

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL..... Diary No(s). 32601/2018

(Arising out of impugned final judgment and order dated 15-05-2018
in RFA No. 301/2017 passed by the High Court of Delhi at New Delhi)

VINEETA SHARMA

Appellant (s)

VERSUS

RAKESH SHARMA & ORS.

Respondent(s)

(IA No. 173973/2018 - CLARIFICATION/DIRECTION,
IA No. 139136/2018 - CONDONATION OF DELAY IN FILING)

WITH

SLP(C) No. 35994/2015 (IX)

SLP(C) No. 684/2016 (IV-A)

SLP(C) No. 38542/2016 (XII-A)

(IA FOR [PERMISSION TO FILE ANNEXURES] ON IA 2/2017

FOR APPLICATION FOR SUBSTITUTION ON IA 122620/2017

FOR CONDONATION OF DELAY IN FILING ON IA 122623/2017

FOR APPLICATION FOR SUBSTITUTION ON IA 122631/2017

FOR CONDONATION OF DELAY IN FILING ON IA 122633/2017

FOR [I A FOR EXEMPTION FOR DEATH CERTIFICATE] ON IA 122635/2017

FOR APPLICATION FOR SUBSTITUTION ON IA 122637/2017

FOR CONDONATION OF DELAY IN FILING ON IA 122639/2017

FOR ON IA 122643/2017

FOR APPLICATION FOR SUBSTITUTION ON IA 122647/2017

FOR CONDONATION OF DELAY IN FILING ON IA 122649/2017

IA No. 122637/2017 - APPLICATION FOR SUBSTITUTION

IA No. 122631/2017 - APPLICATION FOR SUBSTITUTION

IA No. 122620/2017 - APPLICATION FOR SUBSTITUTION

IA No. 122647/2017 - APPLICATION FOR SUBSTITUTION

IA No. 122639/2017 - CONDONATION OF DELAY IN FILING

IA No. 122633/2017 - CONDONATION OF DELAY IN FILING

IA No. 122623/2017 - CONDONATION OF DELAY IN FILING

IA No. 122649/2017 - CONDONATION OF DELAY IN FILING

IA No. 122635/2017 - I A FOR EXEMPTION FOR DEATH CERTIFICATE

IA No. 2/2017 - PERMISSION TO FILE ANNEXURES)

SLP(C) No. 6403/2019 (IV-A)

(FOR EXEMPTION FROM FILING O.T. ON IA 32774/2019

IA No. 32774/2019 - EXEMPTION FROM FILING O.T.)

SLP(C) No. 14353/2019 (IV-A)

(IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
79112/2019

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA

79114/2019

IA No. 79112/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 79114/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 24901/2019 (IX)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 152173/2019

FOR CONDONATION OF DELAY IN FILING THE SPARE COPIES ON IA 24197/2020

IA No. 24197/2020 - CONDONATION OF DELAY IN FILING THE SPARE COPIES

IA No. 152173/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 1766-1767/2020 (IV-A)

(FOR ADMISSION and I.R.)

Date : 11-08-2020 These matters were called on for pronouncement of judgment today.

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Hon'ble Mr. Justice Arun Mishra pronounced the judgment of the Bench comprising His Lordship, Hon'ble Mr. Justice S. Abdul Nazeer and Hon'ble Mr. Justice M.R. Shah.

The operative part of the judgment is extracted below:-

"..129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter

born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by 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 Act of 1956 or male relative of such female. The provisions of the substituted Section 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.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, 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 by a decree of a court, it may be accepted. A plea of partition based on oral

evidence alone cannot be accepted and to be rejected outrightly.

130. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in Prakash v. Phulavati and Mangammal v. T.B. Raju & Ors. The opinion expressed in Danamma @ Suman Surpur & Anr. v. Amar is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits."

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
ASSISTANT REGISTRAR

(Signed "Reportable" judgment is placed on the file)