
(2004) 08 MAD CK 0067
In the Madras High Court
Case No : A.S. No. 148 of 1992

Alamelu Ammal, Rathinam, Balaji @ Balammal and
Govindarajan

APPELLANT

Vs

Tamizh Chelvi, Krishna Devi (rep. by next friend and mother
guardian 1st respt.), Ellappa Reddiar, Alamelu and Dhevan

RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

Hindu Succession Act, 1956 — Section 29A, 8

Citation : (2004) 3 MLJ 620

Hon'ble Judges : N.V. Balasubramanian, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : Pushpa Sathyanarayanan, for T.R. Rajaraman, for the Appellant; S. Parthasarathy, for Sarvabhauman Associates for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

N.V. Balasubramanian, J.—This appeal arises out of a suit for partition in O.S.No.75 of 1986 on the file of Subordinate Judge's Court, Tiruvannamalai. The brief facts necessary for the consideration of the appeal are, one Krishna Reddiar (Senior) had a son, by name, Govindasamy Reddiar and a daughter, by name, Rangammal. His wife was Venkattammal and she died in the year 1953. Govindasamy Reddiar, son of Krishna Reddiar (Sr.), died on 19.4.1964. Govindasamy Reddiar had one son, by name, Krishna Reddiar (Junior) and two daughters, namely, Rangammal and Pappathi. The wife of Krishna Reddiar (Jr.) is one Alamelu ammal, who is the first defendant in the suit. Krishna Reddiar (Jr.)'s sister Rangammal had a daughter, by name, Alamelu ammal and she is the fifth defendant in the suit. Krishna Reddiar (Jr.)'s another sister Pappathi ammal had a son, Devan and he is the sixth defendant. Krishna Reddiar (Jr.) had a son, by name, Subramaniam and two daughters, namely, Rathinam (2nd defendant) and Balaji @ Balammal (3rd defendant). Subramaniam son of Krishna Reddiar (Jr.) died on 15.2.1986 leaving behind his wife, Tamilselvi and daughter, Krishna Devi. The wife and the daughter of Subramaniam are the plaintiffs in the suit.

Govindasamy Reddiar, father of Krishna Reddiar (Jr.) had a sister, by name, Rangammal and she died on 14.8.1957. She had a son, by name, Ellappa Reddiar who is the fourth defendant and his son Govindarajan is the seventh defendant. It is also relevant to mention here that Alamelu ammāl, first defendant is the daughter of Rangammal who is the daughter of Krishna Reddiar (Sr.) and Krishna Reddiar (Jr.) had married his paternal aunt's daughter, Alamelu ammāl. For the purpose of convenience, we set out hereunder the genealogy tree of the family:-

Krishna Reddiar (Sr.) Venkattammal ----- Govindasamy
 Rangammal = ----- Chinnammal -----
 Alamelu(D1) Ellappa Reddiar(D4) Krishna Rangammal Pappathi Reddiar
 Govindarajan = Alamelu Devan (D7) Alamelu (D5) (D6) (D1)
 ----- Subramanian Rathinam Balaji = (D2) (D3) Tamilselvi
 (P1)

Krishna Devi (P2)

2. The plaintiffs have filed the suit for partition claiming 5/8th share in the suit properties and also for delivery of possession and mesne profits and other incidental reliefs. In our view, it is not necessary to burden the judgment with various averments made in the plaint as well as the defence raised in the written statements as the points raised in the appeal are narrow. There is no dispute that the plaintiffs are entitled to a share, but the question is what would be the share which the plaintiffs are entitled to.

3. We heard Mrs. Pushpa Sathyanarayan, learned counsel for the appellants and Mr. S. Parthasarathy, learned counsel for the respondents. After hearing the arguments of learned counsel for the parties, we are of the view that the following points emerge for consideration:

1. Whether the properties held by Subramaniam on the date of his death are coparcenary properties?

2. If the answer for the first point is in the affirmative, whether the second plaintiff Krishna Devi, an unmarried daughter, would be entitled to claim a share in the coparcenary properties held by Subramaniam as if she is a coparcener?

3. Whether the share in the properties left by Subramaniam which earlier devolved on the plaintiffs 1 and 2 as well as the first defendant u/s 6 read with 8 of the Hindu Succession Act on the death of Subramaniam would be altered by reason of insertion of section 29-A of the Hindu Succession Act, 1956?

4. Before considering the above questions, it would be relevant to consider the property standing in the name of Rangammal daughter of Krishna Reddiar (Sr.) of an extent of 1.25 acres in the northern portion of second item of suit properties. In so far as that property is concerned, the property was standing in the name of Venkatammal wife of Krishna Reddiar (Sr.) and mother of Govindasamy Reddiar

and she died on 29.11.1953 and on her death, the property devolved on Rangammal daughter of Venkatammal. Rangammal died in the year 1957 and on her death, the properties devolved on the fourth defendant Ellappa Reddiar and the seventh defendant Govindarajan. The trial Court on the basis of appreciation of evidence came to the conclusion that 1.25 acres in the northern portion of the second item of suit properties belonged to Rangammal, daughter of Venkatammal. We find that the said finding of the trial Court is sustainable as it has been arrived at on the basis of evidence and on correct application of law and accordingly, we confirm the said finding.

5. As far as the rest of the properties are concerned, they were held by Krishna Reddiar (Sr.) and his son Govindasamy Reddiar as members of joint family and as joint family properties. Hence, it can be concluded that Krishna Reddiar (Sr.) had a half share in the properties and Govindasamy Reddiar had the other half share. On the death of Govindasamy Reddiar, in so far as the properties held by Govindasamy Reddiar are concerned, his son Krishna Reddiar (Jr.) would take 1/8th share and his wife Chinnammal would take 1/8th share and his daughters Rangammal and Pappathi each would take 1/8th share in the properties. Krishna Reddiar (Jr.), as a member of joint family, was holding a half share in the properties as ancestral property besides 1/8th share obtained from his father Govindasamy Reddiar as his separate property. Krishna Reddiar (Jr.)'s mother Chinnammal died in the year 1968 and she had 1/8th share in the properties and her 1/8th share devolved on her son Krishna Reddiar (Jr.) and therefore Krishna Reddiar (Jr.) got 1/24th share and his sister Rangammal had 1/24th share and his another sister Pappathi had 1/24th share. On the date of death of Chinnammal his mother, Krishna Reddiar (Jr.) had 1/2 share in the ancestral properties and 1/8th share as separate property which he derived on the death of his father and another 1/24th share as separate property which he obtained on the death of his mother. Since Krishna Reddiar(Jr.) was holding " share as ancestral property, his son Subramaniam, husband of the first plaintiff and father of the second plaintiff was holding 1/4th share as ancestral property. Krishna Reddiar (Jr.) died in the year 1979 and on his death, his 1/4th share in the joint family properties devolved on his son Subramaniam and his wife Alamelu ammal (D1) and his daughters, Rathinam (D2) and Balaji (D3). Accordingly, Subramaniam got 1/16th share, Alamelu ammal (D1) got 1/16th share and the daughters Rathinam and Balaji got 1/16th share each. Krishna Reddiar (Jr.) also had 1/8th share as separate property and that share would also devolve on Subramaniam, Alamelu ammal, Rathinam and Balaji in equal shares, namely 1/24th share each. On the death of his father, Subramaniam was holding 1/4th share as ancestral property, 1/16th share as separate property and another 1/24th share from his father. In other words, his share was 1/4th share as ancestral property and 10/96th share as separate property. Subramaniam died on 15.2.1986. On the date of his death, section 29-A of the Hindu Succession Act was not in force and all the properties held by Subramaniam devolved on his mother Alamelu ammal and two plaintiffs herein who are his wife and daughter.

6. There is no dispute that in the hands of Subramaniam there were separate properties, namely 10/96th share and that share would devolve on the two plaintiffs and the first defendant equally and each would get 11/144 share and totally they would be entitled to 40/144 share in separate properties of Subramaniam.

7. The Supreme Court in COMMISSIONER OF WEALTH-TAX, KANPUR, ETC. v. CHANDER SEN 100 L.W. 347 and YUDHISHTER v. ASHOK KUMAR 100 L.W. 356 has held that the position of old law has been affected by section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by section 8, he does not take it as Kartha of his own undivided family but takes it in his individual capacity. Therefore the properties which devolved on Subramaniam u/s 8 of the Hindu Succession Act are not coparcenary properties or joint family properties in the hands of Subramaniam vis-a-vis his son/daughter.

8. The question that remains is regarding the character of the rest of the properties held by Subramaniam on the date of his death. Subramaniam was the sole-surviving coparcener at the time of his death as his father predeceased him and he had no male issues. The submission of Mrs. Pushpa Sathyanarayanan, learned counsel for the appellants is that the properties held by Subramaniam as a sole-surviving coparcener are not coparcenary properties, but his separate properties and hence, section 29-A of the Hindu Succession Act does not apply. However, we are unable to accept the submission of the learned counsel for the appellants as the Federal Court in AIR 1945 25 (Federal Court) has considered the question when a property would be regarded as coparcenary property or separate property with reference to the Hindu Women's Rights to Property Act, 1937. The learned Judge, Varadachariar, J. while considering the question, held as under:-

" In cases governed by the Mitakshara School of Hindu Law, the expression "separate property" has sometimes been used in a limited sense, to denote what is known as self-acquired property. (See Mulla, 9th Edn., para. 230). But, judged by the test of power of disposition, two other kinds of property held by a Hindu governed by that law, viz., property obtained as his share at a partition and property held by him as a sole surviving coparcener may, in some measure, resemble self-acquired property. There is, however, this difference between them, viz., that in the case of self-acquired property, the owner's power of disposition will continue to remain undiminished throughout his life-time, unless he chooses voluntarily to throw it into the joint family stock, whereas, in the case of the other two kinds of property, his power of disposition will become qualified and his interest reduced the moment a son is born to him or the widow of a predeceased coparcener takes a boy in adoption. It would not therefore be right to place these three kinds of property on the same footing merely on the ground that at a particular point of time, the owner may enjoy unrestricted powers of disposition over them. That is why in enumerating the several items constituting

"separate property" in para.230 of his book on Hindu Law, Sir Dinshah Mulla has taken care to add certain qualifying words in respect of items 6 and 7 (share obtained on partition and property held by sole surviving coparcener). The expression "separate property" may be the antithesis of three other expressions, viz., "ancestral property", "coparcenary property" and "joint family property. "

9. In AIR 1943 196 (Privy Council) , the Privy Council held that on the death of sole surviving coparcener, it does not necessarily put an end to the coparcenary. In Smt. Sitabai and Another Vs. Ramchandra, the Supreme Court has held that the property held by a single coparcener does not cease to belong to a joint family because of the temporary reduction of the coparcenary unit to a single individual. The Supreme Court held as under:-

" Under the Hindu system of law a joint family may consist of a single male member and widows of deceased male members and the property of a joint family does not cease to belong to a joint family merely because the family is represented by a single coparcener who possesses rights which an absolute owner of property may possess. The property which was the joint family property of the Hindu undivided family does not cease to be so because of the "temporary reduction of the coparcenary unit to a single individual". The character of the property, viz., that it was the joint property of a Hindu undivided family remains the same. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as "joint property" of the undivided family."

The same view has been taken by the Supreme Court in Manohar Lal Ganeriwal and Others Vs. Bhuri Bai and Others, wherein the Supreme Court held that the property held by a sole surviving coparcener of a joint Hindu family is not his separate property if there is a woman in the family who can bring into existence a new coparcener by adoption.

10. Mr. Parthasarathy, learned counsel for the respondents, in his fairness, brought to our attention the decision of this Court in Arunachalathammal Vs. Ramachandran Pillai and Others, . But, the decision is distinguishable as in that case, the Division Bench after noticing the decision of Federal Court in AIR 1945 25 (Federal Court) and the Division Bench decision of this Court in A.N. Subramanian late minor by G.S. Lakshmi Ammal Vs. A.S. Kalyanarama Iyer and Others, , held that the property held by a coparcener is a separate property as an undivided member of the Hindu family. Since the facts are different, it is not necessary to consider the decision here.

11. These decisions make it clear that 1/4th share held by Subramaniam are coparcenary properties and 11/144 share was held by him as his separate property. We are therefore of the view that the 1/4th share held by Subramaniam on his death was held by him as coparcenary property though he was a sole surviving coparcener. The next question that arises is whether under

the provisions of section 29-A of the Hindu Succession Act, the second plaintiff is entitled to claim any share as a coparcener.

12. Section 29-A of the Hindu Succession Act reads as under:-

"29A. 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 by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary 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 Hindu family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to 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 allottable to the pre-deceased child of predeceased son or of a 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 the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989."

13. Section 29-A of the Hindu Succession Act was inserted by the Tamil Nadu Act 1 of 1990 with effect from 25.3.1989. It grants equal rights to an unmarried daughter in coparcenary property treating her as a coparcener in her own right as a son. Clause (ii) of section 29A provides that at the time of partition of a Hindu joint family the coparcenary property shall be divided so as to allot to the daughter the same share as is allottable to a son. There are two provisos to Clause (ii) with which we are not concerned. Clause (iii) of section 29A provides that the property to which a female coparcener is entitled shall be held by her with the incidents of coparcenary ownership and shall be regarded as property

capable of being disposed of by her by will or other testamentary disposition. Clause (iv) of section 29A provides that a daughter married before the commencement of Hindu Succession (Tamil Nadu Amendment) Act, 1989 is not entitled to the benefit of section 29A, and clause (v) provides that section 29A does not apply to a partition which had been effected before the date of commencement of the said Amendment Act. Section 29A of the Act provides that a daughter of a coparcener shall become a coparcener by birth and the Section 29A of the Act is, no doubt, prospective in nature. By virtue of section 29A of the Act, an unmarried daughter of a Hindu coparcener is regarded as a coparcener by birth. Section 29A of the Act, though prospective in operation, draws upon certain prior events that occurred before the introduction of section 29A of the Act for its operation and treats a daughter born before the insertion of section 29A of the Act also as a coparcener. We are of the view that an unmarried daughter does not become a coparcener only from the date of insertion of Section 29-A of the Hindu Succession Act, but she becomes a coparcener by virtue of her birth in the family of a Hindu.

14. The submission of Mrs. Pushpa Sathyanarayanan, learned counsel for the appellants is that if an unmarried daughter of a Hindu is a coparcener from the date of her birth in the family, then, the section will be given retrospective effect and it would operate even prior to the date of insertion of section 29-A of the Act. We are of the view, though the section is prospective in operation, it treats an unmarried daughter of a Hindu as a coparcener from the date of her birth in the family and the section does not treat her as a coparcener only from the date of insertion of the section 29-A of the Hindu Succession Act. If the submission of learned counsel for the appellants is to be accepted, it would create an anomaly in the sense that the unmarried daughter will not be a coparcener from the date of her birth till the insertion of the section 29-A of the Hindu Succession Act and she would become a coparcener after the insertion of the section. We hold that the second plaintiff is a coparcener from the date of her birth in the family and Subramaniam cannot be regarded as a sole surviving coparcener on the date of his death and viewed from that angle also, the ancestral property held by Subramaniam on the date of his death was the coparcenary property.

15. The next submission of learned counsel for the appellants is that on the facts of the case, Subramaniam died on 15.2.1986 and since on that date section 29A was not in force, the properties of Subramaniam whether held as joint family property or separate property, had already devolved on Class-I heirs, namely, the widow, daughter and mother of Subramaniam on the date of his death, i.e., 15.2.1986 by virtue of sections 6 and 8 of the Hindu Succession Act and there would be no scope for divesture of the properties already devolved and vested with Class-I heirs. She therefore submitted that it is not open to the second plaintiff, unmarried daughter of Subramaniam to claim half share in the ancestral properties held by Subramaniam as a coparcener.

16. Mr. Parthasarathy, learned counsel for the respondents, on the other hand,

submitted that section 29-A of the Hindu Succession Act overrides section 6 of the said Act and in the absence of any exclusion, the shares already devolved should be redetermined by giving effect to section 29-A of the Act. He further submitted that only two kinds of exclusion are provided in section 29-A of the Act which prevent its operation, namely, (i) it does not apply to a case of a daughter who married before the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989; and (ii) in the case of partition which has been effected before the date of commencement of the said Amendment Act.

17. We find force in the submission of Mr. Parthasarathy, learned counsel for the respondents. Section 29-A of the Hindu Succession Act gives a special statutory right to daughters in a Hindu undivided family and a daughter of a Hindu, if not married before the commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989, is treated as a coparcener subject to certain conditions contained in section 29-A of the Hindu Succession Act, but her rights are equal to that of a son in the Hindu family and she is regarded as a coparcener with a right by birth in the family properties. Section 29-A begins with the non obstante clause, "notwithstanding anything contained in section 6 of this Act" which clearly indicates that the provisions of section 29-A would override the provisions of section 6 of the Hindu Succession Act.

18. It is true that in considering the point as to her share in the coparcenary properties, if an unmarried daughter born before the date of commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 is regarded as a coparcener from the date of her birth, any alienation or gift of the family properties by another coparcener during the interregnum period from the date of her birth till the date of commencement of the Tamil Nadu Amendment Act, 1989 may be exposed to challenge by the daughter, but that is not a ground to deny the right by birth granted u/s 29-A of the Hindu Succession Act to an unmarried daughter. We are of the view that section 29-A is a special provision giving a statutory right to a daughter treating her as a coparcener in the family and if such right by birth is given to the daughter, it must mean that she gets the right by birth in the family properties from the date of her birth and it is not a right that would accrue only on the commencement of the Tamil Nadu Amendment Act, 1989. As already held by us, though section 29-A of the Hindu Succession Act is prospective in operation, it takes note of the events that happened prior to the insertion of section 29-A of the Hindu Succession Act in its operation. Therefore, we are of the view that if any alienation or gift of immovable property was made by the sole surviving coparcener or the Kartha of the family during the interregnum period from the date of birth of a daughter till the date of commencement of the Tamil Nadu Amendment Act, 1989, such an alienation or gift of the family property is liable to be questioned by an unmarried daughter as if she is a coparcener, but we are of the view that the ground of challenge would be limited and the Court would be considering the question of validity of any alienation or transfer made by the said coparcener in the light of the provisions of section 29-A of the Act that the daughter became a coparcener only by virtue

of that Section which was inserted subsequent to such alienation or transfer.

19. Moreover, in *S. Sai Reddy v. S. Narayan Reddy*, (1991) 3 SCC 647 the Supreme Court was dealing with a case of partition and in that case, a preliminary decree was passed on December 26, 1973 declaring that the male heirs would be entitled to 1/3rd share each in the coparcenary property and during the pendency of final decree proceedings, but prior to the passing of final decree, the Hindu Succession Act was amended by the State of Andhra Pradesh inserting section 29-A of the Act with the result the unmarried daughter was treated as a coparcener entitled to a share in the joint family property as a coparcener. The Supreme Court held that though a preliminary decree was passed declaring shares on the male members of the family, since the Amendment Act came into force before the final decree was passed, the intervening event which gave shares to daughters had the effect of varying shares of the parties in the preliminary decree like any supervening development and that has to be given effect to. It was also held that the legislation is a beneficial one and section 29-A was inserted with the avowed object of benefiting women and hence, it is necessary to give a liberal effect to it. The Supreme Court in *S. Sai Reddy* case held 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. A Division Bench of this Court in *M. Shanmugha Udayar Vs. Sivanandam and Others*, applied the principles laid down in *S. Sai Reddy v. S. Narayan Reddy*, (1991) 3 SCC 647 and held that the daughter is entitled to a share equal to that of a son in the family. In *SARASU v. BASKARAN* 2000 3 L.W.599, in which one of us was a party, this Court has also taken the same view holding that the daughter is entitled to a share in the coparcenary property. In *KOKILA v. SWATHANTHIRA OTHERS* 2004 3 L.W.60, K. Govindarajan, J. on the difference of opinion between two learned Judges has held that section 29-A of the Hindu Succession Act is a deviation from section 6 of the said Act and an unmarried daughter can, u/s 29A of the Act, claim right equal to a son in spite of specific devolution of interest in coparcenary properties as contained in section 6 of the Act. We are of the view that though the properties devolved on the plaintiffs as well as the mother of Subramaniam, first defendant in the suit and vested in them in the year 1986 on the death of Subramaniam, since partition in the family had not taken place by metes and bounds as provided under clause (v) of section 29-A of the Hindu Succession Act, the rights devolved on the family members would get altered and the second plaintiff would be entitled to claim her share as a coparcener in the coparcenary properties left by Subramaniam as if she had a right by birth in the coparcenary properties. We are of the view that any other construction would defeat the avowed purpose and object of section 29-A of the Hindu Succession Act as the legislature has indicated that section 29-A of the Act has excepted from its operation only two cases, namely, where partition was effected prior to the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 or where the daughter got married before the commencement of the said Amendment Act and in all other cases the necessary

implication is section 29-A of the Hindu Succession Act would apply and consequently, the shares, if any, devolved on the members of the family u/s 6 of the Hindu Succession Act would get altered and their rights in the family properties have to be redetermined by applying the provisions of section 29-A of the Hindu Succession Act. Therefore we hold that notwithstanding the fact that the properties had devolved on the heirs under sections 6 and 8 of the Hindu Succession Act prior to the insertion of section 29-A of the Act, the second plaintiff is entitled to a share as a coparcener in the coparcenary properties left by Subramaniam. We therefore hold that the second plaintiff would be entitled to claim 1/8th share in the coparcenary properties held by Subramaniam. Subramaniam also had separate property, namely, 11/48 share and that would devolve on the plaintiffs and the first defendant, mother of Subramaniam equally. In the result, the second plaintiff would be entitled to 29/144 share and both the plaintiff would be entitled to 40/144 share, i.e., 20/72 share.

20. Accordingly, clause-1 of the decree of the trial Court is set aside holding that the plaintiffs would be entitled to 20/72 share in the suit properties except 1.25 acres in the northern portion of the second item of suit properties and the decree in other respects stands confirmed subject to the shares of the plaintiffs. The appeal stands allowed to the above extent. In the circumstances there will be no order as to costs.