REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1933 OF 2009

Mangammal @ Thulasi and Anr. ….Appellant(s)

Versus

T.B. Raju and Ors. …. Respondent(s)

J U D G M E N T

R.K.Agrawal, J.

1) This appeal is preferred against the impugned judgment and order dated 18.09.2006 passed by the High Court of Judicature at Madras in S.A. No. 780 of 2006 whereby learned single Judge of the High Court dismissed the appeal filed by the appellants herein at the admission stage.

2) **Brief facts:-**

(a) The case of the appellants, in a nutshell, is that the appellants herein are the daughters of Late Shri T.G. Basuvan (died on 12.1979) and Late Smt. Sundari (died on 22.07.1989) whereas Respondent No. 1 is the brother of the appellants herein. Late T.G.

Basuvan left three properties consisting of agriculture land (Item Nos. 1 & 2) and dwelling house (Item No. 3)

(b) Later on, due to the irresponsible behaviour of Respondent No. 1, suit properties at Item Nos. 1 and 2 were leased out to Respondent Nos. 2 to 4 herein during the lifetime of the mother of the appellants herein.

(c) During the lease period, the mother of the appellants died. On the expiry of said lease deed, the appellants herein through legal notice approached the Respondent Nos. 2 to 4 to deliver the vacant possession of Item Nos.1 and 2. In reply, it has been stated that the lands were sold to them by Defendant No. 1.

(d) Being aggrieved, the appellants instituted a suit being O.S. No. 202 of 2003 praying, *inter-alia*, for the partition and separate possession of the suit properties which consisted of three items, namely, agriculture land (Item Nos. 1 and 2) and building site with constructed building (Item No. 3) and arrayed the brother as Defendant No. 1 and lessees/subsequent buyers as Defendant Nos. 2 to 4. The appellants herein were the plaintiffs in the original suit

(e) The trial Court, after hearing the suit at length, dismissed the same, vide judgment dated 28.09.2004 while holding, *inter alia*, that the plaint is the creature of the Defendant No. 1 and the plaintiffs, who being the puppets in the hands of Defendant No. 1, are not entitled to any partition.

(f) Being dissatisfied, the appellants took the matter before the District Judge, Udhagamandalam. Learned District Judge, vide judgment dated 14.12.2005, dismissed the appeal while upholding the decision of the trial court.

(g) Feeling aggrieved with the decision, the appellants herein preferred a Second Appeal being No. 780 of 2006 before the High Court of Judicature at Madras. Learned single Judge of the High Court, vide order dated 18.09.2006, dismissed the appeal at the admission stage itself.

(h) Consequently, this appeal has been filed before this Court by way of special leave.

3) We have given our solicitous consideration to the submissions of learned counsel appearing for both the parties and perused the relevant material on record.

Point(s) for consideration:-

4) The short question that arises before this Court is whether in the light of present peculiar facts and circumstances of the case, any intervention of this Court is required with the impugned decision of the High Court?

Rival contentions:-

5) At the outset, learned counsel for the appellants submitted that the High Court failed to appreciate that no limitation has been prescribed for filing a suit for partition by one or more co-sharers, hence, a suit for partition cannot be dismissed as being barred by time. Further, it was submitted that dismissal of a suit for partition by holding that the appellants herein have not filed the suit within 12 years from the date of dispossession cannot be sustained in the eyes of law specially when there is no proof to prove dispossession and the respondents have failed to plead and prove ouster. Hence, the impugned judgment of the High Court is liable to be set aside at the threshold.

6) *Per contra*, learned counsel for Respondent No. 1 herein submitted that Respondent No. 1 had never been a drunkard and

the appellants made such allegations in order to defeat the sale made in favour of Respondent Nos. 2 and 3 and that during the lifetime of their mother, the suit properties remained un-partitioned and that the properties at Item Nos. 1 and 2 having been legally sold to Respondent Nos. 2 and 3, hence, the question of seeking partition and separate possession does not arise in any circumstance. Further, it was also pointed out that the High Court rightly dismissed the case at admission case. Hence, this appeal also deserves to be dismissed. Learned counsel appearing for other respondents also submitted that they are the *bona fide* purchasers of the suit property, hence, this appeal deserves to be dismissed being devoid of merits.

Discussion:-

7) Before proceeding further, it is apt to have an understanding of the concept of ancestral property in a nutshell. Any property inherited upto four generations of male lineage from the father, father's father or father's father's father i.e. father, grand father etc., is termed as ancestral property. In other words, property inherited from mother, grandmother, uncle and even brother is not ancestral property. In ancestral property, the right of property accrues to the

coparcener on birth. The concept of ancestral property is in existence since time immemorial. In the State of Tamil Nadu, in order to give equal position to the females in ancestral property, in the year 1989, the State Government enacted the Hindu Succession (Tamil Nadu Amendment) Act, 1989 effective from March 25, 1989 which brought an amendment in the Hindu Succession Act, 1956 (for brevity "the Act") by adding Section 29-A vide Chapter II-A under the heading of Succession by Survivorship. It is apt to reproduce the said provision herein below.

> **29-A. Equal rights to daughter in coparcenary property-** Notwithstanding anything contained in Section 6 of this Act,-
>
> (i) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall be birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcener property as she would have had if she had been a son, inclusive of the right to claim by survivorship: and shall be subject to the same liabilities and disabilities in respect thereto as the son:
>
> (ii) at a partition in such a Joint Family the coparcener property shall so divided as to allot to a daughter the same share as is allotable to a son:
>
> Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:
>
> Provided further that the share allotable to the pre-deceased child of pre-deceased son or pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased

child of the pre-deceased son or of the pre-deceased daughter, as the case may be:

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition:

(iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act , 1989:

(v) nothing in clause (ii) shall apply to a partition which had been effected before the date of commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

8) At this juncture, it is to be examined as to whether the appellants were entitled to claim partition in ancestral property in view of the amendment? If the answer to this question is affirmative then only further determination of dispute would arise. Prior to the amendment, it was only the male who would have been coparcener and entitled to claim the partition and share from the joint family property. On the other hand, daughter did not have any right to partition and to claim share in the ancestral property since she was not a coparcener. At the most, at the time of partition, she could only ask for reasonable maintenance and marriage expenses.

9) To cut a long story short, it is undisputed fact that Late T.G. Basuvan, father of the appellants, had only ancestral properties and

he did not left behind any self acquired properties. On a plain reading of the newly added provision i.e., Section 29-A of the Act, it is evident that, *inter-alia*, daughter of a coparcener ought not to have been married at the time of commencement of the amendment of 1989. In other words, only un-married daughter of a coparcener is entitled to claim partition in the Hindu Joint Family Property. In the instant case, it is admitted position that both the appellants, namely, Mangammal, got married in the year 1981 and Indira, got married in or about 1984 i.e., prior to the commencement of the 1989 amendment. Therefore, in view of clause (iv) of the Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, appellants could not institute the suit for partition and separate possession at first instance as they were not the coparceners.

10) Moreover, under Section 29-A of the Act, legislature has used the word "the daughter of a coparcener". Here, the implication of such wordings mean both the coparcener as well as daughter should be alive to reap the benefits of this provision at the time of commencement of the Amendment of 1989. The similar issue came up for the consideration before this Court in ***Prakash & Ors.*** vs.

Phulavati & Ors., (2016) 2 SCC 36, this Court while dealing with the identical matter held at Para 23 as under:-

> 23. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born……"
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> **(emphasis supplied by us)**

It is pertinent to note here that recently, this Court in ***Danamma @ Suman Surpur & Anr.*** Vs***. Amar & Ors,*** 2018 (1) Scale 657 dealt, *inter-alia*, with the dispute of daughter's right in the ancestral property. In the above case, father of the daughter died in 2001, yet court permitted the daughter to claim the right in ancestral property in view of the amendment in 2005. On a perusal of the judgment and after having regard to the peculiar facts of the ***Danamma (supra)***, it is evident that the Division Bench of this Court primarily did not deal with the issue of death of the father rather it was mainly related to the question of law *whether daughter who born prior to 2005 amendment would be entitled to claim a share in ancestral property or not?* In such circumstances, in our view, ***Prakash & Ors. (supra)***, would still hold precedent on the issue of death of coparcener for the purpose of right of daughter in ancestral property. Shortly put, only living daughters of living

coparceners would be entitled to claim a share in the ancestral property.

11) Hence, without touching any other aspect in the present case, we are of the view that the appellants were not the coparceners in the Hindu Joint Family Property in view of the 1989 amendment, hence, they had not been entitled to claim partition and separate possession at the very first instance. At the most, they could claim maintenance and marriage expenses if situation warranted.

Division of the Property:-

12) However, as appears from the record of the case and also in view of the contention of the parties, the coparcener property in the hand of Late T.G. Basuvan got divided between him and his son T.B.Raju-Respondent No. 1. In such partition, Late T.G. Basuvan got ½ share and T.B.Raju also got ½ share. Now the property left in the hand of Late T.G.Basuvan would be his separate property. On his death, such separate property would devolve through succession by applying the rules of Sections 8, 9 & 10 of the Hindu Succession Act, 1956 in the following manner:

- Widow i.e. mother of the appellants would get ¼ of the half share which stands at 1/8.

- Daughter Mangammal-Appellant No. 1 would get ¼ of the half share which stands at 1/8.

- Daughter Indira-Appellant No. 2 would get the ¼ of the half share which stands at 1/8.

- Son T.B.Raju-Respondent No. 1 would get the ¼ of the half share which stands at 1/8. This 1/8 share would be in addition of ½ share which he got in partition.

13) On the death of the widow i.e., mother of the appellants, her 1/8 share which she got in succession, would devolve through succession by applying the rules of Sections 15 & 16 of the Hindu Succession Act, 1956 in the following manner:

- Daughter Mangammal-Appellant No. 1 would get the 1/3 of the 1/8 which stands at 1/24.

- Daughter Indira-Appellant No. 2 would get the 1/3 of the 1/8 which stands at 1/24.

- Son T.B.Raju-Respondent No. 1 would get the 1/3 of the 1/8 which stands at 1/24.

Final Share of Each Person:-

1. Daughter Mangammal-Appellant No .1, total share would be 1/8 + 1/24 = 4/24 or 1/6.

2. Daughter Indira-Appellant No. 2, total share would be 1/8 + 1/24 = 4/24 or 1/6.

3. Son T.B.-Respondent No. 1, total share would be ½ + 1/8 + 1/24 = 16/24 or 2/3.

14) At this juncture, we would like to make it clear that any sale which made to Respondent Nos. 2 & 3 in pursuance of two sale deeds dated 03.04.1996 and 24.08.1998 respectively shall not be disturbed anymore. In lieu of the same, the appellants shall be entitled to their legitimate share, if any, which belonged to them in such properties and which had been sold through sale deeds from Respondent No. 1 by way of money or some other property of the same amount. The price of the properties shall be calculated according to the rate prevailing at the date of sale deeds respectively

along with interest @ 9 per cent per annum from the date of sale deeds till the payment of money or transfer of property. Here, legitimate share means share which appellants have got through the division of property as mentioned above in paragraph Nos. 12 and 13.

15) To sum up the case, the appellants are not entitled to any share in coparcenary property since they were not the coparceners in view of 1989 amendment. However, on the death of their father and mother, appellants would get their property through succession in the above manner.

16) In view of above discussion, we, hereby, partially allow the appeal in the above terms leaving the parties to bear their own cost.

.....J.
(R.K. AGRAWAL)

.....J.
(ABHAY MANOHAR SAPRE)

NEW DELHI;
APRIL 19, 2018.