the Respondents 2 to 4 in this Appeal.



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Point for determination:

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Whether the judgment passed by the learned Additional District Judge, Fast Track Court – III, Coimbatore in O.S. No. 591 of 2010 dated 14.07.2011 is to be set aside as perverse?

9. Heard the learned Counsel for the Appellant, the learned Counsel for the first Respondent as well as the learned Counsel for the Respondents 2 to 4. Perused the plaint, written statement, reply statement filed by the Plaintiff and the additional written statement filed by the first Defendant. The issues framed by the learned Additional Judge, Fast Track Court, Coimbatore and the Judgment of the learned Additional Judge, Fast Track Court, Coimbatore in O.S.No.591 of 2010 were also perused.

10. The main contention of the Plaintiff/Appellant is that the Suit properties were purchased by the mother of the Plaintiff and the Defendant-1, after the death of father of the Plaintiff and Defendant. Further, the suit property has been enjoyed in common and was in possession of the Plaintiff and the Defendants in common. The suit property was purchased by selling the properties belonged to the family and therefore it is ancestral in nature. Even this was also admitted by the Defendants 1 and 2 in their written statement. The property was treated as joint family property by the mother,

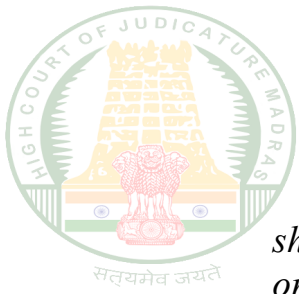


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sons and daughters i.e., Plaintiff/Defendants. After the death of the mother still it is to be treated as joint family ancestral property. After the amendments made to The Hindu Succession Act, 2005, the daughter is also to be treated as coparcener in the joint Hindu family and therefore, the Plaintiff is also entitled to equal share as that of her brothers ie., first Defendant and the deceased Rathinakumar. After the death of the father and mother, the Plaintiff, the first Defendant and the Defendants 2 to 4, who are legal heirs of deceased Rathinakumar are entitled to equal share of 1/3 shares each, however, the trial Court, on a misplaced sympathy and passed the preliminary decree with a reduced share to the Plaintiff. Therefore, the Plaintiff/Appellant seeks to set aside the preliminary decree and judgment passed in OS.. No. 591 of 2010.

11. On perusal of the entire records, the date of death of the father of the Plaintiff and first Defendant has not been mentioned either by the Plaintiff in the Plaintiff or by the Defendants 1 and 2 in their respective written statement. Therefore, the learned Additional District Judge, Fast Track Court-III, Coimbatore in his Judgment stated as follows:

“27. Assuming that Palanisamy Gounder died after 1956 the position will be slightly different. That on the death of Palanisamy Gounder his 1/3 share has to be again divided by the Plaintiff, deceased Karuppathal, the first Defendant and the deceased Rathna Kumar. In that event also her share will come to 1/9. Again on the death of Karuppathal she will get 1/3 share. Totally,

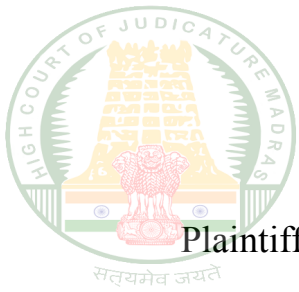


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she will get 1/9 share. So if we calculate the share of the Plaintiff on either count the share will come only to 1/9 and not 1/3 as contended by her.”

12. In the present case, it can be assumed that the father died after 1956 as the precise date of his death is not available on record. On the death of the father, the property of the father has to be divided between the surviving wife and two sons in the ratio of 1 : 3. Subsequent to the death of the mother, her 1/3rd share in the property has to be further divided between two sons and daughter (Plaintiff). In such circumstances, the first Defendant will get one additional share, making his total share as 4/9 which includes the 1/3 share he had got already. Similarly, the Defendants 2 to 4, who are the legal heirs of Rathinakumar, will also get one more share by virtue of the death of the mother. In such event, the Defendants 2 to 4 also will get 4/9 share. The remaining 1/9 share has to be allotted. The Plaintiff cannot seek for one share out of the 1/3 share already given to the first Defendant and the deceased Rathinakumar, while they were alive. Even the 1/9 share will befall on the Plaintiff only due to the death of their mother. In such circumstances, the finding of the learned Additional District Judge, Fast Track Court -II, Coimbatore that the Plaintiff in the Suit, the daughter of Palanisamy is not entitled to 1/3rd share as per the Hindu Succession Act as amended in 2005 is well-reasoned and it does not warrant any interference. The claim of the



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Plaintiff that the property was not partitioned earlier and it was enjoyed in common, after the purchase of the same by the mother on behalf of the joint family will not hold good. Therefore, the preliminary decree for partition passed by the Trial Court is wholly justified.

13. In the light of the above discussion, the point for determination is answered in favour of the Respondents and against the Appellant. The Judgment and Decree dated 14.07.2011 passed in O.S. No. 591 of 2010 by the learned Additional District Judge, Fast Track Court – No. III, Coimbatore is found proper which does not call for any interference by this Court.

In the result, **the Appeal is dismissed.** The Judgment and Decree dated 14.07.2011 made in O.S. No. 591 of 2010 on the file of the learned Additional District Judge, Fast Track Court – No. III, Coimbatore is confirmed. No costs.

02.06.2025

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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SATHI KUMAR SUKUMARA KURUP, J

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To

1. The Additional District Judge,
Fast Track Court – III, Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

Judgment made in
A.S.No.674 of 2012

02.06.2025