



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE THIRTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 1364 OF 2010

Between:

1. Achutuni Sitharavamma W/o. Late A.G.K.Murthy
Housewife
Plot No. 25, C/o. Srinivasarao
D.No. 24-25/4 Adithya Apts.,
Vishnupuri Colony, Malkajgiri, Hyderabad
2. Siripurapu Swarajya Lakshmi W/o. Late Lakshmi Narayana
Housewife
D.No. 25-16/117/3, Dr.K.Kondanda Ramaiah
Chuttugunta, Guntur District MMC
3. Chundururu Savithri Devi W/o. Ch. KRishna Kumar
R/o. MGI 64, A.P.Housing Board Colony
Guntur District MMC

...PETITIONER(S)

AND:

1. Turaga Ananda Rao S/o. Late Rama Murthy
D.No. 42-3/1-62, A
Koduru Raju Street
Rama Krishnapuram, Vijayawada-3 MMC
4. Turaga MAnikya Rao S/o. Late Rama Murthy
Plot No. 14 Teachers Colony Gunrock
Tirumalagiri Secunderabad
5. Turaga Babu Rao S/o. Late Rama Murthy
Retd. Physical Education Teacher, High School, Guntur
R/o. Plot no. 401, Yaganti Bliss Krishnanagar Main Road
Guntur
6. Turaga Suryanarayana Murthy S/o. Late Rama Murthy
ASI of Police
D.No. 5-89-8/1, 3rd Line Lakshmiapuram
Beside Pitchaiah Hotel
Guntur
7. Turaga Venkata Sitha Rama Rao S/o. Late Radha Krishna Murthy
Employee
Plot no. 9, MES Colony Picket Secunderabad-26
Secunderabad MMC
8. Turaga Sankara Narayana Rao S/o. Late Radha Krishna Murthy
Employee
Plot no. 9, MES Colony Picket Secunderabad-26
Secunderabad MMC
9. Turaga Ramanath Tilak @ Ramesh S/o. Late Radha Krishna Murthy
Employee
Plot no. 9, MES Colony Picket Secunderabad-26
Secunderabad MMC
10. Turaga Venkata Sri Rama Murthy S/o. Late Radha Krishna Murthy
Employee
Plot no. 9, MES Colony Picket Secunderabad-26
Secunderabad MMC



2023:APHC:18309

11. Turaga Kameswara Rao S/o. Late Rama Murthy
C/o. Turaga Ganesh, Employee in Prashanta Nilayam
Behind Sathyamma Temple, NEar Banian Factory, Puttaparthi
Ananthapur District
12. Turaga Rama Devi w/o. Late Rama Murthy
C/o. Turaga Suryanarayana Murthy
D.No. 5-89-8/1, 3rd line, Lakshmipuram
Beside Pitchaiah Hotel, Guntur
13. Turaga Mahalakshmi W/o. Late Prasada Rao
D.No. 2-3-512/A/149 Pallavi Caterers, Pallavi Nilayam
Near J.N.Polytechnic College, Chennareddy Nagar
Amberpet, Ramanthapur, Hyderabad
14. Turaga Naga Balaji S/o. Late Prasada RAO
D.No. 2-3-512/A/149 Pallavi Caterers, Pallavi Nilayam
Near J.N.Polytechnic College, Chennareddy Nagar
Amberpet, Ramanthapur, Hyderabad

...RESPONDENTS

Counsel for the Petitioner(s): C.PANINI SOMAYAJI

Counsel for the Respondents: A V KRISHNA KOUNDINYA

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.1364 OF 2010

Between:

Achutuni Sitharavamma and two (02) others
... Petitioners/Defendant Nos.7 to 9

Versus

Turaga Ananda Rao and thirteen (13) others
... Respondents

* * * * *

DATE OF ORDER PRONOUNCED : 13.06.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Order? Yes/No

JUSTICE B.V.L.N.CHAKRAVARTHI



*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.1364 OF 2010

% 13.06.2023

Between:

Achutuni Sitharavamma and two (02) others
... Petitioners/Defendant Nos.7 to 9

Versus

Turaga Ananda Rao and thirteen (13) others
...Respondents

- ! Counsel for the Revision petitioners** : Sri C.Panini Somayaji
- ^ Counsel for the Respondent Nos.1, 5, 6 & 8** : Sri A.V.Krishna Koundinya
- ^ Counsel for the Respondent Nos.2 & 7** : Sri Vijaya Bhaskar Moola
- ^ Counsel for the Respondent No.3** : Sri M.Radha Krishna
- ^ Counsel for the Respondent No.4** : Sri N.Sanyasi Rao
- ^ Counsel for Respondent No.9** : Died, proposed LRs R.13 & 14
- ^ Counsel for the Respondent No.10** : Not claimed (Deemed to be served)
- ^ Counsel for the Respondent Nos.11 & 12** : Not claimed (Deemed to be served) proof of service filed *vide* USR No.7874/17
- ^ Counsel for the Respondent No.13** : Notice served



^ **Counsel for the Respondent** : Refused (Deemed to be
No.14 : served) proof of service filed
vide USR No.4709/17

< **Gist:**

> **Head Note:**

? **Cases referred:**

1. **2007 (2) ALT 52 (SC).**
2. **2006 (6) ALT 38 (SC).**
3. **AIR 2012 SC 169.**
4. **(2018) 2 SCC 343.**
5. **(2020) 9 Supreme Court Cases 1.**
6. **2023 SCC OnLine SC 360.**

This Court made the following:



THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI

CIVIL REVISION PETITION NO.1364 of 2010

ORDER:

This revision-petition is directed against the Order, dated 18.02.2010 passed in I.A.No.639 of 2009 filed under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for brevity 'CPC'), in I.A.No.388 of 2007 in O.S.No.86 of 1986 on the file of Additional Senior Civil Judge's Court, Tenali. The Trial Court 'Allowed' the said application filed to review the Order, dated 17.08.2009 passed in I.A.No.93 of 2009 in I.A.No.388 of 2007 in O.S.No.86 of 1986.

2. For the sake of convenience, the parties are referred to as they were arrayed in the Trial Court proceedings.

3. The facts of the case, in brief, are as follows:

The plaintiff, defendant Nos.2, 3, 4, 5 and 6 are the sons, defendant Nos.7 to 9 are the daughters of late Turaga Ramamurthy. Defendant No.1 is the second wife of Turaga Ramamurthy and mother of plaintiff, defendant Nos.3 to 9 and stepmother to defendant No.2. The plaintiff contends that he is entitled to 11/70th share in the joint family properties, but the defendant Nos.1 and 3 to 9 are not cooperating for partition. It



was alleged that the defendant No.5 is managing the entire joint family properties without accounting for it and the defendant Nos.5 and 6 in collusion with others, purchased 'C' schedule property on 03.06.1987 for Rs.5,000/- with joint family funds. Thus, the plaintiff is also entitled for 11/70th share in 'C' schedule property.

4. The plaintiff filed O.S.No.86 of 1986 on the file of Additional Senior Civil Judge's Court, Tenali against the defendants for Partition and it was preliminarily decreed on 29.04.1993 holding that the plaintiff is entitled to 11/70th share and defendant Nos.10 and 11, who are co-sharers, are entitled to 1/5th share in the share of plaintiff; the defendant Nos.2, 3 to 6 are entitled to 11/70th share each and defendant Nos.1, 7 to 9 are entitled to **1/70th** share each in the plaint 'A' and 'C' schedule properties.

5. Later the Defendant Nos.7 to 9 filed I.A.No.388 of 2007 under Order XX Rule 18 and Section 151 of CPC to pass a Final Decree as per the Hindu Succession (Amendment) Act, 2005 (39 of 2005). The Trial Court in its Order, dated 13.10.2008 appointed an Advocate-Commissioner directing to divide plaint 'A'



and 'C' schedule properties into 100 equal shares and to allot 11 such shares to each of them.

6. While so, the defendant Nos.7 to 9 filed another application in I.A.No.93 of 2009 for amendment of last para of the Judgment and preliminary decree for substitution of division of plaint 'A' and 'C' schedule properties into 100 equal shares in the place of 70 equal shares and for allotment of shares to the respective sharers impleading defendant Nos.3 to 6, plaintiff and defendant Nos.1, 10 and 11. The learned Trial Court allowed the said application on 17.08.2009.

7. Aggrieved by the said Order, the defendant Nos.3 to 6 and legal representatives of the defendant No.2 filed a petition under Order XLVII Rule 1 of CPC to review the Order passed in I.A.No.93 of 2009, dated 17.08.2009 on the ground that Section 6 (3) of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) applies only to cases where Hindu dies after the commencement of Amendment Act of 2005 and it is prospective, but not retrospective in operation, as Turaga Ramamurthy died on 17.07.1961, the amended Act does not apply to the facts of the case and even Andhra Pradesh Amended Act 13 of 1986 also does not apply to the daughters i.e., defendant Nos.7 to 9, as



their marriage was performed prior to commencement of amended Act.

8. The Trial Court, considering the decisions rendered by the Hon'ble Apex Court in **Sheela Devi and others vs. Lal Chand and another**¹ and **Anar Devi vs. Parameswari Devi and others**², 'Allowed' the application on 18.02.2010 holding that succession to the property of Turaga Ramamurthy opened after his death in the year 1961, which is much prior to the cut-off date 09.09.2005, given for commencement of 2005 Amendment Act and therefore, his estate vests on his lawful sharers immediately, as succession cannot be kept in abeyance and once property is vested under old provisions of law, it is not divested by the Amendment Act, 2005. There by the trial Court reviewed its order dated 17.08.2009. Hence the revision is filed against order dated 18.02.2010.

9. In the light of above rival contentions, the point that would arise in the revision-petition is as under: -

“Whether the Trial Court committed any material irregularity in the Order, dated 18.02.2010

¹ 2007 (2) ALT 52 (SC).

² 2006 (6) ALT 38 (SC).



**passed in I.A.No.639 of 2009 in I.A.No.388 of 2007
in O.S.No.86 of 1986?”**

10. **P O I N T:** -

There is no dispute regarding the relationship in between both parties i.e., plaintiff, defendant Nos.2, 3, 4, 5 and 6 are the sons, defendant Nos.7 to 9 are the daughters of late Turaga Ramamurthy and except defendant No.2, plaintiff, defendant Nos.3 to 9 were born to defendant No.1, who was the second wife of Turaga Ramamurthy.

11. The circumstances that lead the plaintiff to file suit against the defendants is that as the defendant Nos.1, 3 to 9 did not cooperate and evading for division of joint family properties, the plaintiff filed O.S.No.86 of 1986 on the file of Senior Civil Judge's Court, Tenali, against the defendants for the relief of 'Partition' of plaint 'A', 'B' and 'C' schedule properties into 70 shares and to allot 11 such shares to the plaintiff.

12. The learned Trial Court passed preliminary decree in the suit on 29.04.1993 holding that the plaintiff is entitled to 11/70th share out of plaint 'A' and 'C' schedule properties. However, the learned Trial Court 'Rejected' the claim of plaintiff in respect of



plaint 'B' schedule property holding that the said property is the exclusive property of defendant No.2.

13. Subsequent to the Hindu Succession (Amendment) Act, 2005 (39 of 2005) which came into effect from 09.09.2005, the defendant Nos.7 to 9 daughters filed I.A.No.388 of 2007 under Order XX Rule 18 and Section 151 of CPC to pass a Final Decree in terms of preliminary decree, dated 29.04.1993 and also contended that as per the Hindu Succession (Amendment) Act, 2005 (39 of 2005), the plaintiff and defendant Nos.2 to 9 are entitled to equal shares along with their father Turaga Ramamurthy.

14. The defendant Nos.7 to 9 daughters also filed I.A.No.93 of 2009 under Sections 151, 152 and 153 CPC to amend the Preliminary Decree, dated 29.04.1993, as per amended Act. The said petition was 'Allowed' on 17.08.2009 holding that in view of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), the defendant Nos.7 to 9 being the daughters of Turaga Ramamurthy, became coparceners and they are entitled to share in coparcenary property by birth on par with sons.

15. Aggrieved by the said Order, the defendant Nos.3 to 6, and the legal representatives of the defendant No.2 i.e., respondent



Nos.10 to 13 filed I.A.No.639 of 2009 under Order XLVII and Rule 1 of CPC against the defendant Nos.7 to 9, plaintiff and defendant Nos.1, 10 and 11, to review the Order passed in I.A.No.93 of 2009, dated 17.08.2009. The learned Trial Court 'Allowed' the said application on 18.02.2010.

16. Be that as it may. The Hindu Succession (Amendment) Act, 2005 has raised several legal issues, one such question is whether this Amendment Act is retrospective or prospective. The issue in the case is whether the succession had already been opened prior to the amendment, if so, this amendment cannot be applied?

17. The Amendment enacts that the daughter will be a coparcener by birth. So would her claim for share goes back to the date of her birth, which is prior to the Amendment Act, if yes, the amendment is retrospective in nature. However, the amendment also states that if the partition or severance of status takes place before 20th December 2004, the daughter cannot ignore such partition and claim her share as a coparcener. Thus, in those cases the amendment is not retrospective in nature.

18. These controversies arising out of the amendment has been resolved by several Courts which put rest to all these issues. The



controversy of whether the amendment is retrospective in nature in the cases when the partition had already been taken place prior to the Amendment Act, was resolved by the Hon'ble Supreme Court in the case of **Ganduri Koteshwaramma v. Chakiri Yanadi**³, in which the appellants are the unmarried daughters of one Chakiri Venkata Swamy, and the respondent has filed a case for Partition in the Joint family Property of their mother in the year 1993. The Trial Court, on 19.03.1999 passed the preliminary decree holding that the daughter is entitled to share in the Joint family property along with father and brother. However, on 27.09.2003, the preliminary decree was amended that the two unmarried daughters are also entitled to this joint family property. Subsequently, the amendment in Hindu Succession Act came into existence and thereby, the appellants filed an application to pass a Final Decree in their favour regarding the disputed joint family property. When the issue as to whether the preliminary decree and amended decree passed by the Trial Court deprives the two unmarried daughters the benefits of amendment though the Final Decree has not yet been passed, came before the Hon'ble Apex Court, their Lordships held that the partition has not been disposed off before 20th December

³ AIR 2012 SC 169.



2004, as the preliminary decree only shows the determination of shares of the members in the property which was also amended in 2003. It was further held that it is only by the Final Decree that the joint family property is partitioned through metes and bounds because between this period there will be circumstances and events which occurs and changes the shares. Therefore, the Court can amend the preliminary decree to predetermine the rights and shares of the members.

19. On the controversy that daughter will be a coparcener by birth, so her share goes back to the date of her birth which is prior to the Amendment Act, has been resolved by the Hon'ble Apex Court in the case of **Danamma @ Suman Surpur & Another v. Amar & Others**⁴. In the said case the appellants are married daughters, and the respondent is a son of one of the coparceners, who had filed a suit for Partition of the Joint Family Property acquired out of the death of the father of appellants in the year 2001. The respondent contended that the appellants are the married daughters and are not coparceners as they were born prior to the enactment of the Hindu Succession Act, 1950. On the contrary, the appellants contended that they are entitled to the

⁴ (2018) 2 SCC 343.



share as their father who died after the enforcement of the act and, they are coparceners under the amendment made in 2005. However, the Trial Court held that the appellants are not entitled to any share in the property as they were born prior to the enactment of 1950 Act and rejected the contention of the appellants. This was also upheld by the High Court. The question of law before the Hon'ble Apex Court was whether the two married daughters can be denied their share on the basis that they were born prior to the enactment of the Act and even though with the passing of Hindu Succession Amendment Act, the appellants would not become coparcener by birth and therefore should not be entitled to an equal share as that of the son? For which, their Lordships held as under:

In the issue of the right of daughter being born prior to the enactment of the act that for the purpose of the undivided interest of the deceased coparcener, if he dies leaving behind female relative in Class-I heir then it will devolve upon his heirs and not by survivorship. The undivided interest will be ascertained through the Explanation 1 to Section 6 of the Act which provides a notional partition, and which includes the female relatives and the surviving coparcener. Thus, the daughters will be entitled to share in the Joint Family property even though they were born prior to the enactment of the act.



20. Section 6 of the Amended Act is quoted below for convenience:

Section 6: Devolution of interest in coparcenary property. —

- (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005*, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—
 - (a) by birth become a coparcener in her own right in the same manner as the son;
 - (b) have the same rights in the coparcenary property as she would have had if she had been a son;
 - (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.
- (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.



(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005*, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a predeceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a predeceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such predeceased child of the pre-deceased son or a predeceased daughter, as the case may be.

Explanation.— For the purposes of this subsection, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005*, no court shall recognise



any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005*, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. —For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005*.

- (5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.



Explanation.—For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.] Statement of Objects and Reasons [The Hindu Succession (Amendment) Act, 2005] Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognizes the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975. It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have.



Section 6-A: Equal rights to daughter in coparcenary property: Notwithstanding anything contained in Section 6 of this Act—

(a) in a joint Hindu family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(b) at a partition in such a joint Hindu family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son: Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter: Provided further that the share allottable to the predeceased child of a predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of such predeceased daughter, as the case may be;

(c) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (a) shall be held by her with the incidents



of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(d) nothing in clause (b) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990.

21. Reading of Section 6 (1) sub-clauses (a), (b) and (c) would show that the daughter was made as a coparcener by birth; hence, she has acquired equal right like a son regarding coparcenary property. She is also subjected to its liabilities. As a coparcener the daughter got a right to seek partition of the coparcenary property if property is available for partition. Coparcener's right to claim partition is one of the incidents in traditional Hindu Law.

22. The Hon'ble Supreme Court in **Vineeta Sharma vs. Rakesh Sharma and others**⁵ held that even daughters have equal coparcenary rights in Hindu Undivided Family (HUF) properties, irrespective of whether the father was alive or not on 9 September 2005 being the date on which the amendment of 2005

⁵ (2020) 9 Supreme Court Cases 1.



came into effect. Hon'ble Apex Court explained the difference between prospective statute, retrospective statute and retroactive statute at para-No.61, as under:

“61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backward and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in future. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of Amendment Act.”

23. It was further held that “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 under Section 6 of the Hindu Succession Act, 1956, is acquired by birth.”

24. It was further held that interest in the HUF property is acquired by birth, and it was not by devolution of interest. And it is only when the female Class-I heir is left, or in case of her



death, male relative is left, the share of the deceased coparcener will devolve by deemed Partition. Hence, the reference was answered conferring status of coparcener on the daughter born before or after amendment in the same manner likewise and with the same rights and liabilities as her male counterpart. Therefore, it was held that the right in coparcenary is by birth and so it was not necessary that the father coparcener should be living as on 09.09.2005.

25. Therefore, the above judgement makes it clear the amendment to the Hindu Succession Act, 1956 granting equal rights to the daughters to inherit the coparcenary property had retrospective effect and was not confined to the date of 9th September 2005, being the date on which the 2005 Act was enacted. Thus, the Hon'ble Apex Court by the above ruling, overruled its own earlier 2015 decision, whereby it had originally held that the rights under the amendment are applicable to living daughters of living coparceners as on 09.09.2005, irrespective of when such daughters were born. A daughter can claim her rights being born earlier with effect from 09.09.2005, with savings as provided in Section 6 (1) as to the nature or alienation, partition, or testamentary disposition, which had taken place before the



20th day of December 2004. It is made obvious by the Hon'ble Apex Court that the provisions of the replaced Section 6 are required to be given full effect, irrespective of the fact that a preliminary decree has been passed; the daughters are to be given share in coparcenary property equal to that of a son in pending proceedings for final decree or in an appeal.

26. In recent Judgment of the Hon'ble Supreme Court in **Prasanta Kumar Sahoo and others vs. Charulata Sahu and others**⁶, their Lordships referring the Judgment in **Vineeta Sharma** case (supra), reiterated the observation made in the said Judgment at para-No.73 (c), which is extracted hereunder:

“Under Mitakshara School of Hindu Law, a member of a joint Hindu Family can bring about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate himself from the family and enjoy his share in severalty. Thus, the institution of a suit for partition by a member of a joint family is a clear intimation of his intention to separate, and there was consequential severance of the status of jointness. Question before this Court in **Vineeta Sharma** (supra) was: in case during the pendency of partition suit or during the period between the passing of preliminary decree and final decree in the partition suit, any legislative amendment or any subsequent event takes place 35 which results in

⁶ 2023 SCC OnLine SC 360.



enlargement or diminution of the shares of the parties or alteration of their rights, whether such legislative amendment or subsequent event can be into consideration and given effect to while passing final decree in the partition suit. The Court held that even though filing of partition suit brings about severance of status of jointness, such legislative amendment or subsequent event will have to be taken into consideration and given effect to in passing the final decree in the partition suit. This is because, the partition suit can be regarded as fully and completely decided only when the final decree is passed. It is by a final decree that partition of property of joint Hindu Family takes place by metes and bounds.”

27. In the revision on hand, as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the Final Decree is passed. As the law governing the parties has been amended before the conclusion of the Final Decree proceedings, the party benefitted by such amendment can make a request to the Trial Court to take cognizance of the Amendment and give effect to the same. Accordingly, the defendant Nos.7 to 9 made application to pass Final Decree as per the amended Hindu Succession Act, 39 of 2005.

28. Considering the decisions rendered by the Hon'ble Supreme Court in **Vineeta Sharma and Prasanta Kumar Sahoo**



cases (supra), this Court has no hesitation to hold that the amendment is retrospective in nature. Therefore, the revision-petition has to be allowed.

29. In the result, the Civil Revision Petition is 'Allowed'. There shall be no order as to costs.

30. As a sequel, miscellaneous applications pending, if any, shall stand closed.

B.V.L.N.CHAKRAVARTHI, J

13th June, 2023.

Note:

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DNB