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CRP.No.385 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.385 of 2024 and CMP.No.1822 of 2024

Aburvakounder (Died)

1.Gowri Ammal

2.Neela Ammal

3.Anjalatchi Ammal

... Petitioners

Versus

1.Balamurugan

2.Rajakumari

... Respondents

PRAYER : Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.10.2023 made in I.A.No.404 of 2023 in O.S.No.310 of 2000 on the file of learned Principal District Munsif, Villupuram.

For petitioner : Mr.J.Jayan

For Respondents : Mr.V.Pavel

Mr.P.Valliappan, Senior Counsel
and Mr.Sharath Chandran
(appointed as amici curiae vide order
dated 21.11.2024)

ORDER



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Challenging the impugned order rejecting the applications filed under Section 152 of CPC to amend the preliminary decree in O.S.No.310 of 2000 dated 23.04.2002 and to hold that the first plaintiff/first respondent is entitled to 1/4th share in the suit properties and the defendants 2 to 4/petitioners 2 to 4 are jointly entitled to 1/4th share.

2. Brief background of the case are as follows:

2.a.The first plaintiff then was a minor represented by his mother second plaintiff have filed a suit for partition claiming $\frac{1}{2}$ share in the suit properties stating the suit properties are ancestral properties of one Rama Kounder, S/o.Perumal Kounder. The said Rama Kounder got four sons, viz., Srinivasan, Aburvakounder, Arumugam and Balakrishna. The plaintiffs have claimed oral partition in the year 1987 in which the suit properties have been allotted to the first petitioner. The respondents have also stated that the properties items 1 to 9 had fallen to the share of the first petitioner. Therefore, the 1st plaintiff as a co-parcener claimed $\frac{1}{2}$ share and first defendant got $\frac{1}{2}$ share obtained preliminary decree for partition of $\frac{1}{2}$ share in the suit properties. Based on the preliminary decree, the respondents have filed application in I.A.No.40 of 2003 for passing of final decree. Accordingly, final



CRP.No.385 of 2024

decree dated 30.01.2010 was passed. Thereafter, the plaintiffs have filed a petition for delivery of the properties in E.P.No.41 of 2022.

2.b. According to the revision petitioners, plaintiffs are not entitled to $\frac{1}{2}$ share in the suit properties as per the judgment of the Hon'ble Supreme Court in the case of Vineeta Sharma vs. Rakesh Sharma and others, wherein, the daughters are recognised as co-parceners along with sons and the said law is retrospective effect viz., from 1956 when the Hindu Succession Act came into force. Therefore, as per the above judgment, the petitioners are equally entitled to a share along with their brother/first plaintiff. Therefore, the first plaintiff is entitled to only $\frac{1}{4}$ share in the suit properties, as the defendants 2 to 4 are each entitled to $\frac{1}{4}$ share. Thus, the application was filed seeking to amend the preliminary decree in O.S.No.310 of 2000 dated 23.04.2002 and to hold that the first plaintiff/first respondent is entitled to $\frac{1}{4}^{\text{th}}$ share in the suit properties and the defendants 2 to 4/petitioners 2 to 4 are jointly entitled to $\frac{1}{4}^{\text{th}}$ share. The said application was dismissed. Challenging the order, the present revision.

3. This Court in order to assist the Court, appointed Mr.P.Valliappan,



learned Senior Counsel and Mr.Sharath Chandran, learned counsel as amici curiae.

According to them, preliminary decree declares rights or shares to the parties in the partition. It is an order declaring the shares of parties is interim in character. It is for this reason that the Court is empowered to pass any number of preliminary decrees prior to passing of a final decree in the suit. Both the learned counsels submitted that once the final decree has been passed, the suit will come to an end for all practical purpose.

4. The final decree has been passed containing the character of the partition effected by a decree of the Court, therefore, according to them, the petitioners cannot seek amendment of preliminary decree for enlargement of the shares after the final decree has been passed dividing the properties by metes and bounds and the suit will come to an end. In support of their submissions, they also relied upon the judgment as follows:

- i. Renu Devi vs. Mahendra Singh reported in 2003 10 SCC 200.
- ii. Thiruvengadathamaiah ILR (1912) 35 Mad 26
- iii. Jotindra Mohan Tagore vs. Bejoy Chand Mahtab reported in 1904 32 Cal.483
- iv. PandiriSatyanandam v. ParamkusamNammayya reported in AIR 1938 Mad 307



v. Board of Revenue, Madras v. MoideenRowther reported in AIR 1956 Mad 207

(FB).

vi. Mool Chand v. Director, Consolidation reported in (1995) 5 SCC 631

vii.S.Sai Reddy vs. S.Narayana Reddy reported in (1991) 3 SCC 647.

viii.Vineeta Sharma v. Rakesh Sharma reported in (2020) 9 SCC 1

viii. Prasanta Kumar Sahoo vs. Charulatha Sahoo reported in (2023) 9 SCC 641.

5. Heard both sides and perused the materials placed on record

6. In light of the above submissions, now, the point arises for considerations in this revision are as follows:

1. When does partition suit come to an end?
2. Till what stage, the parties will be entitled to benefit of Section 6 of the Hindu Succession Act, 1956
3. Whether the partition suit be treated as pending if the parties are not put in possession pursuant to the final decree?.

Point 1.



7. It is not in dispute that in the instant case a preliminary decree has been passed on 23.04.2002 followed by a final decree on 30.01.2010 engrossed on a stamp paper of requisite value. The Order XX Rule 18 of CPC reads as follows:

“18. Decree in suit for partition of property or separate possession of a share therein.—

Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.”

8. It is well settled that a suit for partition is decided in stages: the normal course is to pass a preliminary followed by a final decree. In ***Renu Devi v. Mahendra Singh, (2003) 10 SCC 200***, the distinction between a preliminary and final decree was explained as under:



“8. A preliminary decree declares the rights or shares of parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of divided property then such inquiry shall be held and pursuant to the result of further inquiry a final decree shall be passed. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is, the final decree.”

9. In **Thiruvengadathamiah** ILR (1912) 35 Mad 26, Blakewell, J pointed out that an order merely declaring the shares of parties is interim in character. It is for this reason that the Court is empowered to pass any number of preliminary decrees prior to passing of a final decree in the suit.

10. The question as to when a partition suit would terminate was considered by a Division Bench of the Calcutta High Court in **Jotindra Mohan Tagore v. Bejoy Chand Mahtab** [1904] 32 Cal. 483, where it was held that a suit for partition must be regarded as a pending suit till the final decree had been drawn , signed and engrossed on stamp paper. This decision has been followed by a Division Bench of this Court in **Pandiri Satyanandam v Paramkusam Nammayya**, AIR 1938 Mad 307 and later by a Full Bench of this Court in **Board of Revenue, Madras v**



Moideen Rowther, AIR 1956 Mad 207 (FB).

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11. In **Mool Chand v. Director, Consolidation**, (1995) 5 SCC 631, the Supreme Court has clearly held that a suit for partition will come to an end for all practical purposes upon passing of the final decree. The Court has observed as under:

“The definition of ‘decree’ contained in Section 2(2) read with the provisions contained in Order 20 Rule 18(2) as also Order 26 Rule 14 of the Code indicate that a preliminary decree has first to be passed in a partition suit and thereafter a final decree is passed for actual separation of shares in accordance with the proceedings held under Order 26. There are, thus, two stages in a suit for partition. The first stage is reached when the preliminary decree is passed under which the rights of the parties in the property in question are determined and declared. The second stage is the stage when a final decree is passed which concludes the proceedings before the court and the suit is treated to have come to an end for all practical purposes.”

From the above dictum, it is very clear that when a final decree has been drawn up, signed and engrossed in stamp paper of requisite value, as has been done in the instant case, it cannot be said that the suit must be treated to be pending for the purposes of passing further orders including readjustment of shares on account of a change in law.

Point 2.

12. The consistent position of law is that so long as a final decree has not



been passed a party may apply to the Court to vary/modify or allot a share on account of any change in law. As pointed out earlier, this is because a preliminary decree is treated to be interim in character, and as evident from the language of Order XX Rule 18(2) which states that a preliminary decree is subject to further inquiry that the Court may make.

13. In **S. Narayana Reddy v. S. Sai Reddy, AIR 1990 AP 263**, the question before the Andhra Pradesh High Court was whether the benefit of Section 29-A (inserted vide a State Amendment) of the Hindu Succession Act, 1956 could be availed of by an unmarried daughter of a deceased coparcener. Though the amendment came into force in 1985, the preliminary decree was passed in 1973, and the suit remained pending for passing a final decree. Clause (iv) of Section 29-A was as follows:

“Nothing in clause (ii) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986.”

14. Examining the scope of the expression “partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh



Amendment) Act, 1986” the High Court held as under:

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“The law as summarised from the above three judgments is clear and it must be held as a settled proposition that after the passing of the preliminary decree in a partition suit before passing of the final decree if there has been either enlargement or diminution of the shares or rights of the parties have been changed by reason of the rights that have been conferred by the statute or rights of the parties by a second or by subsequent purchase or by assignments of interest by whatever cause, the Court, before passing its final decree, has to consider and decide the matter and grant a final decree in accordance with such subsequent devolutions to avoid multiplicity of suits and give complete and appropriate relief to all the parties.”

15. The decision of the Andhra Pradesh High Court was affirmed on appeal by the Supreme Court in **S. Sai Reddy v. S. Narayana Reddy, (1991) 3 SCC 647.**

The Supreme Court went on to hold as under:

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



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*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 stratas, it is necessary to give a liberal effect to 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.”*

16. In **Prema v. Nanje Gowda, (2011) 6 SCC 462**, a petition under Section 151, 152 & 153 of the CPC was filed by Prema for amendment of the preliminary decree and for grant of a declaration that in terms of Section 6-A of the Hindu Succession Act (Karnataka State Amendment), she was entitled to 2/7th share in the suit property. In the said decision, the preliminary decree was passed on 11-8-1992. The first appeal against the preliminary decree was dismissed on 20-3-1998 and the second appeal was dismissed on 1-10-1999. The Hon'ble Supreme Court held as under:



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“We may add that by virtue of the preliminary decree passed by the trial court, which was confirmed by the lower appellate court and the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. If in the interregnum any party to the partition suit dies, then his/her share is required to be allotted to the surviving parties and this can be done in the final decree proceedings. Likewise, if law governing the parties is amended before the conclusion of the final decree proceedings, the party benefited by such amendment can make a request to the court to take cognizance of the amendment and give effect to the same. If the rights of the parties to the suit change due to other reasons, the court seized with the final decree proceedings is not only entitled but is duty-bound to take notice of such change and pass appropriate order.”

17. As the application under Sections 151-153 CPC was filed before the passing of the final decree, the Supreme Court directed the trial court to amend the preliminary decree by giving the female heir a share.

18. The same principle is reiterated in **Ganduri Koteswaramma v. Chakiri Yanadi, (2011) 9 SCC 788**, wherein it was held as follows:

“19. The High Court was clearly in error in not properly appreciating the scope of Order 20 Rule 18 CPC. In a suit for partition of immovable property, if such property is not assessed to the payment of revenue to the Government, ordinarily passing of a preliminary decree declaring the share of the parties may be required. The court would thereafter proceed for preparation of final decree. In



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Phoolchand [AIR 1967 SC 1470] , this Court has stated the legal position that CPC creates no impediment for even more than one preliminary decree if after passing of the preliminary decree events have taken place necessitating the readjustment of shares as declared in the preliminary decree. The court has always power to revise the preliminary decree or pass another preliminary decree if the situation in the changed circumstances so demand. **A suit for partition continues after the passing of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree.** It is not correct statement of law that once a preliminary decree has been passed, it is not capable of modification. It needs no emphasis that the rights of the parties in a partition suit should be settled once for all in that suit alone and no other proceedings.”

From the above, it is clear that the jurisdiction of the Court a suit for partition is extinguished upon passing the final decree.

19. In **Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1**, while declaring that Section 6 of the Hindu Succession Act, 1956 (As amended by Act 39 of 2005) had retroactive effect, the Supreme Court examined the meaning of the expression “partition effected by a decree of a court” occurring in the explanation to Section 6(5) of the Act. It was observed:

“136.The expression used in the Explanation to Section 6(5) “partition effected by a decree of a court” would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a court effects partition. A preliminary decree declares share but does not effect the actual partition, that is effected by passing of a final decree; thus, statutory provisions are to be given full



effect, whether partition is actually carried out as per the intendment of the Act is to be found out by the court.”

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20. The consequences arising out of **Vineeta Sharma v. Rakesh Sharma**, (2020) 9 SCC 1, were examined in **Prasanta Kumar Sahoo v. Charulata Sahoo**, (2023) 9 SCC 641. The Supreme Court examined two points of time when the right of a party to seek enlargement of a share would subsist. It was held:

“74.3. Under the Mitakshara School of Hindu law, a member of a joint Hindu family can bring about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate himself from the family and enjoy his share in severalty. Thus, the institution of a suit for partition by a member of a joint family is a clear intimation of his intention to separate, and there was consequential severance of the status of jointness. Question before this Court in Vineeta Sharma [Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 : (2021) 1 SCC (Civ) 119] was : in case during the pendency of partition suit or during the period between the passing of preliminary decree and final decree in the partition suit, any legislative amendment or any subsequent event takes place which results in enlargement or diminution of the shares of the parties or alteration of their rights, whether such legislative amendment or subsequent event can be into consideration and given effect to while passing final decree in the partition suit. The Court held that even though filing of partition suit brings about severance of status of jointness, such legislative amendment or subsequent event will have to be taken into consideration and given effect to in passing the final decree in the partition suit. This is because, the partition suit can be regarded as fully and completely decided only when the final decree is passed. It is by a final decree that partition of property of joint Hindu family takes place by metes and bounds.”



21. Thus, from the above, it is clear that during the pendency of partition suit or during the period between the passing of preliminary decree and final decree in the partition suit it is open to a party to seek modification or enhancement of his shares till the passing of the final decree. Once the final decree is passed the suit terminates and the remaining issues are to be worked out at the stage of execution. In the instant case, admittedly the final decree has been passed before the judgment in Vineeta Sharma. Hence, the petitioners cannot get the benefit of the judgment by filing an application under Section 152 CPC since the suit has terminated upon passing of the final decree which has also been engrossed in stamp paper.

Point 3.

22. This contention has been raised on the basis of the following observations in **S. Sai Reddy v. S. Narayana Reddy, (1991) 3 SCC 647:**

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



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of the shares are put in possession of the respective property, the partition is not complete.”

23. As observed earlier, Sai Reddy’s case was a matter where the final decree had not been passed. That apart, in the very same paragraph the Court has also observed as under:

“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.”

24. In this case, partition has been effected by metes and bounds by passing the final decree. That apart, as pointed out in **Prasanta Kumar Sahoo v. Charulata Sahoo, (2023) 9 SCC 641**, extracted supra, a partition suit is fully and finally decided when a final decree has been passed.

25. The very same question was considered by the Andhra Pradesh High Court in **Gooti Nagarathnamma v. Chennakeshapu Venkamma, (2006) 6 ALT**

285. It was held:

“9. The adjudication stricto sensu, by a Court, in a suit for partition, covers two important aspects, viz., ascertainment of the items of properties, available for partition, and determination of shares of the parties. It is around these two important aspects, that other subsidiary



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questions revolve. Once the Court is able to record its findings on these two aspects, a preliminary decree comes to be passed, as provided for under Rule 18(1) of Order 20 C.P.C. This is to be followed by the final decree proceedings.

10. In the final decree proceedings, an exercise would be undertaken to divide the available properties and to allot the respective shares to the parties, in terms of the preliminary decree. Depending upon the nature of properties and existence of agreement, or lack of it, among the parties, the Court is required to examine the matter further, which would be mostly ministerial, than adjudicatory, in nature. The final decree proceedings come to an end, with the division of properties and allotment of shares. If the final decree is to result in delivery of possession of property, by one party to another, and there exists any non-compliance with the final decree, the aggrieved party has to initiate execution proceedings. It is not at all in the contemplation of the final decree proceedings, to induct the parties into the possession of their respective shares. That is to be relegated to the stage of execution. Therefore, the contention of the learned Counsel for the respondents 1 to 4, that till the possession of the respective shares are delivered to the parties, a suit for partition can be said to be pending; cannot be accepted.”

26. It is, thus, clear that the question of delivery of properties is a matter to be considered at the stage of execution and is not a matter falling for contemplation in the final decree stage. It may be mentioned that the same view was taken by Blakewell, J in **Thiruvengadathamiah v. Mungiah**, ILR (1912) 35 Mad 26

“the Court should, after the specific share of each co-sharer has been determined, pass the final order or decree allotting a particular and ascertained property to each co-sharer and vesting it in him. (See



CRP.No.385 of 2024

Jotindra Mohan Tagore v. Bejoy Chand Mahatap [(1905) 32 Calc., 483.] .) Further proceedings on such a final order will be for delivery of possession - merely and in execution, and will not be for effecting a partition.”

27. The above decision of the Madras High Court has been upheld by the Supreme Court in **Renu Devi v. Mahendra Singh, (2003) 10 SCC 200.**

28. From the above, this Court is of the view that as the final decree has been drawn up, signed and engrossed in stamp paper of requisite value, the suit will come to an end for all practical purpose.

29. Therefore, once the the decree has been passed by fixing metes and bounds and the same is engrossed on the stamp paper on the requisite value, the petitioners cannot seek enlargement of shares on the ground of change of law. Hence, I do not find any merits in this revision and accordingly, this revision stands dismissed. No costs.

30. Before parting, this Court would like to appreciate the amici curiae,



CRP.No.385 of 2024

Mr.P.Valliappan, learned senior counsel and Mr.Sharath Chandran, learned counsel for their assistance.

03.01.2025

Index : Yes / No
Speaking/non speaking order
dhk

N. SATHISH KUMAR, J.

dhk

To,

The Principal District Munsif
Principal District Munsif Court, Villupuram

Page 19 / 20



WEB COPY



CRP.No.385 of 2024

CRP.No.385 of 2024

03.01.2025