REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8538 OF 2011
(Arising out of SLP (Civil) No. 9586 of 2010)

Ganduri Koteshwaramma & Anr. …. Appellants

Versus

Chakiri Yanadi & Anr. ….Respondents

JUDGMENT

R.M. Lodha, J.

Leave granted.

2. The question that arises in this appeal, by special leave, is: whether the benefits of Hindu Succession (Amendment) Act, 2005 are available to the appellants.

3. The appellants and the respondents are siblings being daughters and sons of Chakiri Venkata Swamy. The 1st respondent (plaintiff) filed a suit for partition in the court of Senior Civil Judge,

Ongole impleading his father Chakiri Venkata Swamy (1st defendant), his brother Chakiri Anji Babu (2nd defendant) and his two sisters – the present appellants – as 3rd and 4th defendant respectively. In respect of schedule properties 'A', 'C' and 'D' – coparcenary property – the plaintiff claimed that he, 1st defendant and 2nd defendant have 1/3rd share each. As regards schedule property 'B'—as the property belonged to his mother—he claimed that all the parties have 1/5th equal share.

4. The 1st defendant died in 1993 during the pendency of the suit.

5. The trial court vide its judgment and preliminary decree dated March 19, 1999 declared that plaintiff was entitled to 1/3rd share in the schedule 'A', 'C' and 'D' properties and further entitled to 1/4th share in the 1/3rd share left by the 1st defendant. As regards schedule property 'B' the plaintiff was declared to be entitled to 1/5th share. The controversy in the present appeal does not relate to schedule 'B' property and is confined to schedule 'A', 'C' and 'D' properties. The trial court ordered for separate enquiry as regards mesne profits.

6. The above preliminary decree was amended on September 27, 2003 declaring that plaintiff was entitled to equal

share along with 2nd, 3rd and 4th defendant in 1/5th share left by the 1st defendant in schedule property 'B'.

7. In furtherance of the preliminary decree dated March 19, 1999 and the amended preliminary decree dated September 27, 2003, the plaintiff made two applications before the trial court (i) for passing the final decree in terms thereof; and (ii) for determination of mesne profits. The trial court appointed the Commissioner for division of the schedule property and in that regard directed him to submit his report. The Commissioner submitted his report.

8. In the course of consideration of the report submitted by the Commissioner and before passing of the final decree, the Hindu Succession (Amendment) Act, 2005 (for short, '2005 Amendment Act') came into force on September 9, 2005. By 2005 Amendment Act, Section 6 of the Hindu Succession Act, 1956 (for short '1956 Act') was substituted. Having regard to 2005 Amendment Act which we shall refer to appropriately at a later stage, the present appellants (3rd and 4th defendant) made an application for passing the preliminary decree in their favour for partition of schedule properties 'A', 'C' and 'D' into four equal shares; allot one share to each of them by metes and bounds and for delivery of possession.

9. The application made by 3rd and 4th defendant was contested by the plaintiff. Insofar as 2nd defendant is concerned he admitted that the 3rd and 4th defendant are entitled to share as claimed by them pursuant to 2005 Amendment Act but he also submitted that they were liable for the debts of the family.

10. The trial court, on hearing the parties, by its order dated June 15, 2009, allowed the application of the present appellants (3rd and 4th defendant) and held that they were entitled for re-allotment of shares in the preliminary decree, i.e., they are entitled to 1/4th share each and separate possession in schedule properties 'A', 'C' and 'D'.

11. The plaintiff (present respondent no. 1) challenged the order of the trial court in appeal before the Andhra Pradesh High Court. The Single Judge by his order dated August 26, 2009 allowed the appeal and set aside the order of the trial court.

12. 1956 Act is an Act to codify the law relating to intestate succession among Hindus. This Act has brought about important changes in the law of succession but without affecting the special rights of the members of a Mitakshara Coparcenary. The Parliament felt that non-inclusion of daughters in the Mitakshara Coparcenary property was causing discrimination to them and, accordingly, decided to bring in necessary changes in the law. The statement of

objects and reasons of the 2005 Amendment Act, inter alia, reads as under :

> "…….The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property."

13. With the above object in mind, the Parliament substituted the existing Section 6 of the 1956 Act by a new provision vide 2005 Amendment Act. After substitution, the new Section 6 reads as follows :

> "6. Devolution of interest in coparcenary property.— (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—
>
> (a) by birth become a coparcener in her own right in the same manner as the son;
>
> (b) have the same rights in the coparcenary property as she would have had if she had been a son;
>
> (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

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

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

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

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

Explanation.— For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been

allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect —

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

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

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

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

Explanation. —For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

14. The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a copercener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.

15. The right accrued to a daughter in the property of a joint Hindu family governed by the Mitakshara Law, by virtue of the 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to sub-section (1) of Section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely, (i) where the disposition or alienation including any partition has taken place before December 20, 2004; and (ii) where testamentary disposition of property has been made before December 20, 2004. Sub- section (5) of Section 6 leaves no room for

doubt as it provides that this Section shall not apply to the partition which has been effected before December 20, 2004. For the purposes of new Section 6 it is explained that `partition' means any partition made by execution of a deed of partition duly registered under the Registration Act 1908 or partition effected by a decree of a court. In light of a clear provision contained in the Explanation appended to sub-section (5) of Section 6, for determining the non-applicability of the Section, what is relevant is to find out whether the partition has been effected before December 20, 2004 by deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. In the backdrop of the above legal position with reference to Section 6 brought in the 1956 Act by the 2005 Amendment Act, the question that we have to answer is as to whether the preliminary decree passed by the trial court on March 19, 1999 and amended on September 27, 2003 deprives the appellants of the benefits of 2005 Amendment Act although final decree for partition has not yet been passed.

16. The legal position is settled that partition of a Joint Hindu family can be effected by various modes, inter-alia, two of these modes are (one) by a registered instrument of a partition and (two) by a decree of the court. In the present case, admittedly, the partition

has not been effected before December 20, 2004 either by a registered instrument of partition or by a decree of the court. The only stage that has reached in the suit for partition filed by the respondent no.1 is the determination of shares vide preliminary decree dated March 19, 1999 which came to be amended on September 27, 2003 and the receipt of the report of the Commissioner.

17. A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation. We are fortified in our view by a 3- Judge Bench decision of this

Court in the case of *Phoolchand and Anr. Vs. Gopal Lal* [1] wherein this Court stated as follows:

> "We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. . . . .. So far therefore as partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so; ..... there is no prohibition in the Code of Civil Procedure against passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Code of Civil Procedure does not contemplate such a possibility. . . for it must not be forgotten that the suit is not over till the final decree is passed and the court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties. . . . .a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf and that dispute is decided the decision amounts to a decree…. …… ."

18. This Court in the case of *S. Sai Reddy vs. S. Narayana Reddy and Others*[2] had an occasion to consider the question identical to the question with which we are faced in the present appeal. That was a case where during the pendency of the proceedings in the suit for partition before the trial court and prior to

[1] AIR 1967 SC 1470
[2] (1991) 3 SCC 647

the passing of final decree, the 1956 Act was amended by the State Legislature of Andhra Pradesh as a result of which unmarried daughters became entitled to a share in the joint family property. The unmarried daughters respondents 2 to 5 therein made application before the trial court claiming their share in the property after the State amendment in the 1956 Act. The trial court by its judgment and order dated August 24, 1989 rejected their application on the ground that the preliminary decree had already been passed and specific shares of the parties had been declared and, thus, it was not open to the unmarried daughters to claim share in the property by virtue of the State amendment in the 1956 Act. The unmarried daughters preferred revision against the order of the trial court before the High Court. The High Court set aside the order of the trial court and declared that in view of the newly added Section 29-A, the unmarried daughters were entitled to share in the joint family property. The High Court further directed the trial court to determine the shares of the unmarried daughters accordingly. The appellant therein challenged the order of the High Court before this Court. This Court considered the matter thus;

> "……A partition of the joint Hindu family can be effected by various modes, viz., by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the court. When a suit for partition is filed in a

court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (*ii*) of Section 29-A of the Act became applicable. This intervening event which gave shares to respondents 2 to 5 had the effect of varying shares of the parties like any supervening development. Since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment. Spurious family settlements, instruments of partitions not to speak of oral partitions will spring up and nullify the beneficial effect of the legislation depriving a vast section of women of its benefits".

19. The above legal position is wholly and squarely applicable to the present case. It surprises us that the High Court was not

apprised of the decisions of this Court in *Phoolchand*[1] and *S. Sai Reddy*[2]. High Court considered the matter as follows:

> "In the recent past, the Parliament amended Section 6 of the Hindu Succession Act (for short 'the Act'), according status of coparceners to the female members of the family also. Basing their claim on amended Section 6 of the Act, the respondents 1 and 2 i.e., defendants 3 and 4 filed I.A. No. 564 of 2007 under Order XX Rule 18 of C.P.C., a provision, which applies only to preparation of final decree. It hardly needs an emphasis that a final decree is always required to be in conformity with the preliminary decree. If any party wants alteration or change of preliminary decree, the only course open to him or her is to file an appeal or to seek other remedies vis-à-vis the preliminary decree. As long as the preliminary decree stands, the allotment of shares cannot be in a manner different from what is ordained in it."

20. The High Court was clearly in error in not properly appreciating the scope of Order XX Rule 18 of C.P.C. In a suit for partition of immovable property, if such property is not assessed to the payment of revenue to the government, ordinarily passing of a preliminary decree declaring the share of the parties may be required. The court would thereafter proceed for preparation of final decree. In *Phoolchand*[1], this Court has stated the legal position that C.P.C. creates no impediment for even more than one preliminary decree if after passing of the preliminary decree events have taken place necessitating the readjustment of shares as declared in the preliminary decree. The court has always power to revise the

preliminary decree or pass another preliminary decree if the situation in the changed circumstances so demand. A suit for partition continues after the passing of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree. It is not correct statement of law that once a preliminary decree has been passed, it is not capable of modification. It needs no emphasis that the rights of the parties in a partition suit should be settled once for all in that suit alone and no other proceedings.

21. Section 97 of C. P.C. that provides that where any party 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 any appeal which may be preferred from the final decree does not create any hindrance or obstruction in the power of the court to modify, amend or alter the preliminary decree or pass another preliminary decree if the changed circumstances so require.

22. It is true that final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial court in the event of

changed or supervening circumstances even if no appeal has been preferred from such preliminary decree.

23. The view of the High Court is against law and the decisions of this Court in *Phoolchand*[1] and *S.Sai Reddy*[2].

24. We accordingly allow this appeal; set aside the impugned judgment of the High Court and restore the order of the trial court dated June 15, 2009. The trial court shall now proceed for the preparation of the final decree in terms of its order dated June 15, 2009. No costs.

……J
(R.M. LODHA)

…. ……J.
(JAGDISH SINGH KHEHAR)

NEW DELHI
OCTOBER 12, 2011