HC-KAR

NC: 2026:KHC:60058
CRP No. 386 of 2019

CNR: KAHC010416062019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION NO. 386 OF 2019 (IO)

BETWEEN:

1. LEELA SCOTTISH LACE LIMITED
A REGISTERED COMPANY
HAVING ITS REGISTERED OFFICE AT
LEELA BAUG
SRI M.V ROAD
MUMBAI-400 059
REPRESENTED BY ITS
FINANCIAL CONTROLLER
MR.SUBRAT SINHA

2. LEELAVENTURES LIMITED
REGISTERED UNDER
THE COMPANIES ACT
HAVING ITS REGISTERED
OFFICE AT THE LEELA SAHAR
MUMBAI-400 059
REPRESENTED BY ITS
FINANCIAL CONTROLLER
MR. SUBRAT SINHA

...PETITIONERS

(BY SRI.DHYAN CHINNAPPA, SENIOR COUNSEL FOR
SRI.SHIRISH KRISHNA, ADVOCATE AND
SRI.JOSEPH ANTHONY, ADVOCATE)

Digitally signed by SUVARNA T
Location: HIGH COURT OF KARNATAKA

AND:

1. SMT. VINODA
W/O NANDEESH REDDY
D/O MOPI REDDY

AGED ABOUT 57 YEARS
R/A KALLAPALYA, JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL-560 105

2. SMT. LAKSHMAMMA
W/O SRIRAMA REDDY
D/O MOPI REDDY
AGED ABOUT 55 YEARS
R/A NO.145, MUNNESHWARA LAYOUT
(OPP.GOVERNMENT SCHOOL)
KODIHALLI
BANGALORE-562 112

3. SRI. BAIYA REDDY
S/O MOPI REDDY
AGED ABOUT 52 YEARS
R/A KOMMEPALLI VILLAGE
AGRAM POST, HOSUR TALUK
KRISHNAGIRI DISTRICT
TAMIL NADU-635 109

4. SRI MOHAN REDDY
S/O MOPI REDDY
AGED ABOUT 49 YEARS
R/A KOMMEPALLI VILLAGE
AGRAM POST, HOSUR TALUK
KRISHNAGIRI DISTRICT
TAMILNADU-635 109

5. SRI SURESH REDDY
S/O MOPI REDDY
AGED ABOUT 45 YEARS
R/A KOMMEPALLI VILLAGE
AGRAM POST, HOSUR TALUK
KRISHNAGIRI DISTRICT
TAMILNADU-635 109

6. SRI RAMA REDDY @ RAMANNA REDDY
S/O LATE MUNIYAPPA

AGED ABOUT 83 YEARS
R/A KODIHALLI VILLAGE
AIRPORT ROAD
BANGALORE-560 008

7. SMT NARAYANAMMA
D/O LATE MUNIYAPPA
W/O MADA REDDY
AGED ABOUT 59 YEARS
R/A KODIHALLI VILLAGE
AIRPORT ROAD
BANGALORE-560 008

8. SRI PAPANNA REDDY
D/O LATE MUNIYAPPA
AGED ABOUT 75 YEARS
R/A KODIHALLI VILLAGE
AIRPORT ROAD
BANGALORE-560 008

…RESPONDENTS

(BY SRI.H.SUNILKUMAR, ADVOCATE FOR R2 TO R5
NOTICE TO R6 AND R7 ARE HELD SUFFICIENT V/O/D:03/07/2026
R1 IS DEAD HAVING NO LR'S V/O/D: 03/07/2026)

THIS CRP FILED U/S.115 OF CPC 1908 AGAINST THE ORDER DATED 01.06.2019 PASSED ON IA NO V IN OS.NO.6992/2012 ON THE FILE OF THE LXXV ADDL. CITY CIVIL AND SESSION JUDGE, BENGALURU DISMISSING THE IA NO V FILED U/O 7 RULE 11(a) AND (d) OF CPC FOR REJECTION OF PLAINT.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 16.09.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CNR: KAHC010416062019

CAV ORDER

The present Civil Revision Petition is filed aggrieved by the order dated 01.06.2019 passed on I.A.No.V in O.S.No.6992/2012 by the LXXV Additional City Civil and Sessions Judge, Bengaluru.

2. The respondents Nos. 1 to 5 herein, who are the plaintiffs, filed O.S. No. 6992/2012 seeking partition and separate possession of the suit schedule A and B properties, and further sought a declaration that the sale deeds by which the properties were sold are not binding on the plaintiffs. In the said suit, the petitioners herein, who are defendant Nos. 4 and 5, filed I.A. No. V under Order VII Rule 11 of the CPC seeking rejection of the plaint. It is the specific case of the defendants that one Muniyappa, the father of defendant Nos.1 to 3, died in the year 1954; his wife/widow died in the year 2002; and the mother of the plaintiffs died in June 2005. Hence, the plaintiffs cannot maintain a suit for partition. The trial court, by the impugned order, dismissed the application filed by the petitioner seeking rejection of the plaint.

3. While rejecting the application, the trial Court has observed that on perusal of the written statement of the defendants, they have admitted that the suit property is an ancestral property and it devolved on Muniyappa from his paternal uncle Nanjareddy who had no issues. The counsel for defendant Nos.4 and 5 vehemently argued that the present suit is barred by limitation as per the pleadings in the plaint. In this regard, the counsel pointed out that Muniyappa died in 1954 when the succession opened and thereafter, Muniyamma died on 22.09.2002 and the mother of the plaintiffs died in June 2005 and the present suit is filed in the year 2012 and therefore, it is clearly barred by limitation. The trial Court observed that as per the plaint, they have pleaded that there is no partition and suit property remained joint family property and they came to know about the efforts by defendant Nos.1 to 3 to sell the suit schedule property in the year 2012 and immediately they got issued a legal notice on 16.04.2012 and in spite of the said legal notice defendant Nos.4 and 5 had executed the registered Sale Deed dated 03.05.2012. In the present case, the plaintiffs have challenged the Sale Deeds

dated 10.04.2001, 06.09.2001, Release Deed dated 15.11.2007 and the Sale Deed dated 03.05.2012. The plaintiffs have clearly pleaded that they have come to know about the previous Sale Deeds in 2012 and they are claiming share through female legal heir and that the same is to be considered. It is a well settled principle of law that the issue relating to limitation is a mixed question of fact and law. As the plaintiffs have clearly pleaded about the date of knowledge of the previous sale deeds, evidence is required for giving finding in respect of limitation. Therefore, at this stage, it is not possible to hold that the present suit is barred by limitation.

4. The trial Court further observed that in the present case according to the plaintiffs, Muniyappa died in the year 1954 and their mother got married in the year 1960. Therefore, in the year 1954 when Muniyappa died, the mother of the plaintiffs was unmarried. Therefore, it is just and necessary to consider whether she acquired any right to share in this ancestral property where the plaintiffs can maintain the present suit. In order to give finding on these issues, evidence is required. No doubt the law is settled regarding the right of

women in the ancestral property, but whether the plaintiffs are entitled for share in the suit property is not a pure question of law, which can be answered based on the decisions of the High Court and the Hon'ble Supreme Court. Hence, for giving a finding in this regard, a full-fledged trial is necessary. Therefore, the plaint averments discloses the cause of action for seeking partition. Hence, the contention of defendant Nos.4 to 5 that the plaint averment does not disclose the cause of action is not sustainable. Aggrieved thereby, the defendant Nos.4 and 5 are before this Court.

5. Learned Senior counsel representing the learned counsel for the petitioner had relied on the judgment of the Apex Court in ***Vineeta Sharma Vs. Rakesh Sharma and others***[1], paragraph Nos.79 and 80 which reads thus:

> ***"79. In Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] , father died in the year 1988, daughters filed a suit for partition in 1992, same was dismissed in 2007, entitlement was given to the daughters to a share on a notional partition under the proviso to Section 6 in the share of the coparcener father. However, the High Court [Phulavati v. Prakash, 2010 SCC OnLine Kar 5310 : (2011) 2 AIR Kant R 121] applied the amended provisions of Section 6 to the pending proceedings and treated daughters***

[1] 2020 9 SCC 1

equally with sons. As such, the matter travelled to this Court. It was held that the proviso is not retrospective. The requirement of partition being registered can have no application to statutory notional partition, on the opening of succession as per the unamended proviso to Section 6, having regard to the nature of such partition, which is by operation of law. It was opined: (SCC pp. 48-49 & 52, paras 17-18, 23, 27.2 & 27.3)

"17. The text of the amendment itself clearly provides that the right conferred on a "daughter of a coparcener" is "on and from the commencement of the Hindu Succession (Amendment) Act, 2005". Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective [Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24, paras 22 to 27] . In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the amendment will be considered a little later. On this finding, the view [Phulavati v. Prakash, 2010 SCC OnLine Kar 5310 : (2011) 2 AIR Kant R 121] of the High Court cannot be sustained.

18. The contention of the respondents that the amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the amendment applicable on and

from its commencement and only if death of the coparcener in question is after the amendment. Thus, no other interpretation is possible in view of the express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20-12-2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20-12-2004. Notional partition, by its very nature, is not covered either under the proviso or under sub-section (5) or under the Explanation.

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23. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20-12-2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.

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27.2. In Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum [Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, (1978) 3 SCC 383] , Shyama Devi v. Manju Shukla [Shyama Devi v. Manju Shukla, (1994) 6 SCC 342] and Anar Devi v. Parmeshwari Devi [Anar Devi v. Parmeshwari Devi, (2006) 8 SCC 656] cases this Court interpreted Explanation I (p. 60, para 50) to Section 6 (prior to the 2005 Amendment) of the Hindu Succession Act. It was held that the deeming provision referring to partition of the property immediately before the death of the coparcener was to be given due and full effect in view of settled principle of interpretation of a provision incorporating a deeming fiction. In Shyama Devi [Shyama Devi v. Manju Shukla, (1994)

6 SCC 342] and Anar Devi [Anar Devi v. Parmeshwari Devi, (2006) 8 SCC 656] cases, same view was followed.

27.3. In Vaishali Satish Ganorkar v. Satish Keshaorao Ganorkar [Vaishali Satish Ganorkar v. Satish Keshaorao Ganorkar, 2012 SCC OnLine Bom 116 : AIR 2012 Bom 101] , the Bombay High Court held that the amendment will not apply unless the daughter is born after the 2005 Amendment, but on this aspect a different view has been taken in the later larger Bench judgment in Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari [Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari, 2014 SCC OnLine Bom 908 : AIR 2014 Bom 151] . We are unable to find any reason to hold that birth of the daughter after the amendment was a necessary condition for its applicability. All that is required is that daughter should be alive and her father should also be alive on the date of the amendment."

80. A finding has been recorded in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36: (2016) 1 SCC (Civ) 549] that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of "living coparcener", as laid down in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36: (2016) 1 SCC (Civ) 549]. In our opinion, the daughters should be living on 9-9-2005. In substituted Section 6, the expression "daughter of a living coparcener" has not been used. Right is given under Section 6(1)(a) to the daughter by birth. Declaration of right based on the past event

> ***was made on 9-9-2005 and as provided in Section 6(1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave no room to entertain the proposition that coparcener should be living on 9-9-2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part."***

6. Relying on the above judgment, it is submitted that the Hon'ble Apex Court has categorically observed in paragraph No.80 that the daughter should be living as on 09.09.2005. In substituted Section 6, the expression daughter of a living co-parcener is not being used, right is given under Section 6(1)(a) to the daughters by birth, provided in Section 6(1)(b) daughters by their birth have the same rights in the coparcenary and they are subjected to the same liabilities as provided in Section 6(1)(c). The trial Court observed that the provisions of Section 6(1)(c) leaves no room to entertain the proposition that the co-parcener should be living on 09.09.2005, through whom the daughter is claiming. Relying on this, it is submitted that in the light of the judgment passed by the Hon'ble Apex Court in ***Vineetha Sharma's*** case

referred supra, this case is squarely covered and the plaint has to be rejected.

7. Learned counsel appearing for the respondent/plaintiffs has relied on the judgment of a Co-ordinate Bench of this Court in ***Channabasappa S/o. Shivappa Hosamani Vs. Smt.Parvatevva alias Kasturevva***[2], in paragraph Nos.8, 9, 10, 11 and 12 and conclusion (a) to (e) which reads thus:

> ***"8. In view of the law laid down by the Apex Court in the case of Vineeta Sharma what emerges is that in view of amendment to Section 6 of the Act, daughter would step into the coparcenary as that of a son by taking birth before or after the Act.***
>
> ***9. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Therefore, what emerges from the above said principle is that Hindu Succession (Amendment) Act, 2005, has virtually damaged the concept of Mitakshara coparcenary because daughter is treated like a son and she is entitled for a share on par in a coparcenary by birth. If the daughters by birth become a coparcener in her own independent right, in addition, the Act makes the heirs of pre-deceased sons and daughters more equal, by including as ClassI heirs, two generations of children of pre-deceased daughters, as was already in the case of sons. The main significant change making all daughters coparceners in joint family properties is also of great importance for women both economically and symbolically.***
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> ***10. The Apex Court judgment in the case of Velamuri Venkata Sivaprasad (Dead) by LRs. .vs.***

[2] WP.No.105363/2023 dated 18.12.2023

Kothuri Venkateswarlu (Dead) by LRs.5 held that Hindu Succession Act is a socio-economic legislation. Therefore, it should be interpreted with widest possible connotation. The Apex Court in the above cited judgment also pointed out that in the case of interpretation of statute, specially relating to 5 AIR 2000 SC 434 womenfolk, due weight should be given to the Constitutional requirement of equality and status.

11. In the light of law laid down by the larger Bench in the case of Vineeta Sharma and in view of interpretation of amended Section 6 in the above cited judgment, what emerges is that Sub-Section (1) of Section 6 envisages existence of joint Hindu family when the amendment came into force. If the joint family and the ancestral properties are intact, the right of a daughter subsists, whether she is alive or not as on the date of 2005 amendment. Since daughter by fiction is granted the status of coparcener by birth, her right in the ancestral property being antecedent, the Class-I heirs of pre-deceased daughter are to be treated equal and at par with the other family members. Therefore, the right of legal heirs of deceased daughter in the coparcenary properties, subject to existence of Hindu undivided family and in absence of disruption of the Joint family properties, is not taken away. The only exception being disposition or alienation or partition of properties which has taken place before 20.12.2004. The Apex Court in the above cited judgment has clearly held that the provisions are retroactive and they confer benefits based on the antecedent events and the Mitakshara Coparcenary shall be deemed to include a reference to a daughter as a coparcener. If Section 6(1)(a) makes a daughter by birth a coparcener in her own right and in same manner as the son, the legal heirs of deceased daughters cannot be denied the benefit of 2005 amendment. If the rights of legal heirs of predeceased son are not affected, the conferral of coparcenary right on a daughter by birth cannot be taken away on the premise that the daughter was not alive on 9.9.2005. Any denial would lead to discrimination among the legal heirs of predeceased

son and predeceased daughter and would defeat the very noble object of enactment and codifying the law relating to intestate succession.

12. The application filed by the petitioner in final decree proceedings under Section 152 of CPC is clearly hit by the bar under Section 97 of CPC. Section 97 of CPC clearly provides that where any party is aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in final decree proceedings. Modification of preliminary decree is permissible only on the ground of changed or supervening circumstances or change in law. Even on this count, the application filed under Section 152 of CPC seeking modification is not at all maintainable. Petitioner having failed to question the preliminary decree 18 cannot seek amendment by having recourse to Section 152 of CPC.

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b. The Apex Court in the case of Vineeta Sharma has clearly opined that daughter has to be treated as a coparcener at par and right is by birth. Therefore, what can be inferred from the dictum laid down by the Apex Court in the judgment cited supra is that even if daughter is not alive when 2005 amendment to Hindu Succession Act was passed, her legal heirs cannot be deprived the benefit of 2005 amendment. The Apex Court unequivocally stated that a daughter should be treated as a coparcener with equal rights by birth. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with birth rights is alive or not. Therefore, even if a daughter passed away before the 2005 amendment to the Hindu Succession Act, her legal heirs cannot be denied the benefits of the amendment. The court affirmed that the daughter's right, being inherent from birth, is comparable to that of a son, irrespective of the timing in relation to the enactment of the act. If a daughter who died before 2005 has surviving legal heirs, they could

potentially enjoy the equal rights conferred by the amendment on ancestral properties.

Conclusions:

a. The reference made in the Vineeta Sharma's case (supra) by the Supreme Court of India stemmed from conflicting views and interpretations regarding the rights of daughters in ancestral property under Section 6 of the Hindu Succession Act, 1956. There were varying judgments and opinions on whether the amendments made to the Act in 2005 applied retrospectively or only prospectively. The Court sought to address these conflicting views and provide a clear and consistent legal interpretation to ensure uniformity in matters of inheritance for daughters. The Supreme Court's reference in the Vineeta Sharma's case aimed to resolve these disparities and establish a definitive interpretation to bring clarity to the legal landscape concerning daughters' inheritance rights.

b. The Apex Court in the case of Vineeta Sharma has clearly opined that daughter has to be treated as a coparcener at par and right is by birth. Therefore, what can be inferred from the dictum laid down by the Apex Court in the judgment cited supra is that even if daughter is not alive when 2005 amendment to Hindu Succession Act was passed, her legal heirs cannot be deprived the benefit of 2005 amendment. The Apex Court unequivocally stated that a daughter should be treated as a coparcener with equal rights by birth. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with birth rights is alive or not. Therefore, even if a daughter passed away before the 2005 amendment to the Hindu Succession Act, her legal heirs cannot be denied the benefits of the amendment. The court affirmed that the daughter's right, being inherent from birth, is 20 comparable to that of a son, irrespective of the timing in relation to the enactment of the act. If a daughter who died before 2005 has surviving legal heirs, they could

potentially enjoy the equal rights conferred by the amendment on ancestral properties.

c. Denying equal rights to legal heirs in this context may not only be considered discriminatory but could also be subject to legal challenges. It goes against the constitutional principles of equality and non-discrimination enshrined in the Indian Constitution. Courts, when interpreting and applying the law, often strive to uphold these fundamental principles and may intervene to ensure that the rights of individuals, irrespective of gender, are protected and upheld. By refusing the benefits granted to similarly situated heirs of sons, it undermines the fundamental principle of equality before the law.

d. To elaborate further, the judgment in the case of Vineeta Sharma effectively removes the temporal restriction associated with the 2005 amendment to the Hindu Succession Act. It recognizes the rights of daughters and their legal heirs in ancestral property, regardless of whether the daughter predeceased the father before or after the amendment. This retrospective application ensures that the principles of equality and non-discrimination are upheld, providing daughters and their descendants with a fair share in the ancestral property. It aligns with the evolving legal landscape in India, progressively addressing historical gender biases in property rights within Hindu families. The denial of benefits to the legal heirs of a predeceased daughter under the 2005 amendment could be seen as perpetuating historical gender-based biases.

e. The judgment in the case of Vineeta Sharma has retrospective applicability. It extends the benefit of the 2005 amendment to daughters, even if the daughter had predeceased the father before the amendment came into effect. This means that the legal heirs of a predeceased daughter are entitled to a share in the ancestral property, just like they would have been if the daughter were alive at the time of the 2005 amendment. The ruling emphasizes gender equality and ensures that daughters and their heirs receive their rightful

> ***share in ancestral property, irrespective of when the daughter passed away. The judgment essentially corrects this historical imbalance by granting daughters and their legal heirs the same rights as sons in ancestral property, regardless of when the daughter passed away. It emphasizes the constitutional principle of equality, ensuring that women are not deprived of their rightful share merely due to the timing of legal amendments."***

8. Relying on the above judgment, it is submitted that the death of the daughter is immaterial. Learned counsel has also relied on the judgment of the Orissa High Court in case of ***Yagnaseni Patel vs. the General Manager, Mahanadi Coalfields Ltd and others***[3]. He relied on paragraph Nos.10, 11 and 12 which reads thus:

> ***"10. Therefore, taking into account the aforesaid provision in Prakash and Mangammal (supra), the finding of the apex Court that daughters are not entitled to get the benefit of equal share being co-sharers in the ancestral property, no more remains res integra in view of the Larger Bench judgment of the apex Court in the case of Vineeta Sharma v. Rakesh Sharma and others, 2020 (II) OLR (SC) 569 : (2020) 9 SCC 1 wherein Subsection (1) of Section-6 of the Hindu Succession (Amendment) Act, 2005 was under consideration and consequentially a question was framed "does the Hindu Succession (Amendment) Act, 2005, which gave equal right to daughters in ancestral property, have a retrospective effect". The apex Court, in answering the same in affirmative, held that daughter shall remain as coparcener (one who shares equally with others in inheritance of an undivided joint family property) throughout life, regardless of the***

[3] 2023 LiveLaw (Ori) 76

question as to whether her father was alive when the law was amended in 2005 or not, stressing that the law has a retrospective effect. The apex Court further held that the purpose behind the amendment in 2005 is to give equal rights of inheritance. Therefore, a woman will have an equal share in undivided family property. Sons and daughters of a coparcener become coparceners by virtue of birth. A female heir or male relative of such female heir have same rights and liabilities. Thereby, analyzing the amended Section 6 of the Hindu Succession Act, 1956, it was held that since the right is given by birth, it is an antecedent event and the provisions concerning the rights operate on and from the date of commencement of the

Amendment Act, 2005. As a consequence thereof, the judgments in Prakash and others v. Phulabati and others, 2015 (II) CLR (SC) 1146 : (2016) 2 SCC 36, Mangammal @ Thulasi and another v. T.B. Raju and others, Civil Appeal No. 1933 of 2009 decided on 19.04.2018, reported at (2018) 15 SCC 662 and Danamma @ Suman Surpur and another v. Amar and others, 2018 (I) OLR (SC) 494 : (2018) 3 SCC 343, have been overruled.

11. In the above view of the matter, this Court is of the considered view that the Claims Commission has committed error apparent on the face of the record by passing the order impugned denying benefit to the daughter relying upon Prakash and Mangammal (supra). But fact remains, the Claims Commission passed the order impugned on 04.01.2020, by which time the judgment of the Larger Bench in the case of Vineeta Sharma (supra) had not seen the light of the day, which was decided on 11th August, 2020. Since the judgment, basing upon which the Larger Bench has passed the order impugned, has no effect at this point of time, in view of the fact that the Amendment Act, 2005 has already come into force and, as such, the interpretation thereof has to be given effect to. As such, the daughter has a right to get the property of her father from the date the Amendment Act came into force, i.e., in 2005.

12. At this stage, it is profitable to quote paragraphs 60, 68 and 69 of the judgment of the Larger Bench of the apex Court in the case of Vineeta Sharma v. Rakesh Sharma and others, 2020 (II) OLR (SC) 569 : (2020) 9 SCC 1:-

"60. Section 6(2) provides when the female Hindu shall hold the property to which she becomes entitled under section 6(1), she will be bound to follow rigors of coparcenary ownership, and can dispose of the property by testamentary mode. 68. It is by birth that interest in the property is acquired. Devolution on the death of a coparcener before 1956 used to be only by survivorship. After 1956, women could also inherit in exigencies, mentioned in the proviso to unamended section 6. Now by legal fiction, daughters are treated as coparceners. No one is made a coparcener by devolution of interest. It is by virtue of birth or by way of adoption obviously within the permissible degrees; a person is to be treated as coparcener and not otherwise. 69. The argument raised that if the father or any other coparcener died before the Amendment Act, 2005, the interest of the father or other coparcener would have already merged in the surviving coparcenary, and there was no coparcener alive from whom the daughter would succeed. We are unable to accept the submission because it is not by the death of the father or other coparcener that rights accrue. It is by the factum of birth. It is only when a female of Class I heir is left, or in case of her death, male relative is left, the share of the deceased coparcener is fixed to be distributed by a deemed partition, in the event of an actual partition, as and when it takes place as per the proviso to unamended section 6. The share of the surviving coparcener may undergo change till the actual partition is made. The proviso to section 6 does not come in the way of formation of a coparcenary, and who can be a coparcener. The proviso to section 6 as originally stood, contained an exception to the survivorship right. The right conferred under substituted section 6(1) is not by survivorship

> ***but by birth. The death of every coparcener is inevitable. How the property passes on death is not relevant for interpreting the provisions of section 6(1). Significant is how right of a coparcener is acquired under Mitakshara coparcenary. It cannot be inferred that the daughter is conferred with the right only on the death of a living coparcener, by declaration contained in section 6, she has been made a coparcener. The precise declaration made in section 6 (1) has to be taken to its logical end; otherwise, it would amount to a denial of the very right to a daughter expressly conferred by the legislature. Survivorship as a mode of succession of property of a Mitakshara coparcener, has been abrogated with effect from 9.9.2005 by section 6(3).”***

9. Learned counsel also relied on the judgment of the Delhi High Court in case of ***Vivek Premkumar Gupta and another Vs. Prabhath Kumar Swaroop***[4], on paragraph No. 28 which reads thus:

> ***“28. The fact that there was an amendment to the Hindu Succession Act in 20026 whereby the status of women was elevated to that of a coparcener and the failure of the mother of the Plaintiffs not the seek partition on that ground cannot deprive the Plaintiffs from claiming partition. The claim of the Plaintiffs is maintainable on two grounds, (a) as LRs of their mother, who is entitled to her share in her father's property, i.e., maternal grandfather of the Plaintiffs, (b) in terms of the amendment to the Hindu Succession Act elevating the status of women to that of a coparcener.”***

[4] 2026 SCC OnLine Delhi 6672

10. Learned counsel for respondent relied on the judgment of a Co-ordinate Bench of this Court in in case of ***Smt. M Rathnamma, Dead by her LRs Vs. M Suresha, Dead by his LRs and Ors.***[5], para no. 18 and 19 which reads thus:

> ***"18. Therefore, the coparcener's right and title is recognized by her birth as there is no obstructed inheritance. Soon after the birth of the daughter, she enters into zone of coparcener right as that of son either before or after the Hindu Succession Act, 1956. If the daughter is born before 17.06.1956 and is denied the coparcener right and is not given an equal share as that of son that would make discrimination as is opposed to equality as per Article 14 of the Constitution of India. Therefore, a daughter irrespective of whether she born either before or after 17.06.1956 is entitled to be recognized as coparcener and to claim an equal share in the coparcenary property in accordance with provisions of the Hindu Succession Act, 1956 as amended. Therefore, in this regard, the observation of the Trial Court is not correct and thus, it is liable to be set aside. Hence, the plaintiff is entitled to equal share as that of defendant No.1 so far as item Nos.2, 3 and 4 of the suit schedule properties but the plaintiff is not entitled to share in item No.1 of the suit schedule property as it is proved the said property is self acquired property of defendant No.1. Hence, I answer to point No.1 in the negative and point Nos.2 and 3 in the affirmative.***
>
> ***19. Before parting with the judgment, this Court places on record its deep appreciation for the wellresearched and valuable assistance rendered***

[5] RFA No. 346 of 2021 dated 17.06.2026

by its Research Assistant, namely Smt. Pushpa R., and her valuable research helped the Court to take a correct conclusion. Accordingly, the Court places its appreciation on Research Assistant, namely Smt. Pushpa R., on record."

11. He relied on the judgment of the High Court of Madras in case of ***Murugammal vs. Andi and others***[6], , para No. 16 which reads thus:

"16. As stated supra, there is no registered partition deed and no actual partition took place between the parties before December 20, 2004. Hence, as per the dictum laid down by the Hon'ble Supreme Court in the Vineeta Sharma Vs. Rakesh Sharma, reported in (2020) 9 SCC 1, the father need not be alive as on September 09, 2005 (Date of commencement of Act 39 of 2005) to enable the daughter to claim equal rights by birth. Hence, the Plaintiff, being the daughter of G.Venkatesa Naicker, is entitled to an equal share as that of his son – second defendant. Therefore, the Plaintiff is entitled to 1/5 share under Section 6 of the Hindu Succession Act, 1956. After the demise of G.Venkatesa Naicker, his 1/5 share shall devolve upon his legal heirs under Section 8 of the Hindu Succession Act, 1956. Thus, the Plaintiff will be entitled to 1/5 + 1/25 = 6/25 share. To that extent, the decree and judgment of the First Appellate Court and the Trial Court require modification."

12. In response to that learned Senior counsel has also relied on another judgment of the Madras High Court in case of

[6] S.A.No.897/2002

M Iyyanar and Others Vs. Kalvikarasi and others[7], paragraph No.25 which reads thus:

> ***"25. Submissions were made mainly on the interpretation of the judgment of the Supreme Court in Vineeta Sharma v. Rakesh Sharma reported in (2020) 9 SCC 1, which answered the reference arising out of the conflicting verdicts rendered by two Division Benches of the Supreme Court, one in Prakash v. Phulavathi [(2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] and another in Danamma @ Suman Surpur v. Amar [(2018) 3 SCC 343 : (2018) 2 SCC (Civ) 385]. In Prakash v. Phulavathi (supra), the Supreme Court has held that the rights under the Act 39 of 2005 are applicable to living daughters of living coparceners as on 9-9-2005, irrespective of when such daughters are born; disposition or alienation including partitions which may have taken place before 20-12-2004 as per the law applicable prior to the said date will remain unaffected and any transaction of partition effected thereafter will be governed by the Explanation. Whereas, in Danamma's case (supra), the Supreme Court has held that the amended provisions of Section 6 confer full rights upon the daughter coparcener; any coparcener, including a daughter, can claim a partition in the coparcenary property; therefore, though the father coparcener is not alive as on the date of commencement of the Amendment Act, the daughter is entitled to coparcenary rights."***

13. A memo is filed on behalf of the petitioner distinguishing the authorities produced by the counsel for the respondents. In respect to ***Yagnaseni Patel***'s case referred supra, It is stated that the petitioner, therein being the

[7] 2026 SCC OnLine Madras 7614

daughter of the late Kulamani Patel, claimed an equal share in the property, relying on the provisions of Section 6 of the Hindu Succession Amendment Act, 2005. Since the daughter was alive as on 09.09.2005, that judgment will not apply to the facts of the case. Then coming to ***Vivek Premkumar Gupta***'s case referred supra of the Delhi High Court, it is stated that the plaintiffs are the children of one Mira Gupta, who passed away on 29.04.2019. Therefore, it is clear that, in that case, the daughter passed away after 09.09.2005, and the judgment cannot be applied. Then with regard to ***M. Rathnamma'***s case referred supra, it is submitted that in the case plaintiff being the daughter of one Sri.Mariswamchar has filed the suit seeking partition. Therefore, it is clear that in this case also plaintiff being the daughter has also filed the suit for partition who is clearly alive after 09.09.2005. Then with regard to ***Murugammal***'s case referred supra, it is stated that the plaintiff being the daughter of one Venkatesa Naickar has filed the suit seeking partition. Therefore, it is clear that plaintiff being the daughter has filed the suit, who is clearly alive after 09.09.2005 and this judgment is also not applicable to the facts of the case. In ***Channabasappa***'s case referred supra, it is

submitted that the paragraph No.80 of ***Vineeta Sharma***'s case referred supra has been relied upon by the Court. In paragraph No.80, the Hon'ble Supreme Court did not agree with the decision in ***Prakash Vs. Phulavati***[8] only in respect of the concept of living coparcener alone, whereas in the very next sentence the Hon'ble Supreme Court in fact has also held that in their opinion, the daughter should be living on 09.09.2005. In paragraph No.78 of ***Vineeta Sharma***'s case referred supra also, it was argued before the Supreme Court that if the daughter is given the right to be a coparcener by birth and deemed to become a coparcener at any point in the past, in the normal working of law, uncertainty would be caused. To address the arguments, the Hon'ble Supreme Court has clearly held that there is no uncertainty caused when the daughter is treated like a son and given the right by birth to be exercised from a particular date i.e., 09.09.2005. It is further held that it does not resurrect the past, but recognize and anticipate even for conferring the rights prospectively. Therefore, the said findings makes it clear that though the confirmation was given

[8] AIR 2016 SC 769

retroactively, the enforcement of the right is given prospectively.

14. It is submitted that the Madras High Court in ***M. Iyyanar***'s case referred supra at para No.34 had clearly held that. It is an undisputed fact that the mother of the plaintiff died on 24.06.2005 which is prior to 09.09.2005 i.e., prior to the Hindu Succession Amendment Act, 2005. This fact is not in dispute and also the relationship of the parties is not in dispute. Therefore, the judgments relied upon in the instant case are not applicable in as much as the Apex Court in ***Vineeta Sharma***'s case referred supra has clearly opined and clarified that the daughter should be alive as on 09.09.2005 to accept any right under the Hindu Succession Amendment Act, 2005. Additionally, the suit is filed by the children of Gouramma during 2012 and not Gouramma, who died on 24.06.2005 i.e., prior to the amendment of the Hindu Succession Act. Therefore, clearly the suit is not maintainable and deserves to be rejected in limine.

15. Having heard the learned Senior Counsel representing the learned counsel for the petitioner and the learned counsel

for the respondents, perused the entire material on record. The Civil Revision Petition is directed against the order passed by the learned trial court dismissing the application filed under Order VII Rule 11 of the CPC, 1908, seeking rejection of the plaint in a suit for partition. In the light of the submissions made on behalf of both the parties, the issue that falls for consideration before this court is:

> ***"Whether the children and grandchildren of a daughter who died before the commencement of the Hindu Succession Amendment Act, 2005, can claim coparcenary rights under the amended Section 6 of the Hindu Succession Act, 1956?"***

The controversy requires consideration of the position of law before the judgment of the Supreme Court in ***Vineeta Sharma***'s case referred supra. Under the traditional Mitakshara law, daughters were not co-parceners by birth in the same manner as sons. The Hindu Succession Amendment Act 2005 brought about a significant change by conferring equal coparcenary status on daughters. The amendment was intended to remove the discrimination that had existed in the law governing joint family property. However, the amendment gave rise to conflicting interpretations concerning its application

to daughters whose fathers had died before 09.09.2005. In the case of ***Prakash***'s case referred supra, the Hon'ble Supreme Court held that the amended provision applies to living daughters of living coparceners as on the date of commencement of the amendment.

16. Subsequently, in ***Danamma alias Suman Surpur and Anr. Vs. Amar and Ors.***[9], the Hon'ble Supreme Court recognised the rights of daughters notwithstanding that their father had died before the amendment. The difference between these two cases created uncertainty concerning the requirement that the father should be alive as on 09.09.2005. It was in this background that the matter came to be considered by larger bench of the Supreme Court in case of ***Vineeta Sharma*** referred supra. In ***Vineeta Sharma***'s case referred supra, the Hon'ble Supreme Court held that a daughter becomes a coparcener by birth in the same manner as a son. The Court rejected the requirement that the father must be alive as on 09.09.2005, holding that the daughter's coparcenary status is founded on birth and does not depend on the continued survival of her father. However, while dispensing

[9] (2018) 3 SCC 343

with the requirement concerning the father's survival, the Supreme Court expressly observed in paragraph Nos.75, 79, and 80 that the distinction drawn by the Supreme Court is significant. The above-mentioned paragraphs read as follows:

> ***"75. The decision in Bireswar Mookerji v. Ardha Chunder Roy Chowdhry [Bireswar Mookerji v. Ardha Chunder Roy Chowdhry, 1892 SCC OnLine PC 3 : (1891-92) 19 IA 101] , was relied upon to contend that adoption is only of a male and not a female as held in Amarendra Mansingh v. Sanatan Singh [Amarendra Mansingh v. Sanatan Singh, 1933 SCC OnLine PC 29 : (1932-33) 60 IA 242 : AIR 1933 PC 155] , a male becomes a coparcener by birth or adoption. There is no dispute with the custom, which was prevalent earlier that there could be the adoption of a male child and not that of females. There is no dispute with the proposition that a coparcenary right accrued to males under the prevalent law by birth or adoption. In the same manner, right is accrued by birth to the daughter under the provisions of Section 6. The legislature in Section 6 used the term that a daughter becomes coparcener by birth. The claim based on birth is distinguishable and is different from modes of succession.***
>
> ***79. In Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] , father died in the year 1988, daughters filed a suit for partition in 1992, same was dismissed in 2007, entitlement was given to the daughters to a share on a notional partition under the proviso to Section 6 in the share of the coparcener father. However, the High Court [Phulavati v. Prakash, 2010 SCC OnLine Kar 5310 : (2011) 2 AIR Kant R 121] applied the amended provisions of Section 6 to the pending proceedings and treated daughters equally with sons. As such, the matter travelled to this Court. It was held that the proviso is not***

retrospective. The requirement of partition being registered can have no application to statutory notional partition, on the opening of succession as per the unamended proviso to Section 6, having regard to the nature of such partition, which is by operation of law. It was opined: (SCC pp. 48-49 & 52, paras 17-18, 23, 27.2 & 27.3)

"17. The text of the amendment itself clearly provides that the right conferred on a "daughter of a coparcener" is "on and from the commencement of the Hindu Succession (Amendment) Act, 2005". Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective [Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24, paras 22 to 27] . In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the amendment will be considered a little later. On this finding, the view [Phulavati v. Prakash, 2010 SCC OnLine Kar 5310 : (2011) 2 AIR Kant R 121] of the High Court cannot be sustained.

18. The contention of the respondents that the amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the amendment applicable on and from its commencement and only if death of the coparcener in question is after the amendment. Thus, no other interpretation is possible in view of the express language of the

statute. The proviso keeping dispositions or alienations or partitions prior to 20-12-2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20-12-2004. Notional partition, by its very nature, is not covered either under the proviso or under sub-section (5) or under the Explanation.

***

23. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20-12-2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.

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27.2. In Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum [Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, (1978) 3 SCC 383] , Shyama Devi v. Manju Shukla [Shyama Devi v. Manju Shukla, (1994) 6 SCC 342] and Anar Devi v. Parmeshwari Devi [Anar Devi v. Parmeshwari Devi, (2006) 8 SCC 656] cases this Court interpreted Explanation I (p. 60, para 50) to Section 6 (prior to the 2005 Amendment) of the Hindu Succession Act. It was held that the deeming provision referring to partition of the property immediately before the death of the coparcener was to be given due and full effect in view of settled principle of interpretation of a provision incorporating a deeming fiction. In Shyama Devi [Shyama Devi v. Manju Shukla,

(1994) 6 SCC 342] and Anar Devi [Anar Devi v. Parmeshwari Devi, (2006) 8 SCC 656] cases, same view was followed.

27.3. In Vaishali Satish Ganorkar v. Satish Keshaorao Ganorkar [Vaishali Satish Ganorkar v. Satish Keshaorao Ganorkar, 2012 SCC OnLine Bom 116 : AIR 2012 Bom 101] , the Bombay High Court held that the amendment will not apply unless the daughter is born after the 2005 Amendment, but on this aspect a different view has been taken in the later larger Bench judgment in Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari [Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari, 2014 SCC OnLine Bom 908 : AIR 2014 Bom 151] . We are unable to find any reason to hold that birth of the daughter after the amendment was a necessary condition for its applicability. All that is required is that daughter should be alive and her father should also be alive on the date of the amendment."

80. A finding has been recorded in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of "living coparcener", as laid down in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549]. In substituted Section 6, the expression "daughter of a living coparcener" has not been used. Right is given under Section 6(1)(a) to the daughter by birth. Declaration of right based on the past event was made on 9-9-2005 and as provided in Section 6(1)(b),

> ***daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave no room to entertain the proposition that coparcener should be living on 9-9-2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part."***

17. The requirement that the father should be alive was specifically rejected. The Court did not similarly dispense with the requirement that the daughter should be living on the date of commencement of the amendment. The recognition of coparcenary status by birth does not mean the amendment operated retrospectively to vest a statutory right in a daughter who had died before its commencement. Birth is the foundation of the right, but the substituted Section 6 became operative as on 09.09.2005. The fact that the right is traced to birth cannot be understood as conferring a right under the amendment upon a person who was no longer alive when the provision came into force.

> ***"In our opinion, the daughters should be living on 9-9-2005."***

18. It recognizes that daughters born before or after the amendment are entitled to coparcenary status by birth, with the same rights and liabilities as sons. The Supreme Court further held that daughters born before the amendment may claim those rights with effect from 09.09.2005. Thus, the requirement that the father be alive was removed. However, the observation concerning the daughter's survival remains significant. The two requirements cannot be treated as though the Supreme Court had rejected both of them. In ***Channabasappa***'s case referred supra, a co-ordinate bench of this court, held that the legal heirs of daughters who died before 09.09.2005, could claim equal share in subsisting coparcenary property. The reasoning in ***Channabasappa***'s case referred supra proceed upon the principle that the daughter becomes a coparcener by birth, and that her descendants should not be denied the benefit of the amendment merely because she had died before its commencement. The difficulty with this interpretation is that it does not give effect to the Hon'ble Supreme Court's observation in ***Vineeta Sharma***'s case referred supra.

19. The Hon'ble Supreme Court, while holding that the father need not be alive on 09.09.2005, specifically stated that the daughter should be living on that day. The recognition of a right by birth cannot be read independently of the commencement or the statutory provision. The amended Section 6 did not operate during the lifetime of a daughter who died before 09.09.2005. Consequently, a coparcenary right arising solely under the amendment could not have vested in her before her death. The interpretation adopted in ***Channabasappa***'s case referred supra, insofar as it recognizes a right under amended Section 6 in favor of the descendants of a daughter who died before 09.09.2005, is therefore inconsistent with the express observation in paragraph No.80 of ***Vineeta Sharma***'s case referred supra. Under Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding upon all Courts. Where an interpretation adopted by this Court is inconsistent with the declaration by the Supreme Court, the latter must prevail. The interpretation in ***Channabasappa***'s case referred supra cannot be applied to defeat the requirement concerning the daughter's

survival expressly stated in ***Vineeta Sharma***'s case referred supra.

20. Coming to the facts of the present case, the plaintiff's mother died on 24.06.2005. The Hindu Succession Amendment Act, 2005, came into force on 09.09.2005. Thus, she was not alive when the amendment or provision became operative. The plaintiff is seeking partition through their deceased mother. Their claim, insofar as it rests upon the amendment to Section 6, necessarily depends upon the existence of a coparcenary right in their mother that could devolve upon them, because their mother died before the commencement of the amendment, no coparcenary right under the substituted Section 6 vested in her. Her children and grandchildren cannot claim through her a right that she did not acquire during her lifetime. The mere fact that the plaintiffs are descendants of a daughter of the family does not, by itself, confer upon them a right to partition under the amended provision. Their entitlement must arise from a legally recognized interest, and the statutory right relied upon vested in their predecessor. The subsequent institution of a suit cannot

create that right. Once the plaintiffs are found not entitled to claim partition under the amendment to Section 6, it is unnecessary to examine the sale transactions of 2001 and the other sale transactions. The validity or binding nature of an alienation becomes relevant only when the plaintiffs establish an enforceable right in the property. In the absence of such a right, consideration of the same would serve no purpose.

21. Order VII Rule 11 of the CPC requires the Court to examine whether the plaint discloses a cause of action. Whether the suit is barred by law, the Court must proceed upon the averments contained in the plaint and cannot rely upon disputed facts introduced through the defense. In the present case, on the face of it on a bare perusal of the plaint. It is clear that the plaintiffs have no legal right to claim partition when their mother was not alive on the day the amendment came into force. The trial court has failed to appreciate this fact. In those circumstances, the impugned order needs to be set aside. Hence, this Court is passing the following:

CNR: KAHC010416062019

ORDER

i. The order dated 01.06.2019 passed on I.A.No.V in O.S.No.6992/2012 by the LXXV Additional City Civil and Sessions Judge, Bengaluru, is **set aside**.

ii. Consequently, I.A.No.V is ***allowed*** and the plaint is ***rejected***.

iii. Accordingly, the Civil Revision Petition is ***allowed***.

iv. All I.As. in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

MEG
List No.: 1 Sl No.: 1
*MR