R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**REGULAR SECOND APPEAL NO.2586 OF 2010**

**BETWEEN:**

SMT.SUSHEELAMMA
SINCE DEAD BY LRS

1. SMT.JAYALAKSHMAMMA,
MAJOR, W/O RAMAN,
MANGANAPURA VILLAGE,
SORABA TALUK-577429
SHIMOGA DISTRICT.

2. ANANTHAPADMANABHA.P

3. B.MUKUNDA

4. B.VEDHAVALLI

5. B.JAGADAMBA

6. B.RAJESHWARI

7. B.CHAYA

APPELLANT NOS.2 TO 7
ARE DAUGHTERS AND SONS
OF LATE K.BALASUBRAMANYAM,

ALL ARE MAJORS AND RESIDING
AT C/O SATHYANARAYANA TEMPLE,

D.NO.905/12-A, 4TH MAIN,
1ST CROSS, VIDYARANYAPURAM,
MYSORE-570008.

...APPELLANTS

(BY SRI A MADHUSUDHANA RAO, ADVOCATE FOR A1 TO 7)

**AND:**

K.SEETHARAMAIAH,
S/O LATE KRISHA BHATTA
SINCE DEAD BY LR

VINUTHA,
W/O LATE K.SEETHARAMAIAH,
SINCE DEAD BY LRS

1. POORNIMA.S
D/O LATE SEETHARAMAIAH,
W/O LINGAPPA,
MAJOR,
RESIDING AT NO.2070, 3RD CROSS,
E BLOCK, DATTAGALLI,
MYSORE-23.

2. MEERA.S
D/O LATE SEETHARAMAIAH
W/O NARAYAN,
MAJOR,
R/AT NO.46, GARDEN STREET,
RAMMURTHYNAGAR,
BANGALORE-560033.

3. AMBIKA.S
D/O LATE SEETHARAMIAH
W/O PARAMESHWAR BHAT,
MELINA GANTIGE,
SALKOD,

SANTHEGALLI, HOSAGALLI POST
HONNAVARA TALUK-581334
UTTARA KANNADA

4. NARAYANA PADANANDA.K
S/O LATE KRISHNA BHATTA,
NO.110, POORNIMA PRASAD,
CHAMUNDI HILLS,
MYSORE - 570010.

5. SWAMINATHAN.K
S/O LATE KRISHNA BHATTA,
RESIDING AT NO.116, MIG LAYOUT,
2ND MAIN, 2ND CROSS,
A.NARAYANAPURA,
KRISHNARAJAPURAM,
BANGALORE-560016.

6. SRINIVASAN.K
S/O LATE KRISHNA BHATTA,
RESIDING AT NO.110,
POORNIMA PRASAD,
CHAMUNDI HILLS,
MYSORE - 570010.

SMT.DHARMAMBA.K
W/O KRISHNA BHATTA,
SINCE DEAD BY LRs

7. SATHYANARYAN,
HUSBAND OF LATE DHARMAMBA,
SINCE DEAD BY LRs
R8, 10 AND 11, 16.

8. RAVI S
S/O LATE DHARMAMBA

9. PURUSHOTHAM.S
S/O LATE DHARMAMBA,

SINCE DEAD BY LRs
R8, 10, 11, 16.

10. SRINIVAS.S
S/O LATE DHARMAMBA
11. ANANTHAKRISHNA.S
S/O LATE DHARMAMBA

ALL ARE MAJORS,
RESIDING AT DOOR NO.1737,
12TH MAIN ROAD,
31ST CROSS, BANASHANKARI II STAGE,
BANGALORE-560070.

12.SMT.RANGANAYAKAMMA,
W/O KRISHNA BHATTA,
RESIDING AT NO.110,
POORNIMA PRASAD,
CHAMUNDI HILLS,
MYSORE-570010.

13. SMT.JAYALAKSHMI,
D/O LATE KRISHNA BHATTA,
W/O MUTTUKUMAR V
RESIDING AT NO.63/1107, I FLOOR,
KHALEEL MANZIL,
VINAYAKA LAYOUT,
SULTHAN PALYA,
BANGALORE-560032.

14. SMT.SHIVAKAMESHWARI,
D/O LATE KRISHNA BHATTA,
W/O SRINIVAS IYER,
RESIDING AT NO.58, 5TH B CROSS,
I STAGE, BRUNDAVAN EXTENSION,
MYSORE-570020.

SMT. LALITHAMBA.K
D/O LATE KRISHNA BHATTA,

SINCE DEAD BY LRS

15. VENKATARAMAN.S
HUSBAND OF LATE LALITHAMBA,
MAJOR,
SINCE DEAD BY HIS LR ARE ALREADY
ON RECORD AS R8, R10, 11, 16

16. SUBRAMANYA,
S/O LATE LALITHAMBA.K,
MAJOR,
VARADARAJAN.B,
S/O LATE BALASUBRAMANYAM,
SINCE DEAD BY LRS

17. RAJESHWARI.K.S
W/O VARADARAJAN B,
MAJOR

18. KOUSHIKRAJ B
W/O VARADARAJAN.B
MINOR, REP BY NATURAL
GUARDIAN MOTHER

19. TILAKRAJ.B,
W/O VARADARAJAN.B
MINOR, REP BY NATURAL
GUARDIAN MOTHER

ALL ARE RESIDING AT
NO.714, 13TH CROSS,
JANATHANAGAR, NEAR T.K.LAYOUT,
CHAMARAJA MOHALLA,
MYSORE-570008.

20. THE ASSISTANT COMMISSIONER,
OFFICE OF THE ASSISTANT COMMISSIONER,
MYSORE SUB DIVISION,

MYSORE - 570005.

…RESPONDENTS

(BY SRI C.SHASHIKANTHA, ADVOCATE FOR R1 TO 6, 17 TO 19; SRI U.MUTHU KUMAR, ADVOCATE FOR R8, 10, 11, 13, 14 & 16; SMT. ANUKANKSHA KALKERI, HCGP FOR SRI H.K. BASAVARAJ, AGA FOR R20; V/O/DTD: 28.09.2022 APPEAL AGAINST R2 DISMISSED AS ABATED; V/O/DTD: 28.09.2022 R8, 10, 11, 16 ARE TREATED AS LRS OF DECEASED R7, 9 & 15 RESPECTIVELY)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT & DECREE DTD 13.11.2009 PASSED BY THE LEARNED III ADDITIONAL CIVIL JUDGE (SR.DN.), MYSORE IN FDP.NO.32/2005 AND THE JUDGMENT AND DECREE DATED 01.09.2010 PASSED BY THE LEARNED IV ADDITIONAL DISTRICT JUDGE, MYSORE IN R.A.NO.1295/2009.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 22.02.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**JUDGMENT**

The captioned second appeal is filed by plaintiffs who are petitioners in final decree proceedings bearing FDP.No.32/2005 assailing the concurrent decrees passed by the Courts below in entertaining applications filed by defendant Nos.6(a) to 6(e) and defendant Nos.7 and 8 in seeking modification of preliminary decree passed in O.S.No.96/1995 and the FDP Court having entertained these applications has come to conclusion that inspite of preliminary decree passed in O.S.No.96/1995, the present defendant Nos. 6(a) to 6(e) who are the legal heirs of one of the predeceased daughter and defendant Nos.7 and 8, in view of amendment to Section 6 of Hindu Succession Act, are entitled for equal share and consequently, a fresh preliminary decree is drawn by FDP Court granting 1/9$^{th}$ share jointly to defendant Nos.6(a) to 6(e) and 1/9$^{th}$ share each to defendant Nos.7 and 8. The said fresh preliminary decree drawn by the FDP Court is confirmed by the

Appellate Court in R.A.No.1295/2009. These concurrent judgments and decrees are under challenge by the plaintiffs/petitioners in FDP.No.32/2005.

2. The present appellants instituted a suit for partition and separate possession in O.S.No.96/1995. The said suit was decreed granting share to the daughters i.e., defendant Nos.6 to 8 notionally. Based on the preliminary decree, the present appellants herein initiated final decree proceedings in FDP.No.32/2005. Pending consideration of final decree proceedings, the legal heirs of original defendant No.6 i.e., 6(a) to 6(e) and defendant Nos.7 and 8 filed two separate applications requesting the Court to modify the preliminary decree and grant equal share by extending benefit of amended provisions of Section 6 of Hindu Succession Act. Though the present appellants strongly resisted these applications, the FDP Court and the Appellate Court by applying the principles laid down by the Hon'ble Apex Court in the case of ***Pushpalatha N.V. vs.***

***V.Padma and Others*** reported in ***ILR 2010 Karnataka 1484***, held that the amended provisions of Section 6(1) of Hindu Succession Act is applicable to the pending proceedings and benefit was extended and therefore, by treating defendant Nos.6 to 8 as coparceners has modified the preliminary decree. Though defendants have not challenged the same, the FDP Court and the Appellate Court having entertained the applications, granted equal share to the daughters i.e., deceased defendant No.6 and defendant Nos.7 and 8.

3. Learned counsel appearing for the appellants/plaintiffs reiterating the grounds urged in the appeal memo, would vehemently argue and contend that the preliminary decree is passed much prior to amendment to Hindu Succession Act and therefore, he would contend that FDP Court erred in modifying the preliminary decree in granting equal share to the daughters. He would also point out that defendant Nos.6 to 8 married much prior to 1994

and therefore, the FDP Court erred in granting equal share by applying the amended provisions of Section 6. Though he does not dispute that FDP court can alter preliminary decree on account of change in law, but he would vehemently argue and contend that the present suit filed in 1995 is governed by the State amendment under Section 6(A) and therefore, he would contend that even if Section 6(A) is held to be repugnant, the said repugnancy is prospective and therefore, he would vehemently argue and contend that defendant Nos.6 to 8 are entitled for a share notionally and the benefit of amended Section 6 of Hindu Succession Act cannot be extended to the present case on hand.

4. To buttress his arguments, he has placed reliance on the following judgments:

*1) Sri H.P.Chikkarama Reddy and Another vs. Smt. Kanthamma and Others – ILR 2021 Kar 613;*

*2) Prema vs. Nanje Gowda and Others – (2011) 6 SCC 462;*

*3) Sugalabai vs. Gundappa A.Maradi and Others – ILR 2007 Kar 4790;*

*4) Prakash and Others vs. Phulavati and Others – (2016) 2 SCC 36;*

*5) Danamma @ Suman Sarpur and Another vs. Amar & Others – (2018) 3 SCC 343;*

*6) Vineeta Sharma vs. Rakesh Sharma and Others – (2020) 9 SCC 1;*

*7) Padmavathi and Another vs. Jayamma since dead by LRs and Others – ILR 2020 Kar 2697.*

5. Referring to the judgment rendered by the Division Bench of this Court in the case of ***Padmavathi vs. Jayamma*** *(supra)* and the judgment rendered by coordinate Bench in the case of ***H.P.Chikkarama Reddy and Another*** *(supra)*, he would contend that this Court is bound by the law laid by Division Bench and Coordinate Bench and therefore, no contrary view can be taken in the present case on hand. Referring to the facts, he would point

out that the propositus died in the year 1972 and the suit for partition came to be filed post Karnataka amendment and therefore, the rights of married daughters have to be decided in terms of Karnataka amendment which was in existence and prevailing at the date of institution of the suit and therefore, he would contend that the preliminary decree modified by both the Courts runs contrary to the dictum laid down by the Division Bench and Coordinate Bench cited supra and therefore, he would point out that substantial question of law would arise for consideration and the appeal deserves to be admitted on these following substantial questions of law:

> *"1. Whether in a final decree proceedings it is permissible for the court to modify the preliminary decree in so far as shares are concerned?*
>
> *2. Whether the Courts below committed error of law in misreading the judgment in Smt. Seela Devi and others Vs. Lal Chand and others reported in (2006) 8 SCC 581, Smt. Puspalatha N.Y Vs. V.Padma reported in ILR 2010 KAR 1484 and Sri.Prithviraj and others Vs. Smt.Leelamma and others reported in 2008(4) KCCR 2333?"*

6. Per contra, learned counsel appearing for the legal representatives of deceased defendant No.6 and defendant Nos.7 and 8 supporting the judgments rendered by the courts below would vehemently argue and contend that the issue relating to right of a daughter in a coparcenery property is given a quietus by the Hon'ble Apex Court in the case of ***Vineeta Sharma vs. Rakesh Sharma*** *(supra)* and therefore, he would contend that the judgments rendered by the Courts below in modifying the decree and extending the benefit of amended Section 6 of Hindu Succession Act would not warrant any interference at the hands of this Court. Therefore, he would request this Court to dismiss the second appeal at the stage of admission itself.

7. Heard the learned counsel for appellants/plaintiffs and learned counsel appearing for respondents/defendants. I have given my anxious

consideration to the judgments rendered by both the Courts below. I have also examined the judgments cited by the learned counsel appearing for appellants/plaintiffs.

8. The question that requires consideration at the hands of this Court is, merely because a partition suit was instituted post Karnataka amendment to Hindu Succession Act in terms of Sections 6(A) and 6(C), would disentitle the married daughters in availing the benefit of amended Section 6 of Hindu Succession Act.

9. The first era of confusion about the proper interpretation of Section 6 of Hindu Succession Act, 2005 amendment which had been set to rest by the Hon'ble Apex Court in ***Prakash vs. Phulavati's*** case has been reiterated by the Hon'ble Apex Court in ***Danamma vs. Amar's*** case. Section 6 of amended Act treated a female coparcener at par with a male coparcener. This Court interpreted the Amendment Act with retrospective effect from the date of coming into force of Hindu Succession Act, 1956, while the

Full Bench of Bombay High Court interpreted the Amendment Act to have effect from the date of coming into force of Amendment Act.

10. The Hon'ble Apex Court in ***Phulavati's*** case laid to rest this uncertainty by holding as follows:

> *"Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born."*

11. The Hon'ble Apex Court in ***Danamma's*** case was dealing with the controversy relating to death of a male coparcener. In ***Danamma's*** case, the Hon'ble Apex Court found that father passed away in 2001 and thereafter one of the sons initiated proceedings for partition of joint family property in the year 2002. The son claimed that the daughters were not entitled to a share in the joint family as father had passed away prior to coming into force of Amendment Act. The Trial Court and High Court accepted

the contention and concluded that daughters were not entitled for a share in the joint family property as a coparcener. This conclusion, in all probability, was in consonance with the dictum laid down in ***Phulavati's*** case. Though Hon'ble Apex Court considered ***Phulavati's*** case and agreed with its findings, yet applied a different principle while granting relief to the daughters. The Hon'ble Apex Court, however, held that the partition is not complete with passing of a preliminary decree and attains finality only with passing of a final decree. The Hon'ble Apex Court held that although suit was filed in 2002, preliminary decree was passed in the year 2007 and therefore, held that daughters are entitled for the benefit of Amendment Act.

12. While holding so, the Hon'ble Apex court relied on the dictum laid down in the case of ***Ganduri Koteshwaramma vs. Chakiri Yanadi***[1]***,*** wherein it was held that rights of a daughter in a coparcenery property as

[1] (2011) 9 SCC 788

per amended Section 6 of Hindu Succession Act are not lost merely because preliminary decree has been passed in a partition suit.

13. Since conflicting interpretations were made by the Hon'ble Apex Court with respect to Section 6 and the judgments rendered in ***Phulavati's*** case and ***Danamma's*** case lead to several ambiguities, the Hon'ble Apex Court finally gave a quietus to the rights of daughters in a coparcenery property. The question with respect to ambiguous interpretation of Section 6 was addressed to a Larger Bench as it involved similar issues with conflicting previous judgments. The Full Bench of Hon'ble Apex Court in ***Vineeta Sharma vs. Rakesh Sharma*** *(supra)* stated the following:

> ** The Hon'ble Supreme Court stated that it is not necessary for the daughter and the coparcener to be alive as on the date of amendment i.e 9-9-2005. By fixing a cut-off date it will defeat the purpose of amendment as the main objective behind amendment was to grant equal rights to daughters*

*as granted to sons. Irrespective of whether the original coparcener is alive as on 9-9-2005 or not the daughter is entitled to claim an equal share in the property.*

** With respect to prospective and retrospective application, the Court stated that the prospective statute operates from the date of its enactment conferring/granting new rights while the retrospective statute operates backwards taking away vested rights. It stated that Section 6 would be a retroactive statute, the one that operates in futuro, its operation is based upon an event which happened in the past, the antecedent event as per Section 6 is the right being given by birth hence, it confers rights to daughters at the time of their birth even if the birth takes place prior to the Hindu Succession Amendment Act, 2005"*

14. The Hon'ble Apex Court while testing the conflicting judgments rendered in the case of ***Phulavati*** and ***Danamma's*** case, clarified at para 129 as under:

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

*(i) The provisions contained in substituted Section 6 of the Hindu Succession Amendment Act 1956 confers the status of the coparcener on the daughter born before or after the*

*amendment made in the same manner as a 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 disposition or alienation, partition or testamentary disposition, which had taken place before 20th December 2004.*

*(iii) Since the right of coparcenary is by birth, it is not necessary that father coparcenary should be living as on 09.09.2005;*

*(iv) The statutory fiction of partition created by provisio to Section 6 of the Hindu Succession Act 1956 as originally created did not bring about the actual partition or disruption of the coparcenary. The fiction was only for the purpose of ascertaining the share of deceased coparcener when he is survived by the female heir, of class I as specified in the Schedule of the Act of 1956 or the 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 a share in the coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.*

*(v) In view of the rigor of provisions of Explanation to Section 6 (5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by the deed of partition duly registered under the provisions of the Registration Act, 1908 or the effected decree of a court. However, in exceptional cases, where the plea of the oral petition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of the court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."*

15. In the light of the law laid down by the Hon'ble Apex Court in the case of ***Vineeta Sharma*** *(supra)*, the controversy relating to the right of a daughter in a coparcenery property irrespective of death of a male coparcener prior to amendment to Section 6 of Hindu Succession Act is given a quietus. The judgment rendered by the Hon'ble Apex Court in ***Vineeta Sharma*** *(supra)* makes 2005 Amendment retrospective and grants unconditional right to the daughters as equal to that of sons in a Joint Hindu family. The Hon'ble Apex Court while over-

ruling the verdict in ***Prakash vs. Phulavati's*** case, held that daughters cannot be deprived of their right to equality conferred upon them by Section 6 of Amendment Act.

16. In the light of the dictum laid down by the Hon'ble Apex Court in the case of ***Vineeta Sharma***, the question that arises for consideration is, as to whether the Karnataka Amendment to Section 6 of Hindu Succession Act has any relevancy and has application to the present case on hand. The status of State amendment after Central amendment was also dealt by the Coordinate Bench in the case of ***Sugala Bai vs. Gundappa*** *(supra)*. The Coordinate Bench referring to the law laid down by the Hon'ble Apex Court in the case of ***United Bank of India, Calcutta vs. Abhijit Tea Company Private Limited***[2]***,*** has culled out the relevant observations made by the Hon'ble Apex Court at para 48 which reads as under:

[2] JT 2000 (10) SC 125

*"48. But, as regards the pending proceedings are concerned, the law laid down by the Apex Court in the case of United Bank of India, Calcutta Vs. Abhijit Tea Co.Pvt.Ltd., and Ors. referred to by the learned Counsel Sri.Desai will have to be taken note of. In the said decision, the Apex Court has observed thus:*

> *It is well settled that it is the duty of a court whether it is trying original proceedings or hearing an appeal, to take notice of the change in the law affecting pending actions and to give effect to the same. If the law states that after its commencement, no suit shall be disposed of or "no decree shall be passed" or "no court shall exercise powers or jurisdiction". The Act applies even to the pending proceedings and has to be taken judicial notice by the Civil Courts."*

17. Therefore, in the light of the law laid down by the Coordinate Bench while examining the repugnancy of State Amendment, the Coordinate Bench has clearly held that in view of Central Amendment, the State Amendment has become repugnant. What can be gathered is that both Central and State Amendment Act is enacted under Entry V

of concurrent list of Schedule VII. According to the Rule of occupied field, when two Statutes pertain to the same subject matter, but when parliament intends to make its enactment a complete code and evinces an intention to cover the entire field, the State law whether passed before or after would be overborne on the ground of repugnancy. This is so even where obedience to each of them is possible without disobeying the other. Thus, the Central Amendment can be said to have superseded the State Amendments and the amended Section 6 of Hindu Succession Act represents the current legal position with regard to coparcenery rights of daughters. Therefore, I am not inclined to accede to the argument canvassed by the learned counsel for appellants that even if there is a repugnancy, the same has to be presumed to be prospective in nature. Such an argument cannot be acceded to in the light of the law laid down by the Hon'ble Apex Court in the case of ***Ganduri Koteshwaramma***

*(supra)*. The Hon'ble Apex Court examined the scope of Order XX Rule 18 of CPC. The Hon'ble Apex Court held that 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 would continue after passing of preliminary decree and the proceedings in the suit gets extinguished only after passing of final decree.

18. One more significant aspect dealt by the Hon'ble Apex Court is that it has gone to the extent of holding that Section 97 of CPC though provides that a party aggrieved by preliminary decree, if he does not challenge, is precluded from disputing its correctness in any appeal arising out of final decree, however, Hon'ble Apex Court held that does not create any hindrance or obstruction in the power of the Court to modify, amend or alter preliminary decree or pass another preliminary decree if the changed circumstances so require.

19. If Hon'ble Apex Court in ***Vineeta Sharma's*** case has given a quietus to the right of a coparcener and having held that a right of a coparcener is by birth and therefore, it is not necessary that a coparcener should be living as on 09.09.2005, this Court is unable to understand as to how appellants can insist that the rights of daughters having concluded in preliminary decree cannot be modified out in a final decree proceedings. If the benefit of amended provisions of Section 6 of Hindu Succession Act can be extended in a pending final decree proceedings, the theory of prospective repugnancy canvassed by the learned counsel appearing for appellants has to be outrightly rejected. It is nobody's case that a suit filed after Karnataka amendment has stood concluded before Central Amendment to Section 6 of Hindu Succession Act was introduced in 2005.

20. Admittedly, final decree is drawn in 2009. If final decree is drawn in 2009, the law prevalent as on the

date of passing of final decree has to be taken into consideration and therefore, the amended Section 6(A) of Karnataka State Amendment has no application to the present case on hand. If a daughter is conferred right by birth, death of a male coparcener much before commencement of amendment to Section 6 has no relevancy and therefore, both the Courts were justified in altering the preliminary decree passed in O.S.No.96/1995 by extending benefit of 2005 amendment.

**Conclusions:**

21(a) At para 129 of the judgment rendered in the case of ***Vineeta Sharma***, the Apex Court held that provisions contained in substituted section confers status of a coparcener on the daughter born before or after the amendment made in the same manner as a son with the same rights and liabilities. The Apex Court has held that right of a coparcener is by birth and it is not necessary that father should be living as on 09.09.2005.

(b) The sum and substance of the Amendment Act is existence of Hindu Undivided Family on the day of its commencement. Therefore, what can be inferred is that basic condition of application of 2005 Amendment Act is that a coparcenery must be in existence on the day when Amendment Act came into force. Sub-section (5) of Section 6 provides that Amendment Act shall not be applicable where partition is effected before 20.12.2004. It is clear that the sum and substance of the Amendment Act is that Hindu Undivided Family must be in existence on the day of commencement of the Act or atleast on 20.12.2004.

(c) By virtue of new provision, a daughter of a coparcener in a Joint Hindu Family governed by Mitakshari law now becomes a coparcener in her own right and thus enjoys equal rights to those hitherto enjoyed by a son of a coparcener.

(d) As 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 the law governing the parties is amended before conclusion of 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. It is well settled that the Court of first instance as well as the Appellate Court are entitled to take into consideration any change in the law. The common law Court while deciding the question whether any person is entitled to any legal character, cannot ignore *pendente lite* change in law. If after passing of the preliminary decree in a partition suit but before passing the final decree, the rights of the parties are altered by statutory amendment, the Court is duty bound to decide the matter and pass final decree keeping in view the changed scenario.

(e) The ratio laid down by the Apex Court in the case of ***Ganduri Koteshwaramma*** (*supra*) has also given a

quietus to the controversy relating to modification of preliminary decree and granting equal share to daughters in a pending final decree proceedings even after passing of preliminary decree which is not challenged by the daughters or sisters in a partition suit. Referring to Section 97, the Apex Court has held that though final decree is to be passed in conformity with the preliminary decree but, however, that does not mean that preliminary decree cannot be altered or amended or modified by a Final Decree Court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree.

(f) The failure to appeal against a preliminary decree creates a bar under Section 97 of CPC from raising any objection to preliminary decree while determining the rights of the parties in a final decree proceedings. Section 97 does not lay down any judicial principle. It is a special provision framed in the interest of expediency. It therefore does not apply to

the cases in the event of changed or supervening circumstances. The bar under Section 97 applies only with reference to factual correctness of preliminary decree as well as with regard to its legal validity. In view of change of law and having regard to amendment to Section 6 of Hindu Succession Act, the FDP Court does not examine the validity or factual correctness of the preliminary decree but on the contrary preliminary decree is altered by taking cognizance of change in law. Therefore, Section 97 has no application while determining the shares of daughters in final decree proceedings dehors the finality given to the shares determined by the Court while passing a preliminary decree. It is true that final decree is always required to be in conformity with the preliminary decree. But that does not mean that the preliminary decree before final decree is passed, cannot be altered or amended or modified by the trial Court in the event of changed or supervening circumstances, even if no appeal has been preferred from such preliminary decree. If an event

transpires after the preliminary decree which necessitates a change in shares, the Court can and should do so. Therefore, it is well within the jurisdiction of FDP Court to re-determine the shares even if preliminary decree passed in a partition suit has attained finality.

(g) The contention of the plaintiffs that though State amendment as per Section 6(A) stands repealed in view of 2005 Central Amendment, but the said repugnancy is prospective in nature in the light of the law laid down by the Division Bench of this Court in the case of ***Padmavathi vs. Jayamma*** (*supra*) cannot be acceded to in the light of the law laid down by the Apex Court in ***Danamma's*** Case. The Apex Court in the case of ***Vineeta Sharma vs. Rakesh Sharma*** *(supra)* has held that the daughter having been conferred the status of a coparcener would acquire right by birth. The amended Section 6 has already been substituted in Hindu Succession Act, 1956 as if it was in the enactment from its inception. The repealing and amending Act, 2015, which

repeals Hindu Succession Amendment Act, 2005, in whole, does not wipe out the amendment to Section 6 from the Hindu Succession Act. The existence of Hindu Succession (Amendment) Act, 2005 since became superfluous and did not serve any purpose and might lead to confusion, the Parliament in its wisdom thought of repealing the said amendment Act. It is only a case of legislative spring-cleaning, and not intended to make any change in law. The contention of the appellants that in view of the law laid down by the Division Bench of this Court in the case of ***Padmavathi vs. Jayamma*** *(supra)*, the married daughters cannot be treated as coparceners in terms of Sections 6(A) and 6(C) cannot be entertained in the light of the law laid down by the Apex Court in the case ***Ganduri Koteshwaramma*** *(supra)* and the law laid down by the Full Bench of the Apex Court in the case of ***Vineeta Sharma vs. Rakesh Sharma*** as well as the judgment rendered by the Apex Court in ***Danamma's*** case.

(h) The Karnataka Amendment in terms of Section 6(A) has to be restricted to only those cases where suits were filed between 30.07.1994 and 08.09.2005 and are concluded on or before 2005 Amendment. After considering the ratio laid down by the Apex Court in ***Vineeta Sharma's*** case (*supra*) and the ratio laid down by the Division Bench of Hon'ble High Court of Karnataka in ***Padmavathi vs. Jayamma*** (*supra*), it can be safely concluded that for the cases covered under Hindu Succession (Karnataka Amendment) Act, 1990 from 30.07.1994 till 08.09.2005, the Hindu Succession (Karnataka Amendment) Act, 1990 has to be applied. A partition suit does not stand concluded by passing a preliminary decree. A partition suit is required to be decided in stages and therefore, the same can be regarded as fully and completely decided only when the final decree is passed. In the present case on hand, the final decree proceedings were pending consideration and the impugned judgment is rendered on 13.11.2009. Therefore, the law laid down by the Division Bench of this

Court in ***Padmavathi's*** case has no application to the present case on hand. The daughters' right in the present case on hand have to be decided in the light of the law laid down by the Apex Court in the case of ***Ganduri Koteshwaramma*** and ***Vineeta Sharma***. As I have rested my conclusions in the light of the law laid down by the Apex Court in the judgments cited supra, I am of the view that it is not necessary to consider the decision rendered by this Court in the case of ***Padmavathi vs. Jayamma*** *(supra)* and the co-ordinate Bench in the case of ***H.P. Chikkarama Reddy and another*** *(supra)*.

22. For the reasons stated supra, I pass the following:

ORDER

No substantial question of law arises for consideration. Second appeal is devoid of merits, accordingly, stands dismissed.

The pending interlocutory application, if any, does not survive for consideration and stands disposed of.

**Sd/-**
**JUDGE**

CA