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IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 18TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 105363 OF 2023 (GM-CPC)

BETWEEN:

CHANNABASAPPA

...PETITIONER

(BY SRI.S L MATTI, ADVOCATE)

AND:

1 . SMT PARVATEVVA ALIAS KASTUREVVA

DATED 08/08/2023 PASSED IN F.D.P. NO. 13/2015 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE AND C.J.M. GADAG VIDE ANNEXURE-E, IN THE ENDS OF JUSTICE AND EQUITY.

THIS PETITION HAVING HEARD AND RESERVED FOR ORDERS ON 03.10.2023 COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

JUDGMENT

The captioned petition is filed by defendant No.4 assailing the order of the FDP Court on I.A.No.11, wherein the appellate Court while rejecting the application filed by defendant No.4 under Section 152 of CPC has declined to amend the preliminary decree granting equal share to the legal heirs of deceased daughters.

2. The trial Court while drawing preliminary decree in O.S.No.185/2000 has granted 1/5th share to the plaintiffs and defendants. Defendant No.4 who is the son of defendant No.2 has filed the present application in the final decree proceedings to amend

the preliminary decree on the ground that two daughters namely Nagavva and Sangavva of propositus Rudrappa Hosmani died before 2005 amendment to Hindu Succession Act, 1956 (for short "the Act") and therefore, the legal heirs of deceased Nagavva and Sangavva are not entitled to take equal share at par with the sons.

3. The contention of the petitioner before this Court is that the effect of amended Section 6 of the Act is prospective in nature and since daughters namely Nagavva and Sangavva died before 2005 amendment, the legal heirs of Nagavva and Sangavva are not entitled for equal share. The petitioner claims that the Act has come into force w.e.f. 9.9.2005 and the amended provision creates a new right. Petitioner's claim is that the provisions of the Act are not expressly made retrospective by the Legislature. Petitioner further claims that the rights under the

amendment Act are applicable to the living daughters of the living coparcener as on 9.9.2005 irrespective of when such daughters are born.

4. Heard the learned counsel for petitioner and the learned counsel appearing for respondents.

5. Before I advert to the controversy on hand, the application of the newly substituted Section 6 of the Act by way of 2005 amendment is dealt by the Hon'ble Apex Court in the case of ***Vineetha Sharma .vs. Rakesh Sharma and others***[1]***.*** The Apex Court in the above said judgment has held as under:

> *"The amended provisions of section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener 'in her own right' and 'in the same manner as the son'. Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section (1)(b) confers the same rights in the coparcenary property 'as she would have had if she had been a son'. The conferral of right is by*

[1] (2020) 9 SCC 1

birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 09.09.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20.12.2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated."

6. The Apex Court in the above cited judgment was examining the ratios rendered in the case of ***Prakash and others vs. Phulavathi and others***[2]***,*** ratio laid down in the cases of ***Danamma alias Suman Surpur and another .vs. Amar and others***[3] and ***Mangamal @ Thulasi and another. vs. T.B.Raju And Others***[4]***.*** The Apex Court while examining the principles laid down by the Apex Court

[2] (2016) 2 SCC 36
[3] (2018) 3 SCC 343
[4] **2018(15) SCC 662**

in the case of ***Prakash .vs. Poolavathi***; ***Danamma and Mangamal's case*** *vis-à-vis* the larger Bench decision rendered by the Apex Court in the case of Vineetha Sharma further held as follows:

> *"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 (2016)2 SCC 36. In our opinion, the daughters should be living on 09.09.2005. In substituted sec. 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 09.09.2005 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".*
>
> *Mangammal v T.B. Raju (2018)15 SCC 662 followed Prakash and opined that Prakash would*

still hold the value of precedent for right of a daughter in ancestral property and only "living daughter of living coparceners" as on 09.09.2005 would be entitled to claim a share in the coparcenary property. But the law so laid down in contrary to what has been decided by the larger Bench and as such, no more hold good."

7. The Larger Bench of the Apex Court in the case of ***Vineeta Sharma*** partly over ruled the ratio laid down by the Apex Court in the case of ***Prakash .vs. Phulavathi.*** The Apex Court while taking cognizance of the divergence of opinion in ***Prakash*** and ***Danamma's*** case with respect to the aspect of living daughters of living coparceners has come to a conclusion that daughters are conferred the status of coparcener by fiction and such right is by birth. Resultantly, the reference was disposed of laying the law as under:

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(1) The provisions contained substituted section 6 confer status of coparcener on the daughter born

before or after amendment in the same manner as son with same rights and liabilities.

(2) The rights can be claimed by the daughter born earlier with effect from 09.09.2005 with savings as provided in section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

(3) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 09.09.2005.

(4) The statutory fiction of partition created by the proviso to section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted sec. 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(5) In view of the rigour of provisions of the Explanation to section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is

> *finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be acepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."*

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 Class-I 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.

10. The Apex Court judgment in the case of ***Velamuri Venkata Sivaprasad (Dead) by LRs. .vs. 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

cannot seek amendment by having recourse to Section 152 of CPC.

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

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.

f. The petitioner's application under Section 152 of CPC in final decree proceedings is barred by Section 97 of CPC, as it prohibits challenging the correctness of a preliminary decree if not appealed. Modification of preliminary decree is permissible only on the ground of changed or supervening circumstances or change in law. Petitioner having failed to question the preliminary decree cannot seek amendment by having recourse to section 152 CPC.

13. For the reasons stated supra, I proceed to pass the following:

ORDER

The writ petition is dismissed.

Sd/-
JUDGE

*alb/-