

**2023 LiveLaw (SC) 655 : 2023 INSC 731**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

***BELA M. TRIVEDI; J., S.V.N. BHATTI; J.***

**CIVIL APPEAL NO. 7374 OF 2008; AUGUST 16, 2023**

**H. VASANTHI *versus* A. SANTHA (DEAD) THROUGH LRS. AND OTHERS**

**Partition - There is no prohibition to effect a partition otherwise than through an instrument in writing by duly complying with the requirement of law. In other words, the division may also be effected under a settlement or oral understanding.**

*For Appellant(s) Mr. An Venugopala Gowda, Sr. Adv. Ms. Garima Jain, AOR Ms. Shruti Priya, Adv.*

*For Respondent(s) Mr. P.B.Suresh, Adv. Mr. Vipin Nair, AOR Mr. Arindam Ghosh, Adv. Mr. Karthik Jayashankar, Adv. Mr. Anshumaan Bahadur, Adv. Mr. P.B.Sashaankh, Adv.*

**J U D G M E N T**

**S.V.N. BHATTI, J.**

1. We have heard learned Senior Counsel Shri A.N. Venugopala Gowda and Counsel Shri P.B. Suresh for the appellant and the respondents, respectively.

2. Plaintiff in OS No. 746 of 1996 City Civil Court, Chennai, is the appellant. OS No. 746 of 1996 was filed for the relief of declaration that the plaintiff with Defendant Nos. 1 and 2 is a coparcener by amended Section 29A of the Hindu Succession Act, 1956 (Tamil Nadu Amendment Act). Therefore, the plaintiff has a right to a one-third share in the suitscheduled property at 24/1, Gomathy Narayanaswamy Road, T-Nagar, Madras-600017. She prayed for an injunction, restraining Defendant Nos. 1 and 2 etc., from disposing of one-third part claimed by the plaintiff to third parties. The plaintiff also prayed for partition and separate possession of one-third in the plaint schedule through a preliminary and a final Decree. The prayers in the plaint are comprehensive enough for declaration, injunction, partition, and separate possession for the plaintiff's one-third share in the plaint schedule property. To avoid repetitive description of the property, which may arise during and in the course of consideration by us, we excerpt the schedule as under:

**Plaint Schedule**

“Outhouse with ground floor and first floor and ground land of a total extent of 111/3 ground (one ground and 800 sq. ft) forming part of Old No. 62 Gomathy Narayanaswamy road and now in New No. 24/1, Gomathy Narayanaswamy Road, T. Nagar, Madras-17 within the regn. District of Madras-Chingleput Sub Registration District of T.Nagar, bearing S.No. 59 part T.S. No. 8623 (part) bounded on the North by G.N. Chetty Road and U. Sripathi Rao's property on the south by house which belongs to Dr. Harischand, on the east by house in Boag Road, No. 20, belonging to Nayudamma and No. 21 belonging to B.A. Kukillaya and Sripathi Rao's property and on the west by common entrance from Gomathy Narayanaswamy Road.”

3. Defendants 1 and 2 are the father and brother of the plaintiff. The third Defendant is the purchaser of the plaint schedule property from Defendants 1 and 2 through the process of law. The following chronology reveals the narrow brief controversy at issue.

4. The plaintiff's case is that the grandfather of the plaintiff Dr H. Venkat Rao purchased the plaint schedule property together with the property on the southern side of the plaint schedule property through a registered sale deed dated 13.09.1924. The first defendant is the only son of Dr H. Venkat Rao and, being so, inherited the property as Joint Hindu Family Property. The second defendant is the son of the first defendant, and the plaintiff is one of the daughters of the first defendant. The admitted circumstances are

that on 18.07.1974, the first defendant and the second defendant entered into an agreement of sale with the third defendant. The third defendant, enforcing the rights under the agreement dated 18.07.1974, filed OS No. 2595 of 1981 before the City Civil Court, Madras, for specific performance. On 11.08.1982, OS No. 2595 of 1981 was dismissed. The third defendant, aggrieved by the Judgment and Decree dated 11.08.1982, filed Appeal No. 165 of 1984 before the High Court of Judicature at Madras. On 13.03.1995, Appeal No. 165 of 1984 was allowed and specific performance of agreement of sale dated 18.07.1974 was granted by the High Court of Judicature at Madras.

SLP (C) No. 10689 of 1995 filed by Defendants 1 and 2 was dismissed on 12.05.1995. In the interregnum and *viz.*, the plaintiff, Defendants 1 and 2 and the other sisters entered into a partial partition (Exhibit-A3) dated 24.02.1980. What is essential is that Exhibit A3 describes the property covered by the said Door Number; the partial division or partition was effected for the property on the southern side, leaving open space for ingress and egress. On 25.03.1989, Section 29A of the Hindu Succession Act (Tamil Nadu Amendment Act), 1989 confers on the unmarried daughters the status of coparceners and right in coparcenary property for partition, etc.

5. On 07.07.1989, the plaintiff got married, and in June 1995, C.S. No. 953 of 1995 was filed before the High Court of Judicature at Madras, transferred and renumbered as OS No. 746 of 1996 before the City Civil Court, Chennai. The plaintiff advert to the above sequence of events accepts the benefit under the partial partition deed dated 24.02.1980 and rests her claim for partition of the plaint schedule property. The gist of the plaintiff's case is stated thus:

- a. The plaint schedule property is the Joint Hindu Family Property,
- b. By the Tamil Nadu State Amendment, the plaintiff has become a coparcener,
- c. The plaintiff, being a coparcener, is entitled to equal share in the plaint schedule property with her father and brother,
- d. The plaintiff since has got the status of coparcener w.e.f. 25.03.1989, when Appeal No. 165 of 1984 (High Court of Judicature at Madras) was pending, the rights of the plaintiff in plaint schedule property remained undisturbed by the Judgment and Decree in Appeal No. 165 of 1984 as confirmed in SLP (C) No. 10689 of 1995.

6. In substance, the plaintiff's case is that the plaint schedule property is available for partition. Therefore, Defendants 1 and 2, i.e., the father and brother of the plaintiff, cannot and could not transfer the right and entitlement of the plaintiff. Hence, the suit for partition. Defendants 1 and 2, having suffered the Decree for Specific Performance, have not opposed the suit prayer. The third defendant contested the suit. The case of the third defendant is that the claim for partition and separate possession of the plaint schedule is unavailable even on the date of coming into force of the State Amendment. As the coparceners, the plaint schedule cannot and could not be treated as a property held by the Hindu Undivided Family of the plaintiff and Defendants 1 and 2. Without assailing the sale deed executed in favour of the third defendant, the plaintiff could not have asked for partition simpliciter of any right much less than one-third. The prayers, as made, substantially negate the adjudication in Appeal No. 165 of 1984 as confirmed in SLP (C) No. 10689 of 1995. In the trial, PE1 to PE3 were marked for the plaintiff, and the plaintiff was examined as PW1, and Defendants examined DW1 and DW2.

7. The Trial Court framed the following:

- "1. Whether the plaintiff was a member of a joint family in accordance with suit property?"

2. whether the plaintiff was debarred from demanding share in the suit property?
3. whether a partition was carried out in the family even on 24.2.80 and consented that the suit property was owned by 1st and 2<sup>nd</sup> defendants.
4. Whether the plaintiff is eligible for relief of declaration, relief of injunction and relief of partition as per her demand?
5. Which relief can be granted to plaintiff?"

8. The Trial Court dealt with all the issues and answered in favour of contesting the third defendant; hence, OS No. 2595 of 1981 was dismissed. The plaintiff, aggrieved by the dismissal of the Suit, filed A.S. No. 77 of 1998 before the High Court of Judicature at Madras, and through the impugment Judgment, A.S. No. 77 of 1998 stood dismissed. Hence, by Special Leave, the present Civil Appeal.

9. Learned Senior Counsel contends that the property covered by Door Number 24/1, Gomathy Narayanaswamy Road, T-Nagar, Madras-600017, was purchased by the plaintiff's grandfather. The first defendant inherited the plaint schedule. The inherited property has the character of coparcenary or Hindu Undivided Family Property. On 25.03.1989, Section 29A of the State Amendment conferred on the unmarried daughters status of a coparcenary. In law, a coparcener is entitled to claim for partition and converse of the said right because Defendants 1 and 2 cannot, in law, convey onethird of the plaintiff's share in the coparcenary in favour of the third defendant. The execution of the sale deed, even assuming after the dismissal of the SLP by this Court, cannot and could not affect the right of the plaintiff in the plaint schedule property. In law, there is no prohibition for entering into and executing a partial deed of partition by the coparceners. The registered partition deed dated 24.02.1980 (Exhibit-A3) does not deal with the plaint schedule property and, therefore, the Judgments impugned in the Civil Appeal, *per se*, are illegal and are contrary to the binding precedents reported in **Vineeta Sharma v. Rakesh Sharma**<sup>1</sup>, **T. Ravi and another v. B. Chinna Narasimha and others**<sup>2</sup> and **Hardeo Rai v. Sakuntala Devi and others**<sup>3</sup>. He further argues that the consideration by the High Court or the Trial Court is not from the perspective of entitlement of an unmarried daughter under Section 29A of an Amendment Act but from the finality attached to the Judgement in Appeal No.165/1984. Therefore, alternatively, it is argued that the impugned Judgment of the High Court is set aside and the matter remitted to the Appellate Court for consideration afresh.

10. Shri P.B. Suresh, learned Counsel, contends that the principles enunciated in the Judgments relied on by the appellant cannot, abstractly, be applied to the facts and circumstances of the case. The Third defendant, it is contended, claims exclusive rights and title to plaint schedule through agreement of sale dated 18.07.1974, crystallised into an enforceable Decree in Appeal No. 165 of 1984, and as confirmed by this Court in SLP (C) No. 10689 of 1995. It is argued that, by calling in question the Decree in Appeal No. 165 of 1984 or partial partition through Exhibit-A3, the declaratory relief, much less the partition relief is available to the plaintiff. It is contended that Section 29A of the State Amendment, firstly, is unavailable nor attracted to the case on hand. The learned Counsel does not join the issue of whether members of the coparcenary can enter into a partial partition or not but argues by referring to a partial partition deed dated 24.02.1980(Exhibit A3). He contends that, on 25.03.1989, i.e., the date on which Section 29A of the Hindu

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<sup>1</sup> (2020) 9 SCC 1

<sup>2</sup> (2017) 7 SCC 342

<sup>3</sup> (2008) 7 SCC 46

Succession Act (State Amendment) came into force, the plaint schedule property ceased to be either coparcenary or Hindu Undivided Family Property. As a signatory to the partial partition deed dated 24.02.1980, the plaintiff accepted the plaint schedule as property belonging to Defendants 1 and 2. Therefore, the partial partition is understood as the partial partition of the remainder of the property in the schedule covered by the Exhibit-A3 document. The description of the property indicates that the subject matter of the suit was treated as property belonging to Defendants 1 and 2. The third defendant since has purchased from the exclusive owners, i.e., Defendant Nos. 1 and 2, treating the plaint schedule property as a coparcenary property is unavailable, and the Courts below have rightly rejected the claim.

**11.** The property since ceased to be a coparcenary property on the date of introduction of Amendment to Section 29A; the claim for partition is rightly rejected by the Courts below. He prays for dismissing the Civil Appeal. The learned Counsel relied on **Suhrid Singh Alias Sardool Singh v. Randhir Singh and others**<sup>4</sup> and **Sunil Kumar and another v. Ram Prakash and others**<sup>5</sup>.

**12.** We have perused the record and taken note of the rival contentions. The above narrative set out in preceding cases takes us to a concise question for consideration, viz., whether the plaint schedule has the colour of coparcenary as of 25.03.1989 and is available for partition. The review is more in the realm of circumstances proved by the parties than the interpretation or application of Section 29A of the State Amendment to the case on hand.

**13.** The argument of learned Counsel for the plaintiff lays substantial emphasis on the statutory recognition of status as a coparcener to an unmarried daughter by Section 29A of the Hindu Succession Act and that the plaintiff is a non-executant and, therefore, the plaintiff's share in the coparcenary is available for partition. Briefly stated, the applicability of Section 29A is not the deciding factor but the deciding factor in the case on hand is whether the suit property is available for partition. The crucial circumstance is whether the plaint schedule has the status or standing of a coparcenary property and is available for partition. The High Court, having examined each one of the relevant circumstances, found that the property is not available partition as of the date of coming into force of Section 29A of the State Amendment and dismissed the appeal. We have perused the Judgment and concur with the findings.

**14.** We are alive to the principle that there is no prohibition to effect a partition otherwise than through an instrument in writing by duly complying with the requirement of law. In other words, the division may also be effected under a settlement or oral understanding. The circumstances and manner of recognising Defendants 1 and 2 as exclusive owners are not disclosed by the plaintiff or Defendants 1 and 2.

**15.** Exhibit A3 is a partial partition deed containing three schedules. Schedule-I covers the entire property, i.e., the total extent covered by premises bearing No. 68 corresponding to new No.24, G.N. Chetty Road, T. Nagar, Madras, has five grounds and 1185 square feet. The partial partition allocated the property in Schedule-A to Defendants 1 and 2 and Schedule B to the parties of the second part, i.e., the plaintiff herein. The plaintiff accepted the property given in the 'B' Schedule. In this aspect, the plaintiff has admitted that the present suit schedule property belongs to the first and second defendants and has taken separate possession of the 'B' Schedule in Exhibit-A3 partial partition. Plaintiff does not

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<sup>4</sup> (2010) 12 SCC 112

<sup>5</sup> (1988) 2 SCC 77

take steps to assail Exhibit-A3 in the manner known to law but proceeds to assume contrary to a clear understanding and claims partition. We are conscious that the factum of division is decided by the cumulative effect of all attending circumstances proved by the parties. Either the previous partition or separate ownership of any property is accepted on the evidence placed on record by the parties. In the case on hand, the plaintiff is legally obliged to discharge the burden that the plaint schedule is not only a coparcenary but continued to be so even as of 25.03.1989 and that the plaintiff is entitled to enforce the claim for partition. Let us examine whether the plaintiff discharged the burden on the above touchstone. The suit is filed both for declaration and partition. What has been explicitly declared by Section 29A, subject to a daughter being unmarried, gets the status of a coparcener. There is no difficulty in expressing the plaintiff's position as a coparcenary member. The fact that the plaintiff has earned the legal standing of a coparcener cannot, by itself, would be a reason to accept the prayer for partition unless the plaintiff discharges the burden that the partial partition through Exhibit-A3 did not affect the coparcenary rights in Schedule-I appended to Exhibit-A3. The recitals in Exhibit A3 and subsequent deeds demonstrate that the property shown as a northern boundary to the 'C' Schedule is treated as property belonging to the first and second defendants. The pleadings or evidence is absent to displace the presumption that could be drawn on Defendants 1 and 2 getting exclusive ownership of the suit schedule property as a signatory to Exhibit-A3 whether they could be allowed to lead evidence contrary to the recitals in a registered deed. The plaintiff failed to discharge the burden. The findings of the facts recorded do not warrant interference. Independent consideration of the above circumstances reinforces the conclusion the Courts below arrived in rejecting the suit prayers.

**16.** In whichever way we appreciate, the plaintiff still failed to demonstrate that the plaint schedule continued to be a coparcenary available for partition.

**17.** For the above consideration and reasons, the Civil Appeal fails and is dismissed accordingly—no order for costs.

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