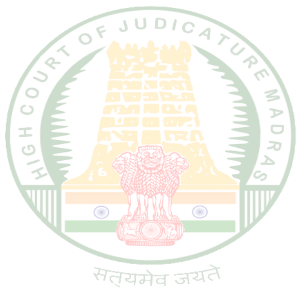
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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30-03-2026 / 06-04-2026

PRONOUNCED ON : 08-04-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

SA Nos.886 & 887 of 2010

S.A.No.886 of 2010

Kasthuri ... Appellant/Plaintiff

Vs.

1.Kausalya ... 1st respondent/1st defendant
2.A.Munusamy (died) ... 2nd respondent/2nd defendant
3.Kalpana
4.Deepika
5.Priyanka
6.Rohit
7.Ramya ... 3rd to 7th respondents/Legal Heirs of deceased 2nd respondent.

Respondents 3 to 7 brought on record as LRs of the deceased 2nd respondent viz., A.Munusamy, vide Court [PTAJ] order dated 29.06.2021 made in CMP Nos.1517 & 1518 of 2021 in SA Nos.886 and 887 of 2010.

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Additional District Judge (Fast Track Court No.II), Poonamallee, dated 19.10.2009 in A.S. No.83 of 2007 confirming the Judgment and Decree of the learned Subordinate Judge, Poonamallee, dated 30.10.2006 in O.S. No.165 of 1999.

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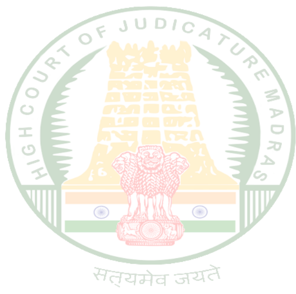

For Appellant: Ms.R.V.Rukmani

For Respondents: Mr.R.Thirugnanam (for R3 to R7)
R1-Ex parte
(vide Court order dated 19.01.2022)
R2-Died

S.A.No.887 of 2010

Kasthuri ... Appellant/Plaintiff

Vs.

1. A.Munusamy (died) ... 1st respondent/2nd defendant
2. Kausalya ... 2nd respondent/1st defendant
3. Kalpana
4. Deepika
5. Priyanka
6. Rohit
7. Ramya ... 3rd to 7th respondents/Legal Heirs of deceased 1st respondent.

Respondents 3 to 7 brought on record as LRs of the deceased 1st respondent viz., A.Munusamy, vide Court [PTAJ] order dated 29.06.2021 made in CMP Nos.1517 & 1518 of 2021 in SA Nos.886 and 887 of 2010.

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Additional District Judge (Fast Track Court No.II), Poonamallee, dated 19.10.2009 in A.S. No.34 of 2007 reversing the Judgment and Decree of the learned Subordinate Judge, Poonamallee, dated 30.10.2006 in O.S. No.165 of 1999.

For Appellant: Ms.R.V.Rukmani

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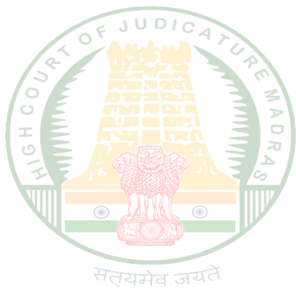
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For Respondents: R1-Died (steps taken)
Mr.R.Thirugnanam (for R3 to R7)
R2-Ex parte
(vide Court order dated 19.01.2022)

Common Judgment

Aggrieved by the judgment and decree in AS No. 34 of 2007 and AS No. 83 of 2007 on the file of the learned Additional District Judge, (FTC-II), Poonamallee, the plaintiff in OS No. 165 of 1999 on the file of the learned Subordinate Judge, Poonamallee, has preferred the above Second Appeals.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The facts leading to the filing of the appeals are as follows:

(i) The appellant in both appeals is the plaintiff in OS No. 165 of 1999. The deceased-A.Munusamy, who was the second respondent in S.A.No.886 of 2010 and the first respondent in S.A.No.887 of 2010, was the second defendant in the suit. One Kausalya, who is the first respondent in S.A.No.886 of 2010 and the second respondent in

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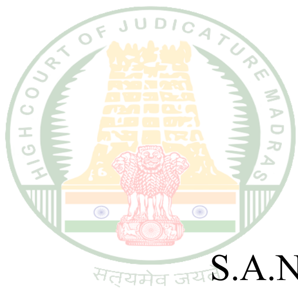
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S.A.No.887 of 2010, was the first defendant in the suit. Respondents 3 to 7 are the legal representatives of the above said deceased-A.Munusamy.

(ii) The plaintiff, the deceased Munusamy, and Kausalya are the children of one Angusamy and Andalammal. Andalammal was originally shown as the third defendant in the suit and pending the trial, she passed away.

(iii) It is the plaintiff's case that late Angusamy held ancestral properties which were described in Sl.Nos.1 to 12 in Item No.1 of the suit schedule properties; that he had purchased three properties which are described in Item No.2 of the suit schedule properties, in the name of her mother Andalammal; that the deceased second defendant-A.Munusamy and the said Andalammal, after the demise of Angusamy, claiming exclusive right over all the properties of Angusamy and Andalammal, had alienated a few properties and had failed to provide the share of the plaintiff; and hence, she is entitled for a decree for partition and separate possession of her one-third share in the suit schedule properties.

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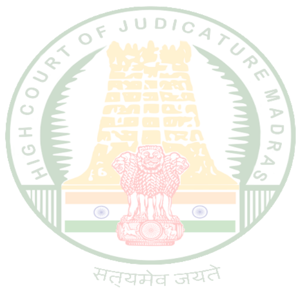
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(iv) The second defendant filed the written statement stating that the properties listed in Item No.1 of the suit schedule properties were ancestral properties; that he and his father, late Angusamy, were the only coparceners; that late Angusamy had executed a Will in respect of his undivided half share in the suit schedule properties on 18.01.1986 and as a result of which his two daughters (plaintiff and the first defendant) were not entitled to any share in the ancestral properties; that all the properties were treated as absolute properties of the second defendant and he had sold most of the properties; and that the properties described in Item No.2 of the suit schedule properties absolutely belonged to his mother late Andalammal and she had sold the properties while she was alive and there is no property available for partition.

(v) The first defendant Kausalya remained *ex parte* in the suit. The third defendant, Andalammal, adopted the written statement filed by the the second defendant. She died during the trial.

(vi) The trial Court framed three issues:

i. Whether the suit properties are the ancestral properties of late Angusamy?

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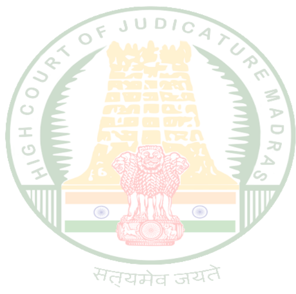

ii. Whether the plaintiff was in possession of the suit properties? and

iii. Whether the plaintiff was entitled to one-third share in the properties?

(vii) The trial Court found that the properties described in Item No.1 are ancestral properties; that the Will said to have been executed by Angusamy in respect of his half-share in the said properties, has not been proved; that certain properties in Item No.1, namely Sl.Nos 4, 8 to 10, were sold even prior to the institution of the suit and the purchasers were not made parties to the suit.

(viii) The trial Court found that since the Will has not been proved Angusamy's half-share must devolve equally by succession upon all the three children and held that the plaintiff is entitled to one-sixth share in Sl.No.1, 2, 3, 6, 7, 11, and 12 in Item No.1 of the suit schedule properties. As regards Item No.2 of the suit schedule properties, the trial Court held that the property mentioned in Sl.No.3 has already been sold and the plaintiff is entitled to one-third share in the properties mentioned in Sl.Nos.1 and 2.

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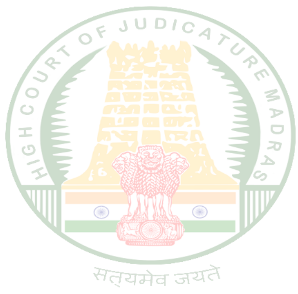
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(ix) The plaintiff aggrieved by the rejection of her claim in respect of certain properties filed A.S.No.83 of 2007 before learned Additional District Judge [FTC-II], Poonamallee. The second defendant aggrieved by the decree in respect of certain properties as stated above had filed A.S.No.34 of 2007.

(x) The first appellate Court found that the Will which was marked as Ex.B13 has been proved by the second defendant by examining DW2, an attestor; that the plaintiff had not filed a reply statement denying the execution of the Will; that she had not taken any steps to question the signature affixed in the Will; that since the Will has been proved and since the properties are ancestral properties, Angusamy and Munusamy were the coparceners and that the properties absolutely belonged to the second defendant.

(xi) As regards the Item No.2 of the suit schedule properties, the first appellate Court held that the properties are the self-acquired properties of the deceased Andalammal; that she had sold all the properties during her lifetime, that no evidence was let in by the plaintiff

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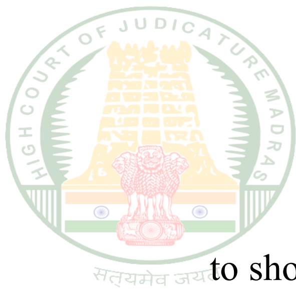
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to show that the said property is still available for partition and hence, the plaintiff is not entitled to a portion of the said properties.

(xii) The first appellate Court hence allowed A.S.No. 34 of 2007 and dismissed A.S.No.83 of 2007. The plaintiff has preferred the above second appeals challenging the common judgment passed in both the appeals.

4. When the second appeals were admitted, the following substantial questions of law were framed by this Court.

> "a. Was the first appellate Court right in declining relief of partition to the appellant, in her father's estate on the ground of limitation?
>
> b. Was the first appellate Court right in holding that the plaintiff was ousted from the suit properties merely on the ground that she was not in physical possession of the same?
>
> c. Were the Courts below right in brushing aside the effect of Act 39 of 2005, amendment to the Hindu Succession Act, giving equal right to daughters along side sons?
>
> d. Is not the findings of the first appellate Court perverse and illegal in misappreciating the evidence on record and to hold that the alleged Will was not disputed by the appellant which is totally contrary to the evidence of P.W.1?
>
> e. Was the first appellate Court right in setting aside the finding

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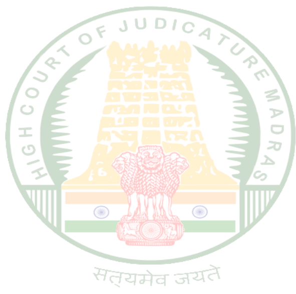
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of the trial Court regarding discrepancy between the admitted signature and the alleged signature in the Will, Exhibit B13 on the basis of the oral testimony of DW2, an alleged attesting witness alone?

f. Were the Courts below justified in not taking into account subsequent event, viz., death of the mother, Andal Ammal to decree the suit in so far as Item II of the schedule properties?"

5. Ms.R.V.Rukmani, learned counsel for the plaintiff would vehemently contend that the first appellate Court erred in holding that the Will has been proved; that the Will though was said to have been executed in 1986, the second defendant admitted that he was not aware of the said Will, which is improbable; that the Will was only created after the suit was filed; that in the sale deeds executed by the second defendant prior to the institution of the suit, there is no reference to the Will; that the trial Court had rightly found that there was a variation in the signature of the unregistered Will when compared with the admitted signature in Ex.B3, a sale agreement; that the first appellate Court had erroneously relied upon the evidence of the attestor-DW2, which is insufficient when there is a suspicion as regards the execution of the Will; that in any case, in view of the judgment of the Hon'ble Supreme Court in ***Vineeta Sharma vs. Rakesh Sharma and others***, reported in **(2020) 9 SCC 1**, since the daughter is also a coparcener, she is entitled to an equal share as

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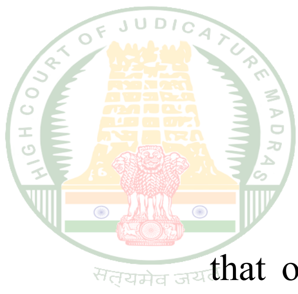
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that of the son, subject to alienations or testamentary deposition made prior to 20.12.2004 in respect of Item No.1 of the suit schedule properties; and that in respect of Item No.2 of the suit schedule properties which belonged to late Andalammal, the plaintiff as a daughter is entitled to one-third share and prayed for setting aside the impugned judgment.

6. Kausalya, the 1st respondent in S.A.No.886 of 2010 and the 2nd respondent in S.A.No.887 of 2010 [the first defendant in the suit] was set *ex parte* vide this Court's order dated 19.01.2022.

7. Mr. Thirugnanam, learned counsel for respondents 3 to 7, who are the legal heirs of the deceased second defendant, submitted that the suit was filed in the year 1999; that the suit claim for one-third share is misconceived, as even according to the plaintiff, the Item No.1 of the suit schedule properties were ancestral properties that most of Item No.1 properties were sold even prior to the institution of this suit; that the suit suffers from latches and was instituted nearly 13 years after the death of Angusamy; that the rights of the plaintiff was ousted on account of passage of time; that since the suit was also one for recovery of

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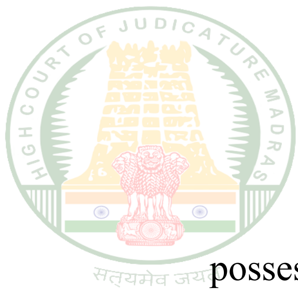
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possession, it ought to have been instituted within 12 years in view of Article 110 of the Limitation Act, 1963 and the suit is barred by limitation; that in respect of Item No.2 of the suit schedule properties, all the properties were sold even during the lifetime of Andalammal and therefore, they are not available for partition; that the Will has been proved beyond doubt and rightly accepted by the first appellate Court; and that the Will is in respect of Sl.Nos.1 to 7 in Item No.1 of the suit schedule properties and the remaining properties in Sl.Nos.8 to 12 were already sold; and hence, prayed for dismissal of the appeals.

8. This Court has carefully considered the rival submissions and perused the materials available on record.

9. Substantial Questions of Law 'd' and 'e':

(i) The substantial questions of law 'd' and 'e' relate to the validity of the Will, marked as Ex.B13, said to have been executed by the late Angusamy. The following facts are admitted:

The plaintiff, the first defendant-Kausalya, and late Munusamy, the second defendant are the children of late Angusamy and Andalammal

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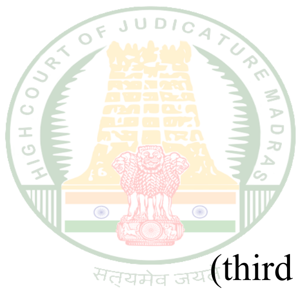
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(third defendant originally). Item No.1 of the suit schedule properties are ancestral properties. Item No. 2 belonged to late Andalammal. Some of the properties in Item Nos.1 and 2 were already sold by late Angusamy and late Andalammal, and some were sold by the second defendant prior to the institution of the suit. The plaintiff had not filed any encumbrance certificate in respect of the suit schedule properties and had not arrayed the purchasers as defendants in the suit.

(ii) Since Item No.1 of the suit schedule properties are ancestral properties, the plaintiff had no basis to claim one-third share in the said properties, as on the date of the suit she had no right as a coparcener. If at all she had any right over the ancestral properties, it was only her one-third share in the father's half share in the coparcenary property, provided the father died intestate. It is the case of the defendants that Angusamy executed a Will on 18.01.1986 in respect of Sl.Nos.1 to 7 in Item No.1 of the suit schedule properties. The properties in Sl.Nos.8, 9, 10 were sold and stated so in the said Will. However, the plaintiff had not chosen to file a reply statement denying the execution of the Will. The defendants had examined one DW2, an attestor to the Will. No suggestion was made

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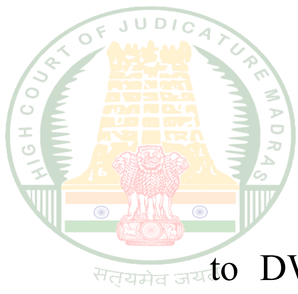
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to DW2 that the signature in the Will were forged. DW2 was not discredited in any manner in the cross-examination. The first Appellate Court, on comparison of the signature in Ex.B13 with the admitted signature in Ex.B3, had found that though there is a slight variation, it reveals that it was signed by the same person. The plaintiff besides not pleading that the Will was forged had not taken any steps to prove that the signature in the Will was not that of late Angusamy.

(iii) The defendants had discharged their onus that the Will was signed by the testator in the presence of two witnesses and he was in a sound disposing state of mind at the time of execution. The plaintiff, who alleged that the Will was either forged or obtained by fraud, had failed to prove such allegation. In ***Daulat Ram vs. Sodha*** and others reported in **2004 5 CTC 790**, the Hon'ble Supreme Court has held as follows:

> "10. Will being a document has to be proved by primary evidence except where the Court permits a document to be proved by leading secondary evidence. Since it is required to be attested, as provided in Section 68 of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. In

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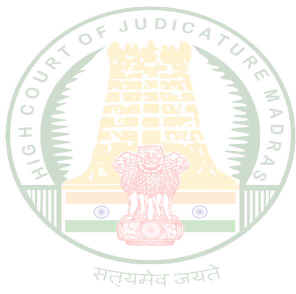
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> addition, it has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. In order to assess as to whether the Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signatures to the testament of his own free will; that he was at the relevant time in a sound disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so."

(iv) In the facts of this case, this Court is of the view that the plaintiff had not pointed out any circumstances in the pleadings or in the cross-examination of DW2 to suggest that the Will is suspicious. Though there is a reference in the trial Court judgment about the admission made by the second defendant, that he had not referred to the Will in any of his sale deeds executed by him, this Court is of the view that since the plaintiff had neither pleaded nor established that the Will was forged or obtained under undue influence or coercion, the finding of the first

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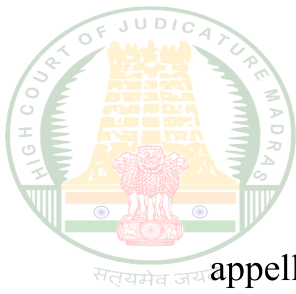

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appellate Court that the Will is genuine cannot be faulted. The substantial questions of law 'd' and 'e' are answered accordingly.

10. Substantial Questions of Law 'a' to 'c':

(i) When the plaintiff filed the suit she could not have claimed a share in her father Angusamy's share in coparcenary property and her claim of 1/3rd share in the suit properties was misconceived. However, it is well settled that in a partition suit, a suit for partition is not disposed of by passing a preliminary decree and the suit continues until a final decree is passed. It is only by a final decree an immovable property is partitioned by its metes and bounds.

(ii) The Hon'ble Supreme Court had also held that even after passing of the preliminary decree, if there is an enlargement or diminution of the shares of the parties or their rights have been altered by any statutory amendment, the Court is bound to decide the matter and pass a final decree keeping in view the change in law. It will be useful to refer to the relevant observations of the Hon'ble Supreme Court in ***Vineeta Sharma's case*** [supra],

> 96. In S. Sai Reddy v. S. Narayana Reddy & Ors. (1991) 3 SCC 647, a suit for partition, was filed. A preliminary decree determining

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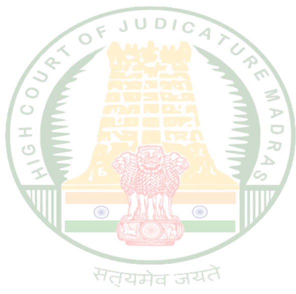
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the shares was passed. The final decree was yet to be passed. It was observed that unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. A preliminary decree does not bring about the final partition. For, pending the final decree, the shares themselves are liable to be varied on account of the intervening events, and the preliminary decree does not bring about any irreversible situation. The concept of partition that the legislature had in mind could not be equated with a mere severance of the status of the joint family, which could be effected by an expression of a mere desire by a family member to do so. The benefit of the provision of section 29A could not have been denied to women whose daughters were entitled to seek shares equally with sons in the family. In S. Sai Reddy (supra), it was held:

> "7. The question that falls for our consideration is whether the preliminary decree has the effect of depriving respondents 2 to 5 of the benefits of the amendment. The learned counsel placed reliance on clause (iv) of Section 29-A to support his contention that it does. Clause (ii) of the section provides that a daughter shall be allotted share like a son in the same manner treating her to be a son at the partition of the joint family property. However, the legislature was conscious that prior to the enforcement of the amending Act, partitions will already have taken place in some families and arrangements with regard to the disposition of the properties would have been made and marriage expenses would have been incurred etc. The legislature, therefore, did not want to unsettle the settled positions. Hence, it enacted clause (iv) providing that clause (ii) would not apply to a daughter married prior

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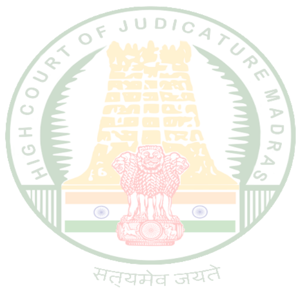

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to the partition or to a partition which had already been effected before the commencement of the amending Act. Thus if prior to the partition of family property a daughter had been married, she was disentitled to any share in the property. Similarly, if the partition had been effected before September 5, 1985 the date on which the amending Act came into force, the daughter even though unmarried was not given a share in the family property. The crucial question, however, is as to when a partition can be said to have been effected for the purposes of the amended provision. A partition of the joint Hindu family can be effected by various modes, viz., by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the Court. When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. *The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (ii) of Section 29-A of the Act became applicable. This intervening event which gave shares to respondents 2 to 5 had the effect of varying*

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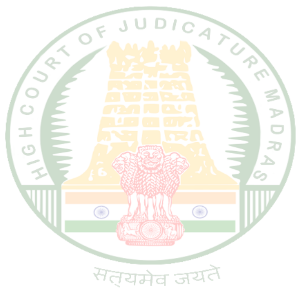
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shares of the parties like any supervening development. Since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. *The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment. Spurious family settlements, instruments of partitions not to speak of oral partitions will spring up and nullify the beneficial effect of the legislation depriving a vast section of women of its benefits.*

8. Hence, in our opinion, the High Court has rightly held that since the final decree had not been passed and the property had not been divided by metes and bounds, clause (iv) to Section 29-A was not attracted in the present case and the respondent-daughters were entitled to their share in the family property." (emphasis supplied)

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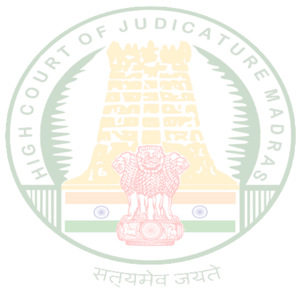
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97. In Prema v. Nanje Gowda, AIR 2011 SC 2077, insertion of section 6A by the amendment made by the State of Karnataka in the Hindu Succession Act, 1956, was considered. Equal rights were given to the daughter in coparcenary property in a suit for partition. A preliminary decree was passed. Amendment in the Act was made during the final decree proceedings. It was held that the discrimination practiced against the unmarried daughter was removed. Unmarried daughters had equal rights in the coparcenary property. The amendment's effect was that the unmarried daughter could claim an equal share in the property in terms of section 6A inserted in Karnataka. In Prema (supra), the Court opined:

> "12. … in R. Gurubasaviah v. Rumale Karibasappa and others, AIR 1955 Mysore 6, Parshuram Rajaram Tiwari v. Hirabai Rajaram Tiwari, AIR 1957 Bombay 59 and Jadunath Roy and others v. Parameswar Mullick and others, AIR 1940 PC 11, and held that if after passing of preliminary decree in a partition suit but before passing of final decree, there has been enlargement or diminution of the shares of the parties or their rights have been altered by statutory amendment, the Court is duty-bound to decide the matter and pass final decree keeping in view of the changed scenario."
>
> ** ** **
>
> "16. We may add that by virtue of the preliminary decree passed by the trial court, which was confirmed by the lower appellate Court and the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only

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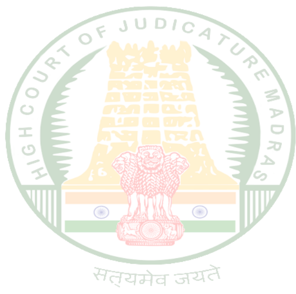
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> when the final decree is passed. If in the interregnum any party to the partition suit dies, then his/her share is required to be allotted to the surviving parties and this can be done in the final decree proceedings. Likewise, if law governing the parties is amended before the conclusion of the final decree proceedings, the party benefited by such amendment can make a request to the Court to take cognizance of the amendment and give effect to the same. If the rights of the parties to the suit change due to other reasons, the Court seized with the final decree proceedings is not only entitled but is duty-bound to take notice of such change and pass appropriate order…" (emphasis supplied).

98. It was held that if after passing of a preliminary decree in a partition suit but before passing of the final decree, there has been enlargement or diminution of the shares of the parties or their rights have been altered by statutory amendment; the Court is duty-bound to decide the matter and pass final decree keeping in view the changed scenario. In Prema (supra), the Court further opined:

> "29. In our view, neither of the aforesaid three judgments can be read as laying down a proposition of law that in a partition suit, preliminary decree cannot be varied in the final decree proceedings despite amendment of the law governing the parties by which the discrimination practiced against unmarried daughter was removed and the statute was brought in conformity with Articles 14 and 15 of the Constitution. We are further of the view that the ratio of Phoolchand v. Gopal Lal, (AIR 1967 SC 1470) (supra) and S. Sai Reddy v. S. Narayana Reddy, (1991 AIR SCW 488) (supra) has direct bearing on this

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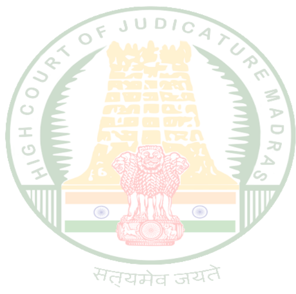
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> case and the trial court and the High Court committed serious error by dismissing the application filed by the appellant for grant of equal share in the suit property in terms of Section 6A of the Karnataka Act No.23 of 1994."
> It was laid down that by the change of law, the share of daughter can be enlarged even after passing a preliminary decree, the effect can be given to in final decree proceedings.""

(iii) Therefore, this Court has to necessarily take into consideration the effect of Act 39 of 2005 amendment to the Hindu Succession Act, 2005 which would have a bearing on the rights of the parties in this case. By virtue of the amendment, the plaintiff has to be treated as a coparcener in respect of the ancestral properties. The Hon'ble Supreme Court in ***Vineeta Sharma's case*** [supra] had summed up its findings as follows:

"137. Resultantly, we answer the reference as under:

> 137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.
>
> 137.2. 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 the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

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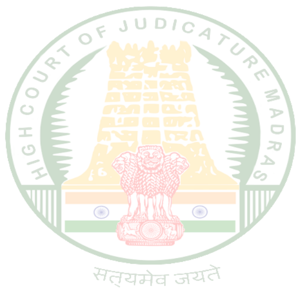

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137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

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

137.5. 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 recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

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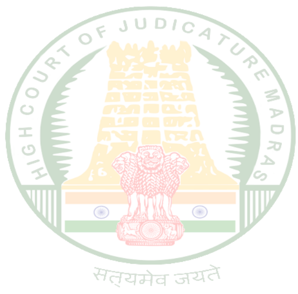
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(iv) From the above observations, it will be clear that the rights can be claimed by the daughter with effect from 09-09-2005 with savings as provided in section 6(1) as to the disposition or alienation, partition or testimonial disposition, which have taken place before 20.12.2004.

(v) It is in the light of the above legal principles the share of the plaintiff has to be determined. In view of her right by birth which has been recognized by the amendment, neither the question of limitation nor ouster would arise.

(vi) As stated above, the Will of Angusamy dated 18.01.1986 has been proved. Angusamy died on 02.03.1986 and hence the testamentary disposition took place prior to 20.12.2004. It is seen from the Will that Angusamy had bequeathed his 50% undivided share in Sl.Nos 1 to 7 of Item No.1 of the suit schedule properties, in favour of the second defendant. When Angusamy executed the Will, he did so on the premise that he had 50% undivided share in the said properties. The said testamentary disposition is protected. He could have executed the Will in favour of any third person. The fact that he executed a Will in favour of

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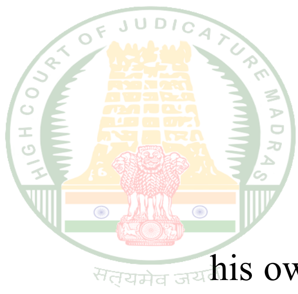
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his own son, another coparcener would make no difference and therefore, the said testamentary disposition has to be necessarily saved and the plaintiff, the daughter cannot claim any share in the 50% undivided share of Angusamy in the properties listed in Sl.Nos.1 to 7 of Item No.1 of the suit schedule properties. The plaintiff would not be entitled to any share in respect of the said testamentary disposition. The properties in Sl.Nos 8, 9, and 10 have been stated to be sold by the late Angusamy in the Will.

(vii) Therefore, this Court is of the view that the plaintiff would be entitled to 1/3rd share in the ½ share that remained in the coparcenary property, after excluding the testamentary disposition made by her father. In other words, the plaintiff would be entitled to 1/3rd x ½ = 1/6th share in properties mentioned in Sl.Nos.1 to 7 of Item No.1 of the suit schedule properties, provided they have not been subjected to any alienation prior to 20.12.2004 by Munusamy/the second defendant.

(viii) Though it is pleaded and some evidence has been let in that certain properties are not available for partition and some of the properties have been described improperly, this Court is of the view that

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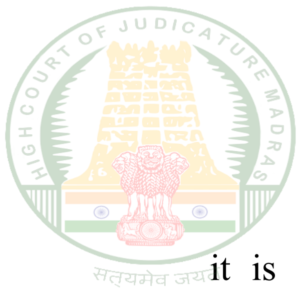
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it is for the trial Court to determine as to which of the properties mentioned in Sl.Nos.1 to 7 of Item No.1 of the suit schedule were available as on 20.12.2004 for partition and determine the 1/6th share of the properties that remained with Munusamy as on 20.12.2004. As stated above the properties in Sl.Nos.8, 9 and 10 have already been sold according to the Will and there is no evidence to the contrary by the plaintiff.

(ix) As regards Sl.Nos.11 and 12 of the Item No.1 of the suit schedule properties, it is seen that though the defendants had claimed that they were sold, the trial Court may determine whether those properties were also available as on 20.12.2004 for partition, before passing the final decree. Further, since there is no testamentary disposition in respect of Sl.Nos.11 and 12 of the Item No.1 of the suit schedule properties, the plaintiff would be entitled to 1/3rd share subject to the above observation and subject to the savings as provided in Section 6(1) of the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005). Therefore, the substantial questions of law ‘a’ to ‘c’ are answered accordingly.

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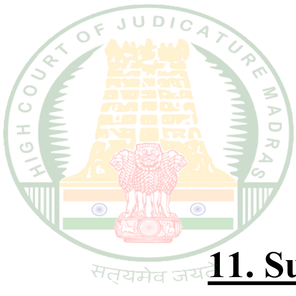
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11. Substantial Question of Law 'f':

(i) As regards the substantial question of law 'f', it is seen that the defendants have stated categorically in the written statement that all the properties have been sold while the late Andalammal was alive. In fact, D.W.1 had deposed and had produced Ex.B4 sale deed of the year 1991 to prove that the property in Sl.No.3 of Item No.2 of the suit schedule properties, was sold through the said document.

(ii) In respect of the property in Sl.No.2 of Item No.2 of the suit schedule properties, the defendants have produced Ex.B5, sale deed of the year 1978 to show that the property has been sold. In fact, the plaintiff has not let in any evidence to the contrary.

(iii) As regards the property in Sl.No.1 of Item No.2 of the suit schedule properties, the defendants have stated that that property also has been sold prior to the death of Andalammal. The learned counsel produced the chart stating that substantial portion of the said property was sold and 6.46 cents is available for partition. However, there is no such evidence let in by the plaintiff to show that the said extent of 6.46 cents is

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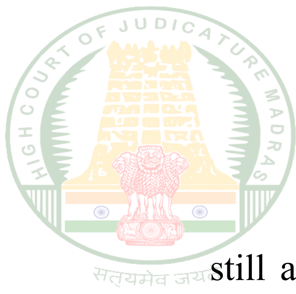
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still available for partition. In the absence of evidence adduced on the side of the plaintiff, this Court is of the view that the plaintiff is not entitled to partition of any of the properties in Item No.2 of the suit schedule properties. Therefore, substantial question of law 'f' is answered against the plaintiff.

12. In the result, this Court sums up the findings as follows:

(a) As regards, Sl.Nos.1 to 7 of the Item No.1 of the suit schedule properties, the plaintiff would be entitled to 1/6th share.

(b) As regards, Sl.Nos.8, 9 and 10 of the Item No.1 of the suit schedule properties, the plaintiff would not be entitled to any share.

(c) As regards, Sl.Nos.11 and 12 of the Item No.1 of the suit schedule properties, the plaintiff would be entitled to 1/3rd share.

(d) The entitlement referred to in (a) and (c) would be subject to any alienation made by the said Munusamy/the second defendant, prior to 20.12.2004. The trial Court shall

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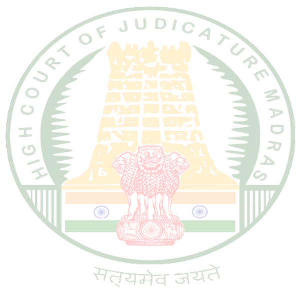
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determine the properties that were available as on 20.12.2004 and pass a final decree as stated above in respect of those properties.

(e) As regards, Item No.2 of the suit schedule properties, the plaintiff is not entitled to any share since the properties are not available for partition.

13. The second appeals are partly allowed in the above terms. No Costs.

08-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Additional District Judge
(Fast Track Court-II),
Poonamallee.

2. The Subordinate Judge,
Poonamallee.

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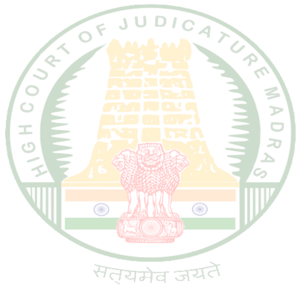

SUNDER MOHAN J.

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Pre-delivery Common Judgment in SA Nos.886 & 887 of 2010

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