

(1958) 04 MAD CK 0010
In the Madras High Court
Case No : Appeal No. 88 of 1951

Alamelu Ammal and Others

APPELLANT

Vs

Chellammal (Died) and Others

RESPONDENT

Date of Decision : 30-04-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 22 Rule 4

Hindu Womens Right to Property Act, 1937 — Section 3, 3(2), 3(3)

Citation : AIR 1959 Mad 100 : (1959) ILR (Mad) 106 : (1958) 71 LW 794

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J;Ganapatia Pillai, J

Bench : Full Bench

Advocate : M.S. Venkatarama Aiyar, for the Appellant; K.V. Venkatasubramania Aiyar and T.V. Balakrishnan, for the Respondent

Judgement

Ramachandra Iyer, J.—This appeal has been posted before as for disposal as one of the questions that arise in the appeal is the soundness

of the contention that the decision reported in Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, has impliedly overruled the

decision reported in Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another, .

2. The facts giving rise to this appeal are as follows: In the village of Kavanoor in South Arcot Dt. there lived two brothers, Chidambaram Pillai

and Saminatha Pillai, as members of a joint Hindu family. Chidambaram Pillai is stated to have become insane by about the year 1920 and he died

on 6-7-1948 leaving his widow Chellammal. Chellammal filed O.S.N. 20 of 1919, on the file of the Sub Court, Cuddalore, for partition of the joint

family properties claiming rights under the Hindu Women's Rights to Property Act, 1937.

Saminatha Pillai was the first defendant and his wife and daughter were second and third defendants respectively. Defendants 4 to 15 were

alienees from Saminatha Pillai. Saminatha Pillai died pending the suit and in addition to the second defendant, his grandsons, defendants 16 and 17

who claimed under a will alleged to have been executed by him were impleaded as his legal representatives. The defendants contested the claim on

various grounds which it is now unnecessary to detail.

3. The learned Subordinate Judge of Cuddalore passed a preliminary decree for partition and allotment of a half share to Chellammal in the

properties covered by schedules 2 to 5, Defendants 2, 3, 16 and 17 filed this appeal in this court impleading Chellammal as the first respondent

and the alienees as other respondents.

4. During the pendency of the appeal in this court, on 7-11-1951, Chellammal adopted to her deceased husband a minor boy Govindarajan, who

has since been impleaded as the fourteenth respondent. The adoption is evidenced by a registered document of that date. Nearly 19 months

thereafter i.e., on 10-6-1953 Chellammal died. C.M.P. No. 8001 of 1953 was filed on 3-7-1953 on behalf of minor Govindarajan to bring him on

record as legal representative of the deceased first respondent, Chellammal.

The appellants contested the application and denied the truth and validity of the adoption and claimed that the right of Chellammal did not survive

to the adopted son. They also set up a will by Saminatha Pillai in favour of appellants 1, 3 and 4 as a bar to the claim by the adopted son.

Rajagopala Aiyangar J. who heard the application called for a report from the Subordinate Judge as to the truth and validity of the adoption.

The learned Subordinate Judge enquired into the matter fully and submitted a report to this court that the adoption was true and valid. Minor

Govindarajan was thereupon directed to be brought on record as the legal representative of the deceased first respondent subject to such

objections as may be advanced at the time of the hearing of the appeal, and the memorandum of appeal was amended by impleading him as the

14th respondent.

5. C.P.M. No. 878 of 1954 was also filed on behalf of the 14th respondent under Order 1, Rule 10, Order 22 Rule 10 and Section 151, C.P.C.

to permit him to defend the above appeal in the place of the original first

respondent. Rajagopala Aiyangar J. who ordered C.M.P., No. 8001 of 1953, held that no orders were necessary on this application. The appeal came up for hearing before the Honourable the Chief Justice and Panchapakesa Ayyar J. An objection was taken that as Chellammal had only a limited right under the Hindu Women's Rights to Property Act, 1937, there was no right in her which would survive in favour of any legal representative of hers and that therefore the decree for partition should be set aside.

In support of the contention reliance was placed on the decision reported in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, wherein it was held that the estate which the widow takes under the Act does not on her death devolve on her husband's heirs, and the right of the coparceners to take by survivorship which was suspended as against the widow re-asserted itself on her death.

The contention on behalf of the respondent was based upon the decision in *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, which held that if the widow divided herself from the other members of the family during her lifetime, on her demise, the succession would be traced to her husband on the basis that the property was his separate property. As a result of this conflict the appeal, as stated already, has been referred to be disposed of by a Full Bench,

6. In the appeal the contentions can be divided into three sets: (1) whether the claim of the widow had abated by reason of her death pending the appeal; (2) whether the death of a widow after filing a Suit for partition causes the property to revert to the family or whether her share devolves on her husband's heirs; (3) whether the adopted son, though not a legal representative of the widow is entitled to continue the partition suit filed by the widow in his own right either under Order 22 Rule 10 or Order 1 Rule 10, C.P.C.

7. (1) On behalf of the appellants it was contended that the appeal had abated as the decree in favour of Chellammal had become nugatory by reason of her death.

In the plaint, she had prayed for partition and also mesne profits. A preliminary decree was passed in her favour, and she was entitled to mesne

profits from the date of plaint. Whatever may, be said of the properties, the mesne profits would be her separate property, and the 14th

respondent would be entitled to the same as her heir and legal representative. That interest would be sufficient to bring him on record in the appeal

and prevent an abatement.

In *Muhammad Husain v. Kushalo*, ILR 9 All, 131, a preliminary decree was obtained in a suit for partition, but pending the appeal the plaintiff died

and his widow applied to come on record as his legal representative. A Full Bench of the Allahabad High Court held that judgment having been

obtained before the plaintiff's death the right of the judgment or the right to sue would survive to his legal representative, though whether the

deceased plaintiff's representative could enforce the whole judgment was a different matter. In *Subbaraya Mudali v. Manikka Mudali*, ILR 19

Mad. 345, a suit for partition was filed, on behalf of a minor and a decree was obtained. Pending the appeal the minor died, and the question arose

as to the precise nature of the defences open to the legal representative. The learned Judges observed at page 346:

That right to continue a suit for partition after the death of the plaintiff would, of course, not devolve on his widow or other heir not being a

coparcener with the defendant, because immediately on the death happening before the decree the right of survivorship would take effect. It would

not be the ordinary case of a suit abating on the ground of the right to sue not surviving but it would be the case of the right extinguished by

confusion owing to the fact that all the rights in respect of the property became vested in one and the same person. The further prosecution of the

claim would be as impossible as it is when the right to demand a debt and the liability to pay it coincides in the same individual. But after a decree

for partition once made it is difficult to understand how the vested right of the plaintiff's representative can be affected or destroyed?

8. The statement that on the death of a minor plaintiff pending a partition suit the right to sue does not survive to his heir may require a qualification

having regard to subsequent decisions but the observations of the learned Judges are of particular value for the distinction between a right to sue

and right after decree. In *Ram Swarup Vs. Jagdish Narain and Another*, a minor son had filed suit for partition against his father and his alienee

and had obtained a decree. Pending the appeal by the alienee the plaintiff died.

The learned Judges held that the abatement of the appeal from the death of the plaintiff respondent cannot alter what is an accomplished fact

namely a decree in his favour even though the original right to sue was personal to him, and that once his right had been vindicated in a decree

passed in his favour his legal representatives can avail themselves of it for the benefit of his estate so far as his death does not deprive them of the

fruits of such decree,

9. The learned advocate for the appellant, relied upon the decision reported in *Movva Subba Rao and Another Vs. Movva Krishna Prasadam by*

Padyala Muthaiya and Another, . There a widow who filed a suit for partition died pending the suit. Her stridhanam heir namely her daughter

applied to come on record in her place. The learned Judges held that so far as the substantial right to apply for partition was concerned the right

did not survive in favour of the plaintiff's heir.

But in regard to the past maintenance upto the date of the death of the plaintiff it was held that the right would vest in the heir of the plaintiff. In that

case the death of the plaintiff took place pending the suit and not after the suit had terminated. The learned Judges held that even in such a case the

legal representative would be entitled to come on record with reference to the claim for maintenance.

In *Mt. Mangalan v. Hira Singh*, AIR 1931 Lah. 675(2), it was held that if a suit were instituted by a widow in the interests of the estate of the last

holder then the reversioners would be entitled to continue to claim on the death of the plaintiff, but where the widow filed a suit to en-Force her

personal right her death brought about the extinction of such rights and no reversioner would be allowed to continue the suit.

The decision in *Amrit Rao v. Sonabai*, AIR 1925 Nag 423 which was referred to, has no relevance to the present case as it was a case of partition

between co-widows who had a joint estate and between whom partition was only for convenience of management. In *Shamrao Bhagwanthrao v.*

Kashibai, AIR 1956 Nag 110, a widow died after obtaining a decree. Applications were made to bring the legal representatives in the suit as well

as in an application for leave to apply to the Supreme Court.

The application was dismissed in the suit and the appeal against the order of the

dismissal also failed. The appellants sought to bring the son adopted by the widow as the legal representative on the ground that he intermeddled with the estate, and it was held that intermeddling with the estate by the adopted son could not make him a legal representative of the widow as that would be in his own right as an adopted son, and that the partition claim was personal to the widow.

It does not appear from the decision that there was any claim for mesne profits which would be her property, and the distinction between the stage

prior to and subsequent to the decree was not considered. In *Perumal Pillai v. Perumal Chetti* ILR (1928) Mad 701; AIR 1928 Mad 914 it was

held that the provisions of Order 22 Rules 3 and 4 do not apply after the passing of the preliminary mortgage decree, as a right of action is

determined by the preliminary decree, and the final decree is only by way of working out in detail the principles laid down and determined in the preliminary decree.

As the declaration of rights is finally determined in the preliminary decree, it is not a case of a right to sue which should be capable of surviving. The

matter however will stand on a different footing if the plaintiff's suit has been dismissed and she died pending an appeal by her. As pointed out in

ILR 9 All. 131, the extent to which a decree can be executed by the legal representative, or we may add to the extent to which the final decree is

to be passed, is not material at this stage.

10. It was then contended on behalf of the appellant that there was a partial abatement of the appeal. In this connection the learned counsel for the

appellants relied upon the decision in *Arumuga Thambiran and Others Vs. Namasivaya Pandara Sannadhi and Others*, . That was a suit u/s 92

C.P.C. for removal of a trustee (and for the settlement of a scheme.) On the death of the trustee, it was held that the suit had abated in regard to

the relief as to the removal but not so in regard to the relief for the settlement of a scheme.

That may be so; but the contention on behalf of the appellant, with which we are concerned, is not so much whether the suit had partially abated

but that in the appeal it should be declared that the decree of the lower court had come to an end without even having the respondent on record.

We cannot agree,

The question whether any portion of the decree has become nugatory by reason of the death of the plaintiff is to be agitated only at the stage of

passing of the final decree and we are of opinion that the appellants who seek a reversal of the decree of the lower court are bound to bring the

legal representative on record, and a failure to do so on this plea of an abatement of the appeal can have no effect on the preliminary decree

already passed.

11. It was next argued that this court should in its discretion take note of the subsequent events, the death of the plaintiff, and mould the relief

appropriate to the existing state of circumstances. It is now conceded, for the purposes of this appeal, that the 14th respondent is the legal

representative of the plaintiff in regard to the portion of the suit claim, namely, the mesne profits, and that he is entitled to come on record.

In the present circumstances of the family he would be the only male member, and if the right of the widow survived to the coparceners in the

family the right would have only vested in him rather than the appellants. We are therefore of opinion that the 14th respondent has been properly

brought on record under Order 22, Rule 4 C.P.C. as the legal representative of the deceased first respondent, and that there has been no

abatement of the appeal.

12. (2) We have next to consider the contention implicit in the second question set out above, viz, that even if the 14th respondent is brought on

record, he could not be held entitled to work out the preliminary decree for partition in favour of Chellamal, as the right granted to her under Act

XVIII of 1937, was a personal one and with her death it came to an end, Section 3(2) or Act XVIII of 1937 states:

When a Hindu governed by any school of Hindu law other than the Dayabag school or by customary law dies intestate having at the time of his

death an interest in a Hindu joint family property, his widow, shall, subject to the provisions of Sub-section (3) have in the property the same

interest as he himself had,

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate,

provided however, that she shall have the same right of claiming partition as a male owner." In AIR 1944 243 (Nagpur) , the Nagpur High Court

held that on the death of the husband, who was a member of the Hindu joint family, his widow took the Property by inheritance. That view

however has not been accepted by our High Court. After considering all the earlier cases on the subject the learned Judges in *Movva Subba Rao*

and *Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another*, , held that Section 3(2) of the Act did not operate as severance of

the interest of the deceased coparcener, and that the right which the widow got under the section was not as an heir of her deceased husband but

by virtue of the statute, based on the principle of her being the surviving half of her deceased husband. The learned Judges held that such a right

was personal to the widow which came to an end on her death.

The result was that on the death of the widow the estate reverted to the original coparcenery. In *Parappa alias Hanumanthappa and Another Vs.*

Nagamma and Others, the widow filed a suit for partition from her husband's coparceners. As the right of the widow accrued prior to the

extension of the Act XVIII of 1937, to agricultural lands, she was held entitled only to her husband's share in non-agricultural properties of the

family which existed at her husband's death with accretions thereto, and to maintenance on the basis of her husband's share in the agricultural

properties of the family.

The learned Judges held that the devolution in respect of agricultural and non-agricultural properties was distinct, the widow having a share in the

latter but not in the former. That devolution was as on the date of the husband's death though an account had to be taken of the properties as on

the date of partition. The effect of it was that the widow was held not entitled to a share of the moveables which were purchased by the family

subsequent to the date of her husband's death out of the income or proceeds of the agricultural lands.

The question as to how the share allotted to the widow devolved after her death did not arise in that case. The learned Judges considering the

changes effected by Act XVIII of 1937 in respect of the widow's pre-existing right observed that her husband's death did not effect a severance

of the family and pass on his interest to her as heir nor was she made a coparcener. Here was a statutory right, with the right of survivorship in

others postponed till after her death. They approved of the decision in *Movva*

Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala

Muthaiya and Another, , presumably on that statement explaining this position where the widow remained a member of the family without

demanding partition, as the position in law after such partition is stated at page 255 (of Mad LJ): (at p. 579 of AIR) as follows:

The Hindu conception that a widow is the surviving half of the deceased husband was invoked, and a fiction was introduced, namely, that she

continued the legal personal of the husband till partition. From the standpoint of the other male members of the joint family the right to survivorship

was suspended. The legal effect of the fiction was that the right of the other members of the joint family would be worked out on the basis that the

husband died on the date when the widow passed away. She would have during her lifetime all the powers which her husband had save that her

interest was limited to a widow's interest. She could alienate her widow's interest in her husband's share; she could even convey her absolute

interest in the same for necessity or other binding purposes. She could ask for partition and separate possession of her husband's share. In case

she asked for partition her husband's interest should be worked out having regard to the circumstances obtaining in the family on the date of

partition. If she divided herself from the other members of the family during her lifetime on her demise the succession would be traced to her

husband on the basis that the property was his separate property. If there was no severance it would devolve by survivorship to the other members

of the joint Hindu family.

13. Mr. K. V. Venkatasubramania Aiyar the learned counsel for the respondent has strongly relied upon this passage and urged before us that the

decision reported in Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another, should be held to have

been overruled by these observations. He contended that u/s 3(2) of the Act a widow gets all the rights of her husband and if she filed a suit for

partition, the jointness of the family is disrupted and the coparcenary put an end to.

The decision in M.C. Chinniah Chettiar Vs. Sivagami Achi alias Sornam Achi and Others, was relied on to show that she was under the Act

equated to a male coparcener, in that her share is fixed only when she makes a

demand. The learned Advocate argued that partition at the instance of the widow would have the same effect as a partition at the instance of the coparcener, that of disrupting the family and the widow being entitled to a woman's estate as known to the law the property should on her death go to her husband's Heirs, not because it was her property but as an incident of the estate granted to her on partition.

We find considerable difficulty in accepting the contention, Act XVIII of 1937 was expressly designed to amend the Hindu law to give better rights

to a woman in respect of the property. There is no indication in the Act that except for granting a right to the widow, any other change in the law

either as to succession of joint family was intended. A Hindu woman's estate is a known concept and a right in property. In *Vengamma v.*

Chellamiah, ILR 36 Mad 484, it was held that a woman's estate can be obtained by a Hindu family by contract of parties by a grant or

prescriptions

In *Lakshmana Nadar and Others Vs. R. Ramier*, the Supreme Court held that it is now well settled that a Hindu can confer by means of a will on

his widow the same estate which she would get by inheritance. Section 3(2) and (3) of the Act XVIII of 1937 gives the widow such an estate. As

such an estate is a limited right of property known to law. it is not necessary for its grant, that subsequent devolution after the widow's lifetime

should be intended or followed.

In *Lakshmi Ammal and Another Vs. Anantharama Aiyangar and Another*, , dealing with the case of succession by the widow to her husband's

property it was held following the Privy Council decision in *Moniram Kolita v. Kerikolitani*, ILR 5 Cal 776 that the succession to the estate of a

male opens only on the death of the female heir. *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, explained that the position

after the Act. where the widow had not sued for partition, would be that the right of the other members of the joint family would be worked out on

the date when the widow passed away.

The legislature evidently extended the same concept even when the widow had taken advantage of the Act and obtained partition. In the one case,

succession was postponed till after her death, and in the case under the Act the survivorship was postponed till after her death. It is not necessary

for the purpose of giving better rights to the widows, which alone the Act intended that rights of succession after her limited interest should be

prescribed. In Craies on Statute Law, 5th Edn. at page 104, it is stated :

To alter any clearly established principle of law a distinct and positive legislative enactment is necessary (a) ""Statutes"" said the Court of common

pleas in Arthur v. Bokenham (1708) 11 Mad 148, are not presumed to make any alteration in the common law further or otherwise than the Act

does expressly declare.

In AIR 1938 191 (Privy Council) the Privy Council held that a statute is prima facie to be construed as changing the law to no greater extent than

its words or necessary intendment required. We have already pointed out that a Hindu Woman's estate is a known concept of property, and Act

XVIII of 1937 gave the widow only that right. There is nothing in the Act or in its intendment to create further inroads into the joint family or

coparcenary property.

The right of partition given to her u/s 16(3) was only to effectuate the right given to her u/s 3(2), and the decision in M.C. Chinniah Chettiar Vs.

Sivagami Achi alias Sornam Achi and Others, cannot be read as giving the widow a larger right than necessary. The observations in Parappa alias

Hanumanthappa and Another Vs. Nagamma and Others, regarding successor to the interest of the widow after partition were obiter. Mr.

Venkatasubramania Iyer the learned counsel for the respondent, sought to argue that the position of a widow in a Hindu family is that of a

coparcener, and that she was therefore competent by her unilateral expression of intention to disrupt the family.

It is unnecessary, to consider that question in the present case, as the right of the widow to claim partition was by virtue of the statute and not by

any right as a coparcener. We have indicated our opinion that the observations contained in Parappa alias Hanumanthappa and Another Vs.

Nagamma and Others, cannot be held to overrule the decision in Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala

Muthaiya and Another, . A more detailed, fuller or final consideration of the matter will probably become academic in the circumstance of the case.

14. Mr. M. S. Venkatarama Aiyar, the learned advocate for the appellants, stated that the question as to the truth, validity and effect of the 14th

respondent's adoption has not been finally decided, though it has been summarily done under Order 22, Rule 5 C.P.C. So long as that dispute

remains outstanding the question whether he would be entitled to the property as on the widow's death or whether the property would revert back

to the family against which he has again to file a suit for partition, does not arise for consideration.

The appellants also plead that Saminatha's will would disentitle the 14th respondent from succeeding. On this aspect further questions may arise as

to what precisely was the right of Saminatha Pillai who had only a contingent right in the interest given to Chellammal to dispose of by a will. We

consider that these questions should be adjudicated in this suit itself, particularly in the view we take on the third question, viz., the right of the 14th

respondent to come on record in his own right in the partition suit and prosecute his claim.

(15) (3) In CMP No. 878 of 1954 the 14th respondent has applied under Order 1, Rule 10; Order 22, Rule 10 and Section 151 C.P.C. to come

on record and defend the appeal in his own right. Although no orders were passed on the application by Rajagopala Ayyangar J. the application

has been pressed before us by his learned counsel Mr. K. V. Venkatasubramania Iyer.

It was contended on behalf of the appellants that Chellammal had only a personal right under the Act, and the 14th respondent could not be said to

derive the right from her so as to come within Order 22 Rule 10 C.P.C. In Ganapatrao v. Mt. Lakshmi AIR 1918 Nag 1, it was held that an

adoption is neither a creation nor devolution of an interest within the meaning of Order 22, Rule 10, C. P. C., that it was a creation of a status to

which certain incidents were attached by the law.

In Ramaswami v. Pedomumayya, ILR (1916) Mad 382: AIR 1916 Mad 611, a daughter of a Hindu filed a suit to recover possession of her

father's properties from trespassers. She died pending the suit and the grandsons of the deceased plaintiff's father sought to continue the suit. It

was held that they could continue although they became entitled to the property in their own right. In AIR 1931 Lah 675, it was held that in regard

to claims against outsiders the heirs of the last male holder were held entitled to continue the suit by the widow.

It is true that the adopted son cannot be held to obtain his right to property either by devolution from or creation by the widow. But having regard

to the peculiar nature of the estate of a sonless widow, and the results of an adoption which divests her of the estate or portion of the estate, and to

the fact that she completely represented the estate till adoption, one would be inclined to hold that there has been a creation of interest within the

meaning of Order 22 Rule 10 C.P.C.

It is unnecessary however to decide whether the provisions of Order 22 Rule 10 CPC would apply, as we are of opinion that the 14th respondent

can be brought on record as a necessary or at least a proper party under Order 1 Rule 10(2) CPC. Under Act XVIII of 1937 the widow is given

the same interest as a woman's estate under the Hindu Law. Such a right has been defined in *Janaki Ammal v. Narayanswami*, ILR (1916) Mad

634, AIR 1916 PC 117.

Her right is of the nature of a right of property; her position is that of owner: her powers in that character are however limited."''

The entire estate is thus vested in her. The coparceners could have no vested right in it during her lifetime, as she could validly alienate it for

necessity. An adoption by her while in possession of such an estate divests her of a partition. As a legal consequence of the adoption, the adopted

son would take his share of the properties allotted to her.

The Full Bench decision in *A.M. Narayana Sah Vs. A. Sankar Sah and Others*, , following the decision in *Manjanatha v. Narayana*, ILR 5 Mad

362 held that when a joint family is comprised of coparceners belonging to different branches, if a member separates from the joint family taking his

share, the share of that branch on a subsequent partition will be debited with what has been already given to the member of that branch.

On that principle, if Chellammal got a half share in the family properties and subsequently adopted the 14th respondent, the property which the

14th respondent would be entitled to could be obtained only out of the share of Chellammal and not from the other branch of the family. The

adopted son's right sprang up even during the lifetime of Chellammal; his presence in the suit, would be necessary to determine and finally

adjudicate the quantum of share to which the widow would be entitled.

That question apart, it is not the case here that the adopted son wanted to

continue in the coparceners as his intention to divide has been sufficiently expressed by his guardian and having regard to the adverse title set up by the appellants a partition is one in his interests. In Chava

Lakshmiddevamma Vs. Chava Nagayya and Others, , a widow filed a suit for recovery of possession of her husband's properties from her

husband's brothers. The brothers alleged that the plaintiff's husband had adopted a son and that the plaintiff had no title to the properties.

The alleged adopted son sought to be impleaded as a party defendant to the suit, and the propriety of his being impleaded as such party came up

for consideration before one of us sitting as a single Judge. It was held that his presence was necessary to effectually and completely adjudicate

upon and settle all questions involved in the suit, and that he was a proper party, Applying that principle we would hold that the 14th respondent,

should properly be joined in the suit. The provisions of Order 1 Rule 10(2) Civil P. C. are sufficiently wide to implead him. Once he is made a

party, it would be open to him to plead that by the death of the widow he became entitled to the entire half share.

In a partition suit every sharer is in the position of a plaintiff, and there would be no impediment to grant the 14th respondent the full share to which

he is entitled. This procedure would avoid multiplicity of proceedings and have the merit of moulding relief to the parties in the light of the

subsequent events. We therefore direct that the 14th respondent be impleaded as a party in his own right, in addition to his character as

representing the estate of the first respondent,

16. On the merits the only question raised and argued on behalf of the appellant was that the lower court went wrong in holding that Exs. B. 17,

and B. 18 were purchases benami by the first defendant in the name of the second defendant. Ex. B. 17 is a purchase of a small item of property

for a sum of Rs. 50 in the year 1906. The father of the first defendant was alive at the time and the first defendant was only a junior member of the

family.

The consideration was so small that it cannot be said that the second defendant had no funds of her own to provide for the purchase. No motive is

suggested on behalf of the plaintiff as to why benami purchase should be made in 1906 in the name of a junior coparcener's wife. We hold that the

plaintiff first respondent has not discharged the onus of proving that the property was purchased benami. We direct that, that item be excluded from the partition decree.

17. As regards Ex. B. 18, it is an usufructuary mortgage for a sum of Rs. 2,000, executed by one Ratnavaram Pillai in favour of the second defendant for a sum of Rs. 2,000. The learned Judge has found that the parents of the second defendant were not in a position to advance the money for the mortgage. The first defendant being the sole manager of the family properties at that time, Chidambaram having become insane, and having been cut off with a mere maintenance deed, the family monies ought to have been utilised for the investment.

No reason has been shown as to why we should not accept that finding of the learned Subordinate Judge. We agree with him in his view, that Ex.

B. 18 represented family moneys and was merely put in the name of the second defendant. We confirm this finding in this regard.

18. The result is that the fourteenth respondent will be made a party to the suit both in his. personal capacity and in his capacity as the legal representative or the deceased respondent, and the suit remanded to the lower court for passing a fresh preliminary decree after considering the truth, validity and effect of his adoption to the husband of the first respondent and whether his rights can be affected by the alleged will of Swaminatha. The cost of the appeal will be provided for by the lower court.