IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.08.2024

Pronounced on : 08.11.2024

CORAM : JUSTICE N.SESHASAYEE

S.A.No.527 of 2022
and CMP.No.10560 of 2022

1.Vasumathi
2.Malathi .. Plaintiffs / Respondents / Appellants

Vs

1.R.Vasudevan
2.A.Ravi
3.Saravanakumar .. Defendants / Appellants / Respondents

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, 1908 praying to set aside the judgment and decree dated 21.04.2022 passed by the I Additional District Judge at Coimbatore in A.S.No.57 of 2021 reversing the judgment and decree dated 01.08.2012 passed by the Principal Subordinate Judge at Coimbatore in O.S.No.505 of 2008.

For Appellants : Mr.Sharath Chandran

For Respondents : Mr.S.Silambannan, Senior Advocate
for Mr.K.Vasanthanayagan

JUDGMENT

1. This second appeal is preferred by the plaintiffs in O.S. No.505 of 2008. The suit is laid for partition of one item of immovable property. Broadly, it is the daughters' suit for partition against their father and brothers claiming a share in the ancestral property as coparceners. They were successful before the trial Court, and obtained a preliminary decree for partition of 1/5 share each in the suit property, whereas before the first Appellate Court in A.S.No.57 of 2021, which the defendants had preferred, the plaintiffs suffered a reversal of fortune and lost their suit. Hence, this appeal. Parties would now be referred to by their rank before the trial Court.

Facts :

2.1 The quintessential facts disclosed in the pleadings are:

a) The first defendant is the father of defendants 2 and 3 and also the plaintiffs. While the plaintiffs are his daughters, the defendants 2 and 3 are the sons of the first defendant.

b) The suit property came to be allotted to the share of the first defendant in a partition between him and his brother vide Ext.A1

dated 01.09.1986.

c) Contending that the properties allotted to the first defendant under Ext.A1 partition are ancestral in character, the plaintiffs claim that they are also coparceners along with their father, the first defendant, and their two brothers, defendants 1 and 2, in terms of amendment to Section 6 of Hindu Succession Act vide Central Act 39 of 2005, and demand 1/5 share each in the suit properties.

2.2(a) Defendants 2 and 3 in the present suit (O.S.505 of 2008), on their part had instituted O.S.484 of 2011 against the plaintiffs herein, for restraining the latter with a decree of prohibitory injunction from interfering with their possession. They claimed title based on settlement deeds, dated 22.08.2008 (marked Exts.B1 and B2) executed by the first defendant, barely few days before the institution of O.S.505 of 2008 on 01.09.2008.

2.2(b) This suit for injunction was contested by the present plaintiffs on the ground that the first defendant herein was not the absolute owner of the property, and that these plaintiffs have 1/5th share each in the suit property and that their father (first defendant in O.S.505 of 2008) did not have any right to

convey the plaintiffs' share through any settlement deed, and that the said documents themselves have been executed by the first defendant after the plaintiffs had issued their suit notice demanding partition. They are sham as they intended to defeat the right, title and interest of the plaintiffs in the suit property.

3.1 Both the suits were jointly tried, and evidence was recorded in O.S.505 of 2008. During trial, for the plaintiffs, second plaintiff was examined as P.W.1 and she had produced Exts. A1 to A5. For the defendants, the second defendant examined himself as D.W.1 and he had produced Exts.B1 and B2, the separate settlement deeds which the first defendant had executed in favour of defendants 2 and 3.

3.2 On appreciating the facts and evidence before it in the context of amended Sec.6 of the H.S. Act, the trial court proceeded to decree the suit in O.S.505 of 2008 and dismissed O.S.484 of 2011. Aggrieved by the same, the defendants in the partition suit preferred a first appeal in A.S. No.57 of 2021 on the file of the I Additional District Court, Coimbatore. The decree passed in O.S.484 of 2011 was not challenged and it appears to have attained finality. The first

appellate court however, reversed the finding of the trial court and dismissed the suit, and hence the plaintiffs are before the Court in this appeal.

4. The appeal is admitted for considering the following substantial questions of law:

1. *Whether the judgment of the first appellate Court suffers from grave and manifest perversity as it has misconstrued the effect and terms of the partition deed Ex.A1 to hold that the suit property was not ancestral in character?*

2. *In the light of the decisions of the Supreme Court in* ***Shyam Narayan Prasad Vs. Krishna Prasad*** *[(2018) 7 SCC 646] and* ***Vineeta Sharma Vs. Rakesh Sarma*** *[(2020) 6 SCC 1], whether the suit property is liable to division amongst the appellants, respondents 2 and 3 and their father the 1st respondent?*

3. *In the light of the recitals in Ex.A1, whether the first appellate Court has miscast the onus of proof on the appellants thereby vitiating its judgment in the light of the law laid down by the Supreme Court in* ***Rangammal Vs. Kuppuswamy*** *[2011 12 SCC 220]?*

4. *In the view of the decision of this Hon'ble Court in* ***M.Krishnamurthy Vs Pandeepankar*** *[2017 (3) CTC*

170], whether the first appellate Court has committed a manifest error in holding that the ancestral properties allotted to the first respondent under Ex.A1, would be his self-acquisitions?

5. *Whether the impugned judgment is vitiated on account of a material irregularity flowing from a violation of the mandate of Order XLI Rule 31 of the Code in the light of the decision of this Hon'ble Court in* ***K.Sundararaj Vs. R.Chellamuthu*** *[(2015) 2 Mad LJ 575] ?*

5. Heard Thiru. Sharath Chandran, learned counsel for the appellants and Thiru. S.Silambannan for the respondents. Mr.Sharath Chandran, learned counsel for the plaintiffs/appellants submitted:

a) Ext. A1 forms the source of title for the first defendant, and so is it for the plaintiffs. In Ext.A1, the first defendant, his brother Kothandapani, and their four sisters make a joint statement that the properties dealt with thereunder are their ancestral property. Indeed Ext.A1 recites that a certain Rangasamy Chettiar had possessed ancestral properties, and that he had also purchased two items of immovable properties, and that all the properties which Rangasamy Chettiar had held were treated as ancestral properties. This was

admitted by all his six children (of whom the first defendant and his brother Kothandapani were his sons, and the rest are his four daughters) in the recital to Ext.A1. Here, the first appellate court has allowed an error to influence its line of reasoning by opting to read only part of the recital in Ext.A1 and omitting to read a critical portion thereof. This selective reading of Ext.A1 has led the first appellate court to a wrong conclusion.

b) Secondly, inasmuch as the parties to Ext.A1 had conceded that the property that had been partitioned thereunder is an ancestral property, it binds them. Indeed, the first defendant, as a party to Ext.A1 is estopped from challenging it. A recital to a document may not be conclusive, and can be explained. However, the first defendant did not offer to explain it, except making a counter allegation in the written statement that the share he had obtained under Ext.A1 was his personal property. Pleadings hardly takes the role of proof, and here, the first defendant did not testify before the Court to establish that the recitals in Ext.A1 about the ancestral-nature of the property, to which he had subscribed himself to voluntarily and willingly, were either false or that it had not been

acted upon. When the defendants challenge the intent and purport of the recital in Ext.A1, and the first defendant having lent his approval to it when Ext.A1 was executed, he was the most competent witness to prove the contrary, as he believes in the contrary.

6. Per contra, Thiru.Silambannan argued that Rangasamy Chettiar had purchased three items of properties between 1943 and 1946, and he had two sons namely the first defendant and Kothandapani, and four daughters and they are Rajalakshmi, Saraswathi, Kannammal and Thirupurasundari. After the death of Rangasamy Chettiar, all his six children had entered into Ext.A1 partition, dated 01.09.1986. In the context of the contention that the properties are ancestral properties, two possible consequences flow out of Ext.A1. Firstly, if they are ancestral properties, then by virtue of notional partition, which law effects on the demise of Rangasamy Chettiar, his daughters would be entitled to a share each, and indeed this has been recognised in Ext.A1. When a notional partition takes place it effects a partition not only vertically but also horizontally. This implies that the share which the first defendant had obtained under Ext.A1 could only be his personal property and it cannot retain the character of ancestral properties. Alternatively, it is an admitted fact that

Rangasamy Chettiar had purchased two items of properties between 1943 and 1946 which Ext.A1 itself recites and hence when Rangasamy Chettiar died leaving behind his daughters, necessarily under Sec.8 of the Hindu Succession Act his properties will devolve on all his heirs equally, and the share which his sons obtained, will therefore, retain the character of their personal properties and not ancestral properties. Reliance was placed on the ratio in ***Arshnoor Singh Vs Harpal Jaur*** [2019 (5) CTC 110) and ***Uttam Vs Saubhag Singh*** [(2016) 4 SCC 68].

7. Replying the same, Mr. Sharath Chandran argued that the argument of the defendants' counsel overlooks the fact that the recital to Ext.A1 states that besides the properties which Rangasamy Chettiar had purchased between 1943 and 1946, he had also possessed ancestral properties, and Ext.A1 describes all these properties taken as a whole as ancestral properties. Secondly, the dictum that a notional partition will effect vertical and horizontal division of entire ancestral properties as was held by the Hon'ble Supreme Court in ***Uttam case*** (and even earlier in ***Gurupad Khandappa Magdum Vs Hirabai Khandappa Magdum & Others,*** (1978) 3 SCC 383) may no longer be good law in view of the ratio in ***Vineeta Sharma Vs Rakesh***

Sharma [(2020) 6 SCC 1].

DISCUSSION & DECISION

8. The learned counsel for the appellants/plaintiffs is correct in his submissions when he submitted that Ext.A1 recites not only about the two properties which Rangasamy Chettiar had purchased in 1943 and 1946, but also about certain ancestral properties, even though the details of the ancestral properties that he possessed were not specifically recited in the said document. As to how these recitals in Ext.A1 are to be understood, and how far they enable the sustenance of rival submissions, and which among the two opposing contentions will eventually prevail over the other will be the subject of discussion to follow. Now, it is time to introduce the very recitals in Ext.A1, and they read:

> "நாங்கள் இந்து அவிபக்த குடும்பத்தைச் சேர்ந்த சகோதர சகோதரிகள் ஆவோம். நமது தகப்பனாருக்கு .... மற்றும் பிதுராஜிதமான வீடு வகையரா சொத்துக்களையும் நமது தகப்பனார் அனுபவித்து வந்தும் அவர் காலம் சென்றபின் சொத்துக்களை நாம் பொதுவாக ஏக குடும்பமாக அனுபவித்து வருகிறோம். இனிமேல் கொண்டும் நாங்கள் பொதுவாக அனுபவித்து வருவது சரிப்படாததனால் குடும்ப நன்மையை உத்தேசித்து அவரவர்கள் தனித்தனியாக பாகம் செய்துகொள்ள தீர்மானித்து எங்கள் குடும்பத்தில் அக்கரை கொண்ட பஞ்சாயத்தாரர்களை வைத்துப்பேசி பஞ்சாயத்தார்கள் பைசல்படிக்கு முடிவு செய்து சம்மதித்து இதில் கண்டபடி பாகம்

செய்துகொண்டுள்ளோம். அதன்படி சொத்துக்களை ஏ, பி, சி ஷெட்யூல்களாகப் பிரித்துக்கொண்டுள்ளோம். அதன்படி ஏ ஷெட்யூல் சொத்துக்களை 1 லக்கமிட்ட ஆர்.கோதண்டபாணியும், பி ஷெட்யூலில் கண்ட சொத்துக்களை 2 லக்கமிட்ட ஆர்.வாசுதேவனும், சி ஷெட்யூலில் கண்ட சொத்துக்களை 3 முதல் 6 லக்கமிட்ட பெண் மக்கள் சு.ராஜலஷ்மி, சு.சரஸ்வதி தகப்பனாரின் பொதுக்குடும்ப சொத்தில் எந்த விதமான பாகம் பெறாமல் பொது குடும்ப நிதியிலிருந்து தலா ரூ.5000 வீதமும் துகை பெற்றுக்கொண்டும் உள்ளார்கள். பெண் மக்களுக்கு ஏ, பி ஷெட்யூலில் கண்ட சொத்துக்களில் எந்தவிதமான பாகமும் ஏற்படுத்தவில்லை."

Translated to English the recital would read: other than the two items of properties which Rangasamy Chettiar had purchased, he also had ancestral properties, and that after his death the parties to the document had been enjoying the same as common properties of the family. The second part of this document states that the four sisters of the first defendant had taken only Rs.5,000/- and not any share in the property dealt with thereunder.

9. The recital in Ext.A1 apparently reflects that the parties to Ext.A1 had treated both these properties as one integrated property and did not opt to differentiate the self-acquired properties of Rangasamy Chettiar and the ancestral properties in his hands as two separate class of properties. What is significant in the context of construction of Ext.A1 is that, in terms of the

classical principles of Hindu law, a self-acquired property of a coparcener may blend and integrate with the ancestral property, and once it is done, it will shed its identity as a self-acquisition and will assume the character of an ancestral property. The plaintiffs/appellants have structured their contention right on this premise, and have come up with a straightforward strategy: When the words which the parties to Ext.A1 employed therein to describe the property that they chose to divide thereunder disclose their intent to treat the entire property as an ancestral property in the hands of Rangasamy Chettiar, then unless it is proved to be engineered by fraud, misrepresentation, or plainly false, they bind them. Necessarily, the first defendant would then be estopped from resiling from his stated position as to the description of the property as an ancestral property, since he had consciously subscribed to that idea. This argument poses no difficulty for this Court to appreciate and the substantial question No.1 is answered in favour of the plaintiffs.

10.1 Evaluating the contentions to the contra made by the defendants/respondents, however, requires greater attention, as they are layered and veiled.

10.2 If the defendants' case is examined under a forensic scanner, it reveals that its sustainability could be derived from their well-concealed supposition that Rangasamy Chettiar held the properties covered under Ext.A1 only as ancestral properties. The fact that they relied on the dictum in ***Uttam case*** (where the Supreme Court has held that a notional partition under Proviso to Sec.6 read alongside Explanation I thereto will effect a vertical and horizontal division of the properties which the coparcenary held), spotlights this under current supposition of the defendants.

10.3 That however, depends on when Rangasamy Chettiar had died. It was not disclosed anywhere, including in Ext.A1 or Exts.B1 and B2. However, both sides made a joint statement that Rangasamy Chettiar had died in 1962. This Court chooses to act on this joint statement and reckons that Rangasamy Chettiar had died in 1962, for it is a statement on an aspect of fact merely, on which there is an agreement between both the sides. (And being an admitted fact, it does not require any proof.)

11. This Court has two facts now: (a) that the property dealt with under Ext.A1 was the ancestral property; and (b) that Rangasamy Chettiar had died

in 1962. And, how they will benefit the defendants' line of arguments will be seen later. First, to the application of doctrine of estoppel as regards the recitals in Ext.A1, which forms the core of the plaintiffs' case.

On Estoppel - Plaintiffs' Strategy

12. Turning to the merit of the plaintiffs' arguments, their strategy is to pin down the first defendant to the recital in Ext.A1. In ***Spencer and Bower*** on 'Reliance Based Estoppel', (Bloomsbury, 5th Edition, pp-326-363), it has been pointed out that the view of Lord Coke and his contemporaries that "*neither doth a recital conclude because it has no direct affirmation*" has been rejected by subsequent authority. The learned authors point out that the recitals of a deed can imply an agreement as to a fact which can be a source of estoppel. An example of this is the decision of Patteson. J, in ***Stroughill Vs Buck*** [(1850) 14 QB 781], wherein he observed thus:

> "*When a recital is intended to be a statement which all the parties to the deed have mutually agreed to admit as true, it is an estoppel upon all. But, when it is intended to be the statement of one party only, the estoppel is confined to that party, and the intention is to be gathered from construing the instrument.*"

In ***Horton Vs Westminster Improvement Commisioners*** [(1852) 7 Exch 780], the rule of estoppel was explained thus:

> "*The meaning of estoppel is this—that the parties agreed, for the purpose of a particular transaction, to state certain facts as true; and that, so far as regards that transaction, there shall be no question about them.*"

The later decisions, however, placed the matter on a sounder footing. In ***Young Vs Raincock*** [7 C. B. 310, 338], Coltman J. said:

> "*Where it can be collected from the deed, that the parties to it have agreed upon a certain admitted state of facts as the basis on which they contract, the statementof those facts, though but in the way of recital, shall estop the parties to aver the contrary.*"

In ***Greer Vs Kettle*** [1938 A.C 156], the House of Lords expounded the principle behind what is now commonly alluded to as "*Estoppel by deed*". Speaking for the House, Viscount Maugham, LC, said:

> "*Estoppel by deed is a rule of evidence founded on the principle that a solemn and unambiguous statement or engagement in a deed must be taken as binding between parties and privies and therefore as not admitting any contradictory proof. It is important to observe that this is a rule of common law, though it may be noted that an exception arises when the deed is fraudulent or illegal.*"

But the first defendant has neither troubled the plaintiffs, nor this Court, as he did not choose to plead or prove that the recital as to the character of the property in Ext.A1 is fraudulent or illegal, or at least false.

13. The first round of this litigious battle belonged to the plaintiffs, but it is not the end game as yet. The Court still has to evaluate the merit of the case of the defendants as to the character of the property which the first defendant had obtained. Indeed, even part of substantial questions 2 and 4 which have been raised in this appeal seek answers here.

Over to Defendants' case

14. When Rangasamy Chettiar died in 1962, in terms of Proviso to Sec.6 read with Explanation I thereof, a notional partition took place, which implied that Rangasamy Chettiar was posthumously allotted 1/3rd share in the entire ancestral property. And this 1/3rd share of Rangasamy Chettiar had devolved on his two sons and four daughters equally, and accordingly, each of his children became entitled to 1/18th share each. This implies that both the sons of Rangasamy Chettiar (which included the first defendant) had their

undivided 2/3rd share in the ancestral property plus 1/18th share each to which they had succeeded to by telescoping the operation of Sec.8 of the H.S.Act into Sec.6 of the Act. And, in Ext.A1 partition, none of the daughters pressed for their share in the property to the extent of their respective 1/18th share. Instead, they settled for Rs.5,000/-each.

15. The theme of the defendants' argument has been that in terms of the ratio in ***Uttam Vs Saubhag Singh*** [(2016) 4 SCC 68], when notional partition took place to vest Rangasamy Chettiar with an undivided 1/3rd share in the ancestral property, it destroys the entire coparcenery, and disintegrates the ancestral property which the coparcenery had held both vertically and horizontally, and therefore, no ancestral property could thereafter be created when Ext.A1 was executed. This is the first layer. When the children of Rangasamy Chettiar, (which included his two sons and four daughters) succeeded to the undivided 1/3rd share notionally allotted to him, each of them took 1/18th share in it. Ascertaining the character of this share is the second layer. And, Ext.A1 shows that none of the four daughters of Rangasamy Chettiar had opted to enforce their right to seek partition of their respective 1/18th share. Understanding its effect will constitute the third layer of the defendants' arguments.

The H.S.Act Implications on Coparcenery & Ancestral Property

16. In this segment, law is discussed to ascertain the character of the undivided 2/3rd share that remained with the first defendant and his brother Kothandapani after the allotment of 1/3rd share towards the share of Rangasamy Chettiar notionally under Sec.6 of the H.S.Act.

17. The two major implications which the H.S.Act has managed to engage the Courts since its enactment, is on the perceived legislative intent to interfere with the fundamentals which characterize the Hindu law conceptualization of the right to property: (a) how far the notional partition as envisaged in Sec.6 of the Act, as it was originally enacted, has affected the rest of the coparcenery among the surviving coparceners as well as the remainder of the ancestral property which they hold; and (b) how to understand the character of the property which a son takes in the estate of a male Hindu dying intestate? It relates not only to the self-acquisitions or individual property of a male Hindu, but also the property allotted notionally to a deceased male Hindu having an interest in the ancestral property which the coparcenery to which he belonged holds. This aspect pertains to the effect which Sec.8 of the Act

brings to the table. The answers to points (a) and (b) will address the issues involved in the first and the second layers of the defendants' case respectively.

Effect of Notional Partition - Judicial Views

18. Whether a notional partition under Sec.6 of the H.S.Act, as it was then, effect both vertical as well as horizontal partition and destroy the entire coparcenery even as between the surviving coparceners? In ***Gurupad Khandappa Magdum Vs Hirabai Khandappa Magdum & Others*** [(1978) 3 SCC 383] the Supreme Court held it to be so, which conclusion was later echoed in ***Uttam Vs Saubhag Singh & others*** [(2016) 4 SCC 68] by a two Judges bench, though on a different line of reasoning. In ***Gurupad case*** [(1978) 3 SCC 383], a three Judges bench of the Supreme Court, presided by the then Chief Justice had held:

> "*13. ....To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's imagination to boggle.* ***All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which***

> ***had taken place during the lifetime of the deceased***. *The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled."*

In ***Uttam case,*** a two Judges bench of the Supreme the Court was required to resolve an issue involving the claim of a grandson by birth to the share that came to be allotted under a notional partition to his grandfather upon the latter's demise. Since Proviso to Sec.6 provides that a share allottable to a deceased coparcener under a notional partition is governed by rules of intestate succession under Sec.8 of the Hindu Succession Act, the Court negated the claim. Reading Sec.8 in conjunction with Sec.4 and Sec.30 of the Hindu Succession Act, the Court proceeded *inter alia* to declare:

> "*18. (i) to (iii) ....*
>
> *(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.*
>
> *(v) On the application of Section 8 of the Act, either by reason*

of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Section 4,8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants-in-common and not as joint tenants."

The dictum in both ***Gurupad case*** and ***Uttam case,*** in effect has equated a notional partition, which to repeat, is only a statutory contrivance that impacts the coparcenery property upon the demise of a coparcener, to an actual partition among all the coparceners though on different line of reasoning. Between these two decisions of the Supreme Court, in ***State of Maharashtra Vs Narayan Rao Sham Rao Deshmukh & Others*** [(1985) 2 SCC 321] a three Judges bench of the Supreme Court distinguished ***Gurupad*** view and differed from it. However, when ***Uttam case*** arrived in the scene, it in effect reinstated the conclusion in ***Gurupad case,*** and with it the issue once again came alive and the law was eventually reset by another three Judges bench of the Supreme Court in ***Vineeta Sharma Vs Rakesh Sharma*** [(2020) 9 SCC 1] [which followed an earlier two judges judgement in ***Danamma alias Suman***

Sirpur & another Vs Amar & Others, (2018) 3 SCC 343, which in turn relied on the ratio of an earlier two Judges bench in ***Anardevi & Others Vs Paremeshwari Devi & Others,*** (2006) 8 SCC 656]. In ***Vineeta Sharma case*** the Court held:

> "*103. The only question involved in the aforesaid matter was with respect to the Explanation of Section 6 and the determination of the widow's share. In that case, the question was not of fluctuation in the coparcenary body by a legal provision or otherwise. Everything remained static. No doubt about it, the share of the deceased has to be worked out as per the statutory fiction of partition created. However, in case of change of body of the coparceners by a legal provision or otherwise, unless and until the actual partition is finally worked out, rights have to be recognised as they exist at the time of the final decree. It is only the share of the deceased coparcener, and his heirs are ascertained under the Explanation to Section 6 and not that of other coparceners, which keep on changing with birth and death.*
>
> *109. When the proviso to unamended Section 6 of the 1956 Act came into operation and the share of the deceased coparcener was required to be ascertained, a deemed partition was assumed in the lifetime of the deceased immediately before his death. Such a concept of notional partition was employed so as to give effect to Explanation to Section 6. The fiction of notional partition was meant for an aforesaid specific purpose.* ***It was not to bring about the real partition****. Neither did it affect the severance of interest*

nor demarcated the interest of surviving coparceners or of the other family members, if any, entitled to a share in the event of partition but could not have claimed it. The entire partition of the coparcenary is not provided by deemed fiction; otherwise, coparcenary could not have continued which is by birth, and the death of one coparcener would have brought an end to it. Legal fiction is only for a purpose it serves, and it cannot be extended beyond."

19.1 While ***Vineeta Sharma*** dictum may offer a ready-reckoner solution, still its ratio can be explained as a product of the fusion of traditional Hindu law and its legislative variant in the Hindu Succession Act. It is now explained:

a) The Constitution has granted fundamental right to equality and also a right to a dignified life. The right to dignified life is unachievable in reality unless it is backed by right to property. And if equality doctrine has to be telescoped into right to dignified life, then a man and a woman cannot have an identical or substantially similar levels of dignified life unless both have certain right to property. Without economic freedom, it is futile to presume that a woman can enjoy her other personal rights effectively. While Article 15 of the Constitution grants women a right to equal opportunity, it is the economic security that ensures them a complete life under the

Constitution. It has been said several times, and it is stated yet another time that the legislative interference with the traditional coparcenery and the incidence of ancestral property is intended to provide security and dignity to a certain class of female heirs of a deceased coparcener. And, it stops there, or at least ought to stop there.

b) But to secure a class of women with a certain right to property for accomplishing the Constitutional purposes and aspirations, should the fundamentals of Hindu Law be disturbed? If the objective is only to secure a dignified life for Hindu women, who hitherto were deprived of any right to property except perhaps the *stridhana* property (which are but the gifts given to a Hindu female at the time of her marriage), does it necessarily require either the destruction of the coparcenary or a forced disintegration of the ancestral property?

c) The Courts in this country did not have any difficulty in understanding the legislative intent behind Sec.6, but where it tended to produce conflicting opinions was on the extent to which the legislative intent behind it could be stretched: While ***Gurupad*** and ***Uttam*** considered that the legislative intent should be stretched

to its elastic limits as enabling the destruction of the entire coparcenery as if the notional partition under Sec.6 has engineered a vertical and horizontal division of ancestral property inter se among all the coparceners, the moderate view, which is in majority, has considered that the notional partition is but a vehicle to grant a class of female heirs some right in the ancestral property and no more. This is made evident by the Parliamentary debate on the Hindu Succession Bill. Allaying the apprehension of the members of the Rajya Sabha about the destruction of coparcenery and ancestral property, Shri. Pataskar, the then Union Minister for Law, explained:

> "*(1) By this Bill, the joint family of the* ***mitakshara type is not abolished****, and that is the main difference between this Bill and the provisions of the lapsed Hindu Code regarding the same.*
>
> *(2) At the same time, a daughter is given a share in the property of her father even if he was a coparcener in a joint Hindu family to the same extent as an undivided son.*
>
> *(3) This Bill does not in any way take away the right of any member of a Hindu coparcenary to get himself separated from the coparcenary."*

Shri Pataskar proceeds to state:

> "*As hon. Members are aware, when the Estate Duty Act was passed, a similar question had arisen. Estate duty is a measure of taxation of property which comes to a person by inheritance. In India, in the case of a large number of people who are governed by mitakshara system of Hindu Law, there is no inheritance with respect, at any rate, to the joint family properties which are held by the families concerned. If all such properties or any interest in such properties were to be excluded from estate duty because they devolve by survivorship and not by inheritance, it would have defeated the very purpose for which the estate duty was proposed to be levied.* ***It was, therefore, then decided that, for the purpose of this taxation, the interest of a deceased coparcener should be treated as if his interest in the coparcenary property has been separated from rest of the coparcenary property just prior to his death. Following up this precedent, a similar method has been evolved for the purpose of giving a female heir a share in the property of the deceased member of a joint Hindu coparcenary; and just as the purpose of the estate duty could be achieved without actually disrupting the joint Hindu family governed by the mitakshara school of law, this Bill has proceeded to give a share to a female heir on the same basis without necessarily disrupting the joint Hindu family. This, in short, is the genesis of the scheme underlying clause 6 of the Bill, which is the most important clause so far as this Bill is concerned.***" *(emphasis supplied)*

19.2 The legislative intent, as was made evident by Shri. Pataskar (which finds its reflection in ***Vineeta Sharma***, though it did not refer to his speech), nowhere declared any intent to destroy the fundamental concepts which are peculiar to Hindu Law – the coparcenary and the ancestral property. To re-emphasize, the Act, read in the backdrop of the legislative intent, does not focus on effecting a complete partition, or to interfere with the right of the surviving coparceners to live as a group, which law understands as coparcenery. To this court, it involves a fundamental right available to the coparceners under Article 19(1)(c) of the Constitution to live together as a specific group sharing certain defined features, with their right to manage whatever property, to underscore, whatever property, that they have as a group. As will be seen later, the Act does not aim at obstructing the formation of new ancestral property post its enactment. To explain it differently, whenever notional partition takes place, the legal fiction which the legislature has invented only intends to carve out the share of the deceased coparcener from the whole, to enable its distribution *inter alia* among his Class I female heirs. In that sense, a notional partition can only be termed as a partial partition of the whole, and cannot be understood as implying the

disintegration of the whole. It is explained in the next paragraph.

20. A partition under the Hindu law is effected when a coparcener declares his intent to sever from the coparcenary and seeks partition of his share. It may trigger a partition inter se among all the coparceners, or may just stop with granting a share to the one who has declared his intent to leave the coparcenary, (both of which can be achieved either consensually among all the coparceners, or litigiously through a legal process). What, however, is significant is that when a coparcener breaks away from the coparcenary, the division of coparcenary estate (or the ancestral property) need not necessarily trigger a complete partition among all the coparceners but can be confined to the share of the coparcener who seeks partition. In ***Kalyani (died) through LRs Vs Narayanan & others*** [AIR 1980 SC 1173 : (1980) Supp. SCC 298], the Supreme Court has made an exposition on the partition and its effect on the joint family. The issue before the Court was the authority of the *karta* of a Mitakshara joint family to effect partition between his two sets of heirs through his two wives through a Will. The Court explains:

> "*10... Partition is a word of technical import in Hindu law. Partition in one sense is a severance of joint status and coparcener of a coparcenery is entitled to claim it as a matter*

of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty . Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby put an end to the coparcenery with right of survivorship and such separated members holds from the time of disruption of joint family as tenants-in-common. Such partition has an impact on devolution of shares of such members. ***It goes to his heirs displacing survivorship.*** *Such partition irrespective of whether it is accompanied or followed by division of properties by metes and bounds covers both the division of right and division of property (See Appovier Vs Rama Subba Aiyan quoted with approval in Krishnabai Bhritar Ganpatrao Deshmukh Vs Appasaheb Tuljaramarao Nimbalkar). A disruption of joint family status by a definite and unequivocal indication ot separate implies separation in interest and in right, although not immediately followed by a defacto actual division of the subject-matter. This may at any time be claimed by virtue of the separate right (See Girija Bai Vs Sadashiv). A physical and actual division of property by metes and bounds follows from disruption of status and would be termed partition in a broader sense.*

20. Partition can be partial qua person and property but a partition which follows disruption of a joint family status will

be amongst those who are entitled to a share on partition.....".

It would therefore be more appropriate to equate a notional partition to a partial partition made in aid of a divided coparcener. That it might have been forced on the coparcenary through a legislation, and posthumously qua the deceased coparcener need not lead to the conclusion that the legislature intended to destroy the entire coparcenary. Indeed, there is no legislative space to conclude it. Its real effect has been to (i) interfere with the right of the surviving coparceners to succeed to the share of the deceased coparcener by survivorship; and (ii) to reduce their combined holding to the extent of the property that becomes allottable to Class I female heirs, and no more. For instance, if there are five coparceners who jointly hold 10 acres of land, and if one coparcener dies leaving only female heirs, then under the concept of notional partition the deceased coparcener will become entitled to obtain 2 acres which will go to his female heirs, and to that extent, it will reduce the combined entitlement of the surviving coparceners to 8 acres, whereas before the Act, the surviving coparceners would have obtained the entire 10 acres. Granting a share to the female heirs, therefore, will merely bring down the quantum of property available to the rest of the coparcenary, and no more. If however, an understanding that a notional partition will effect a complete

partition among all the coparceners is entertained, then beyond what it does, it will also interfere with the right of the surviving coparceners to stay together.

21.1 However, very surprisingly, even though the concept of notional partition has been under the judicial scanner and scrutiny since its descent on the legal horizon, not many of the popular and path-breaking judgments on the subject had ever seen to have considered the legislative intent with reference to the Parliamentary debate on a the bill. In ***Kalpana Mehta & Others Vs Union of India & Others*** [(2018) 7 SCC 1], a Constitution Bench of the Supreme Court has approved the Parliamentary debates as an aid to the interpretation of statutes for exploring the legislative intent behind it. Indeed, in ***Kalpana's case*** the Supreme Court has echoed Justice Krishna Iyer's voice in ***B.Banerjee Vs Anita Pan*** [(1975)1 SCC 166], where he said:

> "*The 'sound-proof theory' of ignoring voices from Parliamentary debates, once sanctified by British tradition, has been replaced by the more legally realistic and socially responsible canon of listening to the legislative authors when their artefact is being interpreted*"

It stands perfectly to reason. There can be nothing more amusing than to treasure-hunt the intent of a legislation, when the legislature, which had made

it, presents its intent to the Court in a platter.

21.2 Given the context of this case it requires to be recorded that the knowledge of this Court is not drawn to any of the authorities taking note of the Parliamentary debate while understanding the import and effect of Sec. 6 or for that matter even Sec. 8 of the Act. The dictum in ***Vineeta Sharma,*** therefore, needs to be appreciated in this contextual setting due to its proximity in correctly reflecting the legislative intent behind Sec.6.

22. It may be added here that when the Parliament originally enacted Sec.6, it merely experimented with its idea of empowering a class of female heirs economically, yet it was seen to be hesitant to issue an admit card to the daughters of a male coparcener for an entry into the club of coparceners. And, notional partition, in its wisdom came in handy to relieve it of its predicament, as it could now balance its intent to preserve the legal incidence of ancestral property in the hands of the coparcenery alongside its intent to vest some right at least in the ancestral property in certain class of female heirs of a deceased coparcener. And, it took another half a century for the Parliament to bring an amendment to Sec.6 vide Central Act 39 of 2005, to elevate the status of

daughters as coparceners (after at least three states have brought in their own amendments to this effect – Tamilnadu, Andhra Pradesh and Maharashtra) and this statutory accomplishment enabled it to grant equal share to the daughters in the ancestral property. In the din of this euphoria what however, appears to have been overlooked is that other than the daughters, the widow and the mother of the deceased coparcener also figure as Class I female heirs, and the rise in status of daughters as coparceners in effect has reduced the quantum of property which the widow and the mother would get. But, what is significant is that neither before, nor now, the Parliament has attempted to destroy the fundamentals of Hindu law such as the coparcenery, the ancestral property, and their inter-relationship and the legal incidence attached to them, *a la* the Kerala Joint Family System (Abolition) Act, 1975.

23. Reverting to the facts of this case, if the first layer of the defendants' case is tested on the plane of the above discussion, it must be held that they lose a point on the issue that they have raised as its premise is unsupported either by the legislative intent behind Sec.6 of the Act, or by the principles set out in ***Vineeta Sharma case*** [(2020) 9 SCC 1]. The result of the discussion is that, when Rangasamy Chettiar died, despite the notional partition allotting him

1/3rd share in the ancestral property, the 2/3rd share of the surviving coparceners (the two sons of Rangasamy Chettiar) will continue to remain as ancestral property in their hands.

(b) Sec.8 of the H.S.Act & Its Impact:

24.1 In this section, this Court proposes to understand the law to ascertain the character of the share of the property which the first defendant and his brother along with their four sisters had obtained from and out of the notionally alloted 1/3rd share of Rangasamy Chettiar. Each of Rangasamy Chettiar's children including the first defendant had obtained an identical 1/18th share.

24.2 Sec.8 of the Hindu Succession Act, operates in two circumstances:

a) on the share allotted notionally to a deceased coparcener. The precondition here is the existence of Class I female heirs; and

b) when a male Hindu dies intestate leaving his personal or individual property.

The immediate fallout of the operation of Sec.8 in the above two circumstances is that it managed to equate the character of the property constituting the share allotted under a notional partition to the property held

as personal property or as self-acquisition by a deceased male Hindu dying intestate since the legal incidence of succession is the same – the one prescribed under Sec.8. To state it differently, Sec.8 forms the common denominator on which both the classes of properties are fitted as the numerator. It would therefore imply that the share allotted under a notional partition to a deceased coparcener will possess all the characteristics of a self-acquisition for succession under Sec.8. In terms of the texts of Hindu law, whenever a partition takes place (either wholly among all the coparceners, or partly in aid of a divided coparcener) each of those who get so divided, hold their respective shares of the property as their personal property as between the other. Now, if the share allotted to a deceased coparcener is to be equated to a share of a divided coparcener, then this share can be treated only as the personal or individual property of the deceased coparcener. The passage extracted from ***Kalyani's case*** [AIR 1980 SC 1173] in paragraph 20 above may be revisited again.

25. The issue however, is not how the property is treated in the hands of the deceased male Hindu, but how it should be treated in the hands of his sons, even if there are Class I female heirs, who succeed to the estate of the

deceased male Hindu. According to Mulla, it will be an ancestral property in the hands of those sons, since in terms of the definition popularised by his treatise, *an ancestral property is that which a male Hindu inherits from his father, grandfather or great-grandfather*. Now, should the intervention of class I female heirs to take a share along with the sons of the deceased coparcener lead to a different consequence? Starting with the ratio in ***Commissioner of Wealth Tax Vs Chandra Sen*** [(1986) 3 SCC 567] and ***Assistant Commissioner of Income Tax Vs P.L. Karuppan Chettiar*** [AIR 1979 Madras 1 (FB)], the predominant view has been that when a son takes a share in the property of his father under Sec.8, then it is treated as the personal or the individual property in the hands of the son, and consequently the son's son (or grandson of the male Hindu) cannot claim a share in the share of the grandfather during the lifetime of the son. The ***Uttam case*** dictum essentially rests on this supposition. But, it may have to be stated that both in ***Chandra Sen case*** and ***Karuppan Chettiar case*** there was an actual partition between the father and the son, and therefore, in terms of the texts of the Hindu law, on partition, they take a share *per capita* and not *per stripes*. More about it in later paragraphs.

26.1 However, a little realised consequence of the understanding that whenever Sec.8 operates the share which a son obtains will be only his personal property, is that it holds a potential to obstruct the formation of new ancestral property. For example, if A, a son along with the class I female heirs take a share by the operation of Sec.8 of the Act, and if the share A takes is treated as his personal property, and if A dies, leaving B and C as his sons along with class I female heirs, then by the operation of Sec.8 again the share which B and C obtain from A will again be treated as their personal property. The chain may go endlessly.

26.2 If an ancestral property has to be formed, in terms of its definition, a property must have to pass hands at least from father to son, but if the dictum in ***Chandra Sen*** and ***Karuppan Chettiar cases*** is understood as a mathematical formula for understanding the implications of Sec.8 as indicated above, no share at no point of time in any generation which a son gets will vest in him as ancestral property. How will the ancestral property be formed then? If this idea is given its operational effect since the arrival of Sec.8 in 1956, then its working, with or without the combination of Sec.6 of the Act, would have ended the formation of ancestral property. Therefore, what

purpose can the amendment of Sec.6 achieve? Irrespective of the shares which the daughters take either as Class I female heirs under pre-amended Sec.6 or as coparceners after its amendment in 2005, there must exist ancestral property, for them to take a share. Here, the following passage from the speech of Shri. Pataskar on the floor of Rajya Sabha is relevant. He says:

> "*The property inherited by a Hindu from his father, father's father or father's father's father is ancestral property. Property inherited by him from other relations is his separate property.* ***The essential feature of ancestral property is that if the person inheriting it has sons, grandsons or great-grandsons, they become joint owners with him and become entitled to it by reason of their birth. So far as separate property Is concerned, the holder is the absolute owner thereof. But separate or self-acquired property, once it descends to the male issue of the owner, becomes ancestral in the hands of the male issue who inherits it***.

27. It is now necessary to visualise how an ancestral property could at all be formed as per the rules governing its formation. No property commences as an ancestral property. It should have been first earned by a male Hindu ancestor – father or grandfather or great-grandfather as his self-acquisition, and they should have allowed it to be inherited by their son, grandson or

great-grandson. Logically, every property in the hands of a male Hindu can therefore, commence only as a self-acquisition by some ancestor at some point of time, and only when it devolves on his son, does it become an ancestral property. To state it differently, it is not until a property acquired by one Hindu male passes on to the next generation of male Hindu can an ancestral property be created.

28.1 The point is, should Sec.8 be understood as affecting the formation of ancestral property in the hands of the son of a deceased male Hindu? Here, it becomes necessary to consider the import and impact of Sec.19 of the H.S.Act. It reads:

> ***Section 19 Mode of succession of two or more heirs.***—*If two or more heirs* ***succeed together to the property of an intestate****, they shall take the property,—*
>
> *a) save as otherwise expressly provided in this Act, per capita and not per stirpes; and*
>
> b) *as tenants-in-common and not as joint tenants.*

Sec.19 of the Act instructs that as between those who take a share together, or simultaneously, under a male (which implies, on their death) as between them they would take their share *per capita*, and not *per stripes*, and consistent with it, it also declares that each of the sharers of the deceased male Hindu will

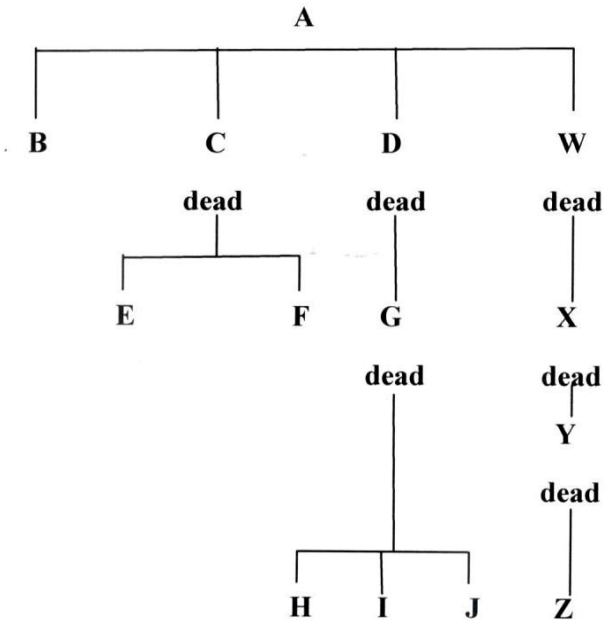
take their respective share as tenants-in-common and not as joint tenants. In other words, Sec.19 in essence declares the rule which Courts follow while granting a preliminary decree for partition. Mulla in his treatise (25th Edition, Page 487, Paragraph 320) writes :

> ***320. Shares on Partition:***
>
> *On a partition between the members of a joint family, shares are allotted according to the following rules:*
>
> *(1) On a partition between a father and his sons, each son takes a share equal to that of the father. Thus, if a joint family consists of a father and three sons, the property will be divided into four parts, each of the four members taking one-fourth.*
>
> *(2) Where a joint family consists of brothers, they take equal shares on a partition.*
>
> (3) *Each branch takes per stripes (i.e., according to the stock) as regards every other branch, but the members of each branch take per capita as regards each other. This rule applies equally whether the sons are all by the same wife or by different wives [Illustrations (a) and (b)].*

Rule 3 explains how the rule of *per capita* and *per stripes* operate. Mayne's on Hindu Law (17th Edition, Page 1027, Paragraph 445) explains the same concept more graphically as below:

445. Right of representation:

Under Mitakshara law, the right to a share passes by survivorship among the remaining coparceners, subject to the rule that where any deceased coparcener leaves male issue, they represent the rights of their ancestor to a partition. For instance, suppose A dies, leaving a son B, two grandsons E and F, three great-grandsons H, I, J and one great-great-grandson Z. The last named will take nothing, being beyond the fourth degree of descent (para 283). The share of his ancestor W will



pass by survivorship to the other brothers, B, C, D, and their descendants, and enlarge their interests accordingly. Hence B, C, and D will each be entitled to one-third. E and F will take the third belonging to C, and H, L, J will take D's third. Each class will take per stripes as regards every other class, but the members of the class take per capita as regards each other. "

28.2 The judicial understanding of these concepts has been consistent with the above rule. In ***Manjanatha Shanabhaga Vs Narayana Shanabhaga*** [ILR (1882) 5 Madras 362] the Court was required to determine the shares available to the coparceners after a set of coparceners had divided from the coparcenery and taken their shares. Muthuswami Iyer J writes:

> "***The rule that, as between different branches, division should be by the stock, and that as between the sons of the same father, it should be per capita, is laid down with reference to cases in which all the coparceners desire partition at the same time, and it ought not to be applied indiscriminately***... *When, therefore, a joint family in an advanced stage of development is broken up by partition, regard is had to the successive vested interests of each branch; and the division by the stock at each stage a new branch intervenes secures equal shares to those who were the sons of the same father..*"

The learned Judge then proceeds to provide an example and it reads*: "If, for instance, A and B, two brothers, have each two sons, and if the two sons of A first separate from the joint family, and if A should afterwards desire partition from B and his sons,"* what would be the share A would now be entitled to? The learned Judge answers:

> " *The shares of coparceners in each branch may increase or*

decrease according as the existing coparceners die or new coparceners are born, and when the joint family consists of several branches and one of those branches become extinct, the interest of that branch may also survive to the other. But so long as neither branch is extinct, ***the right of survivorship has no influence upon the shares of the coparceners who belong to a branch different to that to which the deceased coparceners belonged.*** *Take for example the case of two brothers, one of whom has two sons and the other has three sons. If either of the brothers dies, the share of the other branch would still be a moiety. If both the brothers die, each branch will still take a half share.* ***If one brother and two out of his three sons die, the surviving son would take the moiety of his own branch, whilst the two sons in the other branch would take each only a quarter share. So long as there are coparceners in each branch, the operation of the right of survivorship is precluded by the right of representation****."*

The correctness of ratio in ***Manjanatha's case***, more particularly the thrust it made on *Smiriti Chandrika* to address the issue before it became the subject of serious debate in ***Narayana Sah Vs A. Sankar & others*** [AIR 1929 Madras 865 (FB)]. This part is not essential, but what is contextually relevant is the passage from Mayne which the Court has relied on. The Court writes:

"*5.Mayne on Hindu Law, page 346, paragraph 270, is also quoted. He says:*

> *It is common to say that in an undivided family each member transmits to his 'issue his own share in the joint property, and that such* ***issue takes per capita inter se, but per stripes as regards the issue of other members.*** *But it must always be remembered that this only a statement of what would be their rights on a partition. Until partition all their rights consist merely in a common enjoyment of the common property, to which is further added the right of male issue to forbid alienation, made by their direct ancestors."*

28.3 The difference the Hindu Succession Act has brought to the above rule (*per capita* and *per stripes*) is on the point of its applicability. Prior to the arrival of the Act, the joint tenancy of the coparcenery vis-a-vis the ancestral property it held would continue till a partition among the coparceners took place, and partition would be effected only at the will of the coparcener or the coparceners, as the case may be. The inroad which the H.S.Act has made to this traditional concept is twofold : (a) in enforcing a notional partition under Sec.6 against the will of the coparceners; and (b) in declaring that the shares which devolve under Sec.8 of the Act will follow the rule prescribed in Sec.19, which rule is traditionally applicable only at the point of partition, and not at the point of devolution. This is because the Act has to accommodate female heirs for whose benefit the Parliament has laboured to tinker with the

traditional concepts of Hindu Law. And, inasmuch as Sec.19 does not define what it means by '*per capita*' and '*per stripes*', or '*tenancy in common*' and '*joint tenancy*', it is necessary to fall back on the conceptual Hindu Law for their understanding.

29. Now, is there anything abhorrent in Sec.8 read with Sec.19 in understanding that a share which a son takes in the estate of his father is an ancestral property? To illustrate it, A, a male Hindu, dies intestate leaving his self acquisition or a notionally allotted share in the ancestral property to be succeeded to by his heirs. He has two sons, B and C. And he also has two daughters, his widow and mother, all of whom will constitute his class I female heirs. Now, by the rule of succession envisaged under Sec.8, each of these heirs will take 1/6th share each. They get it per capita. And they also get it as tenants-in-common and not as joint tenants, in the sense that none among B and C and their female siblings could succeed to the share of anyone as among them by survivorship. To re-emphasis, Sec.19 merely states how a share vests in the first generation of heirs, but does not state anything as to how the property should be treated after it is so vested in a son. This would imply that the 1/6th share which B or C obtains belongs to his line, and it

cannot be interfered with by their other siblings based on rule of survivorship. This Court is unable to support an interpretation or an understanding that Sec.19 bars the formation of ancestral property in the male line upon vesting of a share *per capita* in the son. As stated elsewhere in this judgement, partition among co-sharers can happen either consensually or through a preliminary decree for partition of a court. Now, does it come in the way of, say B or C in the above illustration, taking their shares as an ancestral property? Hindu Succession Act does not bring in its own definition of coparcenery or ancestral property, but merely adopts the concepts as they are in the texts of Hindu law. If that is so, is it permissible to read into Sec.8 and 19 any implications more than what the statute has contemplated?

30. If the law is so understood, should the fact that some of the first-generation heirs are female heirs make any difference to the course of the discussion above? If class I female heirs are granted a share, again as stated elsewhere in this judgement, it only reduces the extent of property which a son may obtain, but it does not interfere with the formation of ancestral property in the hands of the son, for he obtaining a share from his father's estate fits in well with Mulla's definition of ancestral property: A share he has

not earned, but obtained from his ancestor – his/her own father. The solution is provided in ***C. Krishna Prasad Vs CIT*** [(1975) 1 SCC 160], (followed in ***Shyam Narayan Prasad Vs Krishna Prasad*** [(2018) 7 SCC 646]) where speaking for the Bench, H.R.Khanna J. writes:

> *"The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently.* ***Such share, however, is ancestral property only as regards his male issue. As regards other relations, it is separate property,*** *and if the coparcener dies without leaving male issue, it passes to his heirs by succession (see p. 272 of Mulla's Principles of Hindu Law,14th Edn.)"*

31.1 Any theory that proposes that when Sec.8 operates, the share in the hands of the son will be his personal property or individual property and it can never assume the character of an ancestral property even when the son begets a son, will signify the death-knell for the formation of ancestral property, which the Parliament never intended to meddle with, which to repeat, is neither the intent of the Parliament, nor within the scheme of the Act.

31.2. This apart, it may also lead to internal contradiction in understanding the

statutory scheme of the Hindu Succession Act in that, while Sec.6 still intends to preserve the concept of ancestral property as a rule, and to simultaneously construe Sec.8 as barring the formation of new ancestral property will be a synthesis of both thesis and antithesis which eventually will result in a negation of the idea of ancestral property. While interpreting the statute, it is an imperative necessity to ensure that the operation of one provision should not be allowed to eat up the existential relevance of another provision as in auto-immune disease.

31.3 Every provision must be given its due space for its operation, and hence, any attempt at interpreting a statute must ensure that all the provisions support each other for sustaining their simultaneous co-existence and relevance. *"Ut res magis valeat quam pereat",* which broadly means let the thing be more valued than it perishes, implying thereby that the interpretation of laws must make them worth rather than making them useless. It applies even for internal working of different parts of the same statute. In ***Badshah Vs Urmila Badshah Godse*** [(2014) 1 SCC 188], the Supreme Court has held " ... *where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute*

has been enacted rather than one which will put a road block in its way ..".

See also: ***Pratap Singh Vs State of Jharkhand*** [(2005) 3 SCC 551] and ***H.S.Vankani Vs State of Gujarat*** [(2010) 4 SCC 301].

32. To sum up the discussion on Sec.6 and Sec.8, it may be said that what emerges out of ancestral property will necessarily be ancestral property in whose hands it should be ancestral property, and what remains after providing for female heirs will also remain as ancestral property.

33.1 On facts, the point which is waiting to be answered is whether the 1/18th share which the first defendant had obtained from the share notionally allotted to the share of his father Rangasamy Chettiar is ancestral? It will necessarily become one, once he has sons, the defendants 2 and 3. Now with his daughters, the plaintiffs, becoming coparceners, they will also be entitled to take a share in it.

33.2 Alternatively, which is on facts, Ext.A1 evidences first defendant's conscious decision to blend the same with his undivided share in the ancestral property which he held jointly with his brother Kothandapani. In effect, the

undivided 1/3rd share which the first defendant originally had in the ancestral property together with the 1/18th share which he had obtained from the share of his father must necessarily be held to constitute ancestral property in his hands by virtue of Ex-A1. Defendants lose another vital point here to the plaintiffs.

Effect of the Abandonment of shares by the Daughters

34. This is the last layer of the defendants' contentions. Here the focus now gets shifted to consider the character of the property which statute vests in the four daughters of Rangasamy Chettiar. Under Ext.A1, they had taken a conscious decision to abandon their respective 1/18th share and settled for Rs.5,000/- each. Incidence of Sec.6 of the Hindu Succession Act can only vest a share in the Class I female heir of a deceased coparcener having an interest in the ancestral property. It merely grants them a right to seek partition of their share. But, how to deal with the share so vested in the female heirs is the prerogative of those female heirs. On facts, the recitals in Ex A1 makes a candid statement that the daughters of Rangasamy Chettiar did not desire the disintegration/fragmentation of the joint family property, and it was for this reason that they received Rs.5,000/- in lieu of their respective shares.

It is akin to a situation where someone who has a right to claim a slice of the cake out of the whole, but chooses not to claim it to preserve its wholesomeness. Will it not leave the whole cake intact? Indeed, the first defendant, who is a party to Ext.A1 has not attempted to characterise this transaction any differently from what is stated in Ext A1.

35. In fact, even amongst the coparceners, it is possible for a coparcener to renounce his share to the other coparceners. The consequence of such renunciation is that the interest of the coparcener would merge with the others. The coparcenary would, nevertheless continue as was held by a Division Bench of this Court in ***Kaveramma Vs Vishnu Kunkullayya and others*** [AIR 1919 Madras 440 : 1918 SCC OnLine Mad 257]. However, this court hastens to add that the ratio in that case may not apply here on fours, since the share which a relinquishing coparcener has is also ancestral property, whereas in the present case, the same effect is achieved through Ext.A1.

36. To sum up the discussions as to whether the suit property which was allotted to the first defendant under Ext.A1 constitutes ancestral property in

his hands, this Court unhesitatingly holds that it is an ancestral property in which the plaintiffs as coparcener would be entitled to a share. It may be that about a week prior to the institution of the suit, first defendant might have executed Exts.B1 and B2 settlement deeds, dated 22.08.2008 in favour of his sons, defendants 2 and 3 here, but it is important that even prior to that the plaintiffs have demanded their share in the property vide notice under Ext.A2 and Ext.A4 notices, dated 13.08.2008 and 19.08.2008 respectively. But when the plaintiffs have already become entitled to a share in the suit property as coparceners even from 09.09.2005, when amended Sec.6 came into effect, anything done by the defendants to upset the plaintiffs entitlement is liable to be ignored by the Court. And, admittedly, on that date, there was no written partition between the defendants. Substantial question No.2 is accordingly decided in favour of the plaintiffs/appellants. So far as the onus of proof goes, inasmuch as the rule of estoppel binds the first defendant to the recital regarding the character of the property in Ext.A1, the burden indeed is on the first defendant to explain the same as false or a mistake. Necessarily the answer to substantial question No.3 is also decided in favour of the plaintiffs/appellants. And in view of answer to the above substantial questions 1 to 3, this Court has to hold that substantial question No.4 must be decided in

favour of the appellants. This Court does not consider that any specific finding is required for substantial question No.5, for neither side is seen to have been prejudiced by the failure to frame appropriate points for consideration by the first appellate court.

Conclusion:

37. To conclude, this appeal is allowed and the judgment in A.S.No.57 of 2021 on the file of the I Additional District Court, Coimbatore is set aside and the decree of the trial Court in O.S.505 of 2008 is restored. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2024

Index : Yes / No
Neutral Citation : Yes / No
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To:

1. The I Additional District Judge
   Coimbatore.

2. The Principal Subordinate Judge
   Coimbatore.

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
S.A.No.527 of 2022

08.11.2024