

(2009) 04 MAD CK 0047

In the Madras High Court

Case No : S.A. No. 91 of 2006 and C.M.P. No. 1477 of 2006

D. Govindarajulu, N.G. Sureshchandrakumar, N.G. Premila
Devi and N.G. Nirmaladevi

APPELLANT

Vs

Lakshmi Bai and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3
Evidence Act, 1872 — Section 91, 92
Hindu Succession Act, 1956 — Section 30, 6, 6(1)

Citation : (2009) 4 LW 659

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : Party in Person 1 and P. Chandrasekaran, 2, for the Appellant; V. Baskaran, for Respondent 1, for the Respondent

Judgement

G. Rajasuria, J.—This second appeal is focussed by D1, D7 (in O.S. No. 4083 of 1983) and D12 and D13 (in A.S. No. 268 of 2002)

animadverting upon the judgement and decree dated 19.01.2005 passed by the learned Additional District and Sessions Judge, Fast Track Court

No. III, Chennai in A.S. No. 268 of 2002 confirming the judgement and decree dated 29.04.2002 passed by the learned III Assistant Judge, City

Civil Court, Chennai in O.S. No. 4083 of 1983, which is the suit for partition. For convenience sake, the parties are referred to here under

according to their litigative status before the trial Court.

2. The first respondent/plaintiff filed the suit for partition as against the defendants. D1 entered appearance and filed the written statement; D2 to

D4 filed the written statement separately and D7 also filed a separate written statement resisting the suit. The trial court framed the relevant issued

based on the pleadings.

3. During trial, the plaintiff examined herself as P.W.1., and Ex.A1 was marked. The first defendant examined himself as DW1 along with one

Padma DW2 and Exs.B1 to B9 were marked.

4. Ultimately the trial Court decreed the suit; as against which, appeal was filed by defendants 1 and 7, for nothing but to be dismissed by the first

Appellate Court confirming the judgment and decree of the trial Court. Being disconcerted and aggrieved by the judgment of both the Courts

below, this Second Appeal has been filed by the defendants by setting out the substantial questions of law in the memorandum of appeal.

5. The learned Counsel for the plaintiff would argue that failure to serve notice to those who remained *exparte* before the lower Court as well as

the Appellate Court in the Second Appeal was not proper as they are entitled to notice. I would like to highlight that the appellant is right in not

taking up notice to those parties who remained *exparte* before the lower Courts as it is based on the established practice of this Court as well as

settled law.

6. My learned Predecessor framed the following substantial questions of law for consideration:

(i) Whether in a co-parcenery Hindu joint family, the plaintiff is entitled to a share as claimed ?

(ii) Whether the appellants 1 and 2 have acquired the entire property by operation of Hindu Law or not?

7. A "resume" of facts, which are absolutely necessary and germane for the disposal of this appeal, would run thus:

(a) Indubitably and indisputably, incontrovertibly and unassailably, the suit property along with other properties originally belonged to one

Parthasarathy Naidu, who died leaving behind his two sons, namely, Perumal Nadu and Doraisamy Naidu; Doraisamy Naidu died in the year

1972, leaving behind his son D1-Govindarajulu Naidu and his five daughters, namely, the plaintiff and D2 to D5; during the pendency of the suit,

D2 died, whereupon D8 to D12, her legal heirs were impleaded; D7 is the son of D1; D6 is none but the grand son of the deceased Perumal

Naidu, so to say, the son of Perumal Naidu's daughter.

(b) The plaintiff's contention is that, as per Ex.A1-the registered partition deed

dated 07.10.1929, the said Perumal Naidu and Doraisamy Naidu got partitioned their various coparcenary properties and got divided their coparcenary status and in that the suit property house herein was also divided, so to say, each was allotted half share in the suit house; as such, they became divided coparceners; Perumal Naidu had three sons and they died in unmarried state; however, in that line of Perumal Naidu, out of his three sons, Pandari happened to be the last sole surviving coparcener, who executed the "Will" in favour of D6. At this juncture, it is worthwhile to highlight that D6 obtained a letter of administration from this Court relating to the said Will. The plaintiff would contend that regarding Doraisamy Naidu's line is concerned, Doraisamy Naidu enjoyed his portion and died during the year 1972, leaving behind his one son D1 and five daughters, namely, the plaintiff and D2 to D5. However, the plaintiff as per her own calculation of shares, claimed 1/6th share in the half share of Doraisamy Naidu.

8. Whereas, remonstrating and refuting, denying and challenging, but accepting the relationship, D1 and D7 would contend that the said partition deed, Ex.A1 was not in stricto sensu, a partition deed, but only a family arrangement, as per which, Doraisamy Naidu was expected to pay a sum of Rs. 2,400/- to Perumal Naidu towards, Perumal Naidu's half share in the and become a full owner of the house; however, Doraisamy Naidu did not pay that amount to Perumal Naidu; the joint status of co-parcenary continued; consequent upon the death of Perumal Naidu and his three sons, the entire suit property came to the ownership of D1 and along with him D7- his son is also entitled to his share in the suit property.

However, the five daughters of Doraisamy Naidu, including the plaintiff, are not entitled to the co-parcenary property; the letters of administration was challenged by him before this Court and he was permitted to agitate the said Will at the appropriate forum at the appropriate stage. D6 remained ex-parte and accordingly, D1 and D7 prayed for the dismissal of the suit.

9. The judgement of the trial Court would evince that based on evidence, it gave a factual finding that Ex.A1 being a registered partition deed was acted upon and it caused division in the joint coparcenary status of Doraisamy Naidu and Perumal Naidu; whereupon ultimately, Pandari-the sole

surviving coparcener, on the side of Perumal Naidu was justified in executing the Will in favour of D6, over which, D1 and D7 cannot claim any

right. The first appellate Court also agreed with the finding.

10. The plaintiff's version in the plaint is that Perumal Naidu and Doraisamy Naidu have got partitioned, as per Ex.A1, the property and even

Doraisamy Naidu had not paid the sum of Rs. 2,400/- to Perumal Naidu or his heirs, so as to acquire the share of Perumal Naidu. In fact, it is the

case of D1 that Doraisamy Naidu did not pay the sum of Rs. 2,400/- to Perumal Naidu or his heirs. As such, in view of the supine admission and

evidence given by D1, by no stretch of imagination, Doraisamy Naidu could be held to have acquired the full title over the suit property and

Doraisamy Naidu had only his half share in the suit house.

11. The plea of D1 that Ex.A1 is not a partition deed and it is only a family arrangement and that there was no division of coparcenary status, failed

to carry conviction with both the Courts below, who considering the oral evidence adduced before them, arrived at the concurrent finding that

Ex.A1 was a partition deed and there occurred division in the coparcenary status between Doraisamy Naidu and Perumal Naidu. In fact, the

evidence would display and demonstrate that D1 was employed in Andhra Pradesh and only during the year 1983, he came to Chennai and came

to understand that D6 was collecting rents for his half share in the suit house.

12. It is a trite proposition of law that in a partition suit the plaintiff is the defendant and the defendant is the plaintiff. However, here the D1 or D7

has not chosen to make any counter claim or a prayer in the written statement seeking the relief that the partition deed Ex.A1 was not a partition

deed, but it was only a family arrangement and that the Will was void ab initio and not binding, etc. However, D1 and D7 have only prayed for the

dismissal of the suit and nothing more.

13. The contention of D1 that D6 remained exparte and he has not chosen to press into service the Will as well as the letters of administration

which he obtained from the Court, in my opinion, is not a sound plea. The lower Court advertent to the evidence available on record pointed out

that D1 despite knowing the said Will executed by Pandari in favour of D6, had not chosen to challenge the same. To the risk of repetition without

being tautologous, I would highlight that the plaintiff in this suit admitting the

validity of the Will and also the consequent letters of administration

obtained by D6 and recognising the half share of D6 in the suit property, prayed for her share in the remaining half share which belonged to

Doraisamy Naidu and hence she was not duty bound to make any prayer adverse to the Will or letters of administration. But on the other hand, it

is D1 who disputes the Will and the letters of administration, but he has not despite lapse of decades together chosen to challenge the Will. Since

the plaintiff accepted the half share of D6, presumably D6 has chosen to remain *exparte* as his share is in tact.

14. It is a trite proposition of Hindu law that a sole surviving co-parcener could dispose of his share by Will, even anterior to Section 30 of the

Hindu Succession Act, 1956 coming into vogue and it is a trite proposition of law and it is found exemplified in the famous Treatise Mulla Hindu

Law, Nineteenth Edition in page No. 367 as under:

A sole surviving coparcener could, however, bequeath the joint family property as if it was his separate property.

Here admittedly as per D1's version, Pandari executed the Will even in the year 1946 and that he died during the year 1948, whereby the Will

came into effect even in the year 1948. Even though the defendant No. 1 would contend in the grounds of appeal that in CMP No. 31 of 1990 of

OSA No. 344 of 1989 before this Court, the letters of administration granted in favour of D6 relating to the said Will executed by Pandari was

challenged, yet this Court as per the order directed D1 to prove his property rights in the appropriate proceedings. However, quite antithetical to

D1's own stand, he has not chosen to agitate the Will by initiating appropriate proceedings and this fact also has been correctly considered by the

trial Court and confirmed by the appellate Court.

15. The first defendant came forward with a far fetched plea as though Ex.A1, the partition deed was not really a partition deed, but family

arrangement and in support of his argument, there is absolutely no iota or miniscule, shred or shard, pint-sized or scintilla of evidence. Section 91

and 92 of the Indian Evidence Act also would as such be an embargo for D1 to contend anything contrary to the terms contained in Ex.A1. I

would like to cite the following decision of the Hon''ble Apex Court reported in *Roop Kumar Vs. Mohan Thedani*, . An excerpt from it would run

thus:

17. It is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence.

As such D1 being the son of Doraisamy Naidu who happened to be a party to Ex.A1 cannot contend contrary to Ex.A1. The records would reveal that the first defendant admitted candidly and categorically that he was aware of the partition deed Ex.A1 dated 07.10.1929 several decades ago itself. But he has not chosen to initiate any action in support of his contention that consequent upon the death of his father Doraisamy Naidu, he along with D3 became the absolute owners of the suit property.

16. The first defendant would put forward an untenable plea as though Ex.A1 would not bind him, on the ground that even as on the date of emergence of Ex.A1, D1 was alive, but he was not added as one of the parties to the partition deed Ex.A1. Such a plea by D1 is totally not contemplated under the Hindu Law. The plea based on the alleged facts that D1 was born earlier to Ex.A1 and in existence as on the date of emergence of Ex.A1 and he was not included in the partition deed, would not in any way affect the validity of the partition deed which emerged between the main co-parceners, viz., Doraisamy Naidu and Perumal Naidu. It is axiomatic in Hindu law that a minor son need not be added in the partition, provided his father represents the line. The doctrine of per capita and per stirpes would amply make the point clear. Throwing to winds the doctrine of representation, D1 went on dilating about his birth even anterior to the emergence of Ex.A1. When the law as highlighted by me supra is to the effect that D1's father could represent his line, then it is not necessary that Doraisamy's son D1 also should have been added as party in the partition deed.

17. Ex.A1, the registered partition deed would unambiguously and unequivocally highlight and spotlight, demonstrate and display, that there occurred division in co-parcenary status between Doraisamy Naidu and Perumal Naidu. A plain reading of the recitals would clearly prove that they decided not to continue as co-parceners and accordingly they also got their properties divided. An excerpt from the said Ex.A1 would run thus:

18. A plain reading of the above extract including the whole Ex.A1 would leave no doubt in the mind of any one that there emerged partition between Doraisamy Naidu and Perumal Naidu and by no stretch of imagination it could be termed as a mere temporary family arrangement and not a partition. As such, both the Courts below correctly held that there occurred division in co-parcenary status, and resulting in division in the properties concerned.

19. It is therefore crystal clear that the descendants of Doraisamy Naidu cannot claim any right or interfere with the right of Perumal Naidu's descendants and the alienee. Accordingly Perumal Naidu got his shares under Ex.A1 and enjoyed it and all his three sons died in unmarried state and out of them Pandari was the last surviving co-parcener in the line of Perumal Naidu. These are all admitted facts by D1 himself and in such a case, Pandari as the sole surviving co-parcener on the line of Perumal Naidu executed the Will in favour of D6, which cannot be found fault with by D1 by any stretch of imagination and as such, both the Courts below au fait with law and au courant with facts rendered their finding on that aspect. As such, it is crystal clear that D1 and D7 cannot be heard to contend that the Will executed by Pandari in favour of D6 was not valid and consequently the plea of D1 and D7 that the half share of Perumal Naidu also came to the share of Doraisamy Naidu is factually baseless and legally untenable. As such, excluding the half share in the suit property, the remaining half share alone could be claimed by Doraisamy Naidu and his descendants.

D.W.1 in his chief examination itself stated as under:

The candid and categorical admission by D1, as aforesaid, would totally torpedo his plea challenging Ex.A1 the partition deed and the Will and D1 and D7's plea claiming the entire suit property. D1's aforesaid admission would

clinchingly establish that consequent upon Ex.A1 the partition effected there was actually division in status between Doraisamy Naidu and Perumal Naidu and as aforesaid, the last surviving co-parcener Pandari executed the Will in favour of D6 and after obtaining letters of administration from this Court, D6 has been in actual enjoyment of his half share by collecting rent from the half portion of the suit property. As such, D1 by his own deposition clearly uttered out the real fact as set out supra and it is therefore crystal clear that relating to the half share of Perumal Naidu which ultimately reached the hands of D6 cannot be questioned.

20. D1 himself also candidly admitted that Doraisamy Naidu had not paid the half value of the suit house amounting to Rs. 2,400/- so as to acquire full ownership over the suit property. A fortiori, Doraisamy Naidu and his descendants were entitled to only half share in the suit property.

21. The contention of D1 and D6 that consequent upon the death of Doraisamy Naidu, they have become absolute owners is totally untenable in view of the settled legal position as contended in the then existed Section 6 of the Hindu Succession Act. Doraisamy Naidu admittedly died in the year 1972, long after the commencement of the Hindu Succession Act. As on the date of his death during the year 1972, the then existed Section 6 of the Hindu Succession Act would contemplate that if a co-parcener dies leaving behind a female heir as contemplated under class I of the Hindu Succession Act, the concept of survivorship would not prevail, but only the share of the deceased co-parcener would devolve upon his legal heirs under the Hindu Succession Act.

22. The first defendant, who appeared as the party-in-person, and who being an Advocate by profession, would submit that the claim of the plaintiff is not tenable as consequent upon the death of his father Doraisamy Naidu, his share devolved upon D1 as well as D1's son and the daughters are having no right over it. According to him, as per Tamil Nadu Hindu Succession (Amendment) Act, (Act 1 of 1990) only unmarried daughters could claim share as co-parceners and not the plaintiff who got married long before 25.03.1989, the date on which the Act came into force and that in the co-parcenary property, the plaintiff, being the married daughter of Doraisamy Naidu is having no right to claim any share. To

say the least, such an argument as put forth by D1 is totally untenable and it is quite against the trite proposition of Hindu Law and antithetical to the provisions of law detailed and discussed supra.

23. The then existed Section 6 of the Hindu Succession Act, is interpreted in (2007) 1 MLJ 799 [Sheela Devi v. Lal Chand] and it is extracted

here under for ready reference:

6. Devolution of interest in coparcenary property: When a male Hindu dies after the commencement of this Act, having at the time of his death an

interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the

coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class

who claims through such female relative, the interest of the deceased in the Mitakshara co-parcenary property shall devolve by testamentary or

intestate succession, as the case may be, under this Act and not by survivorship.

(emphasis supplied)

Explanation 1: For the purposes of this Section, the interest of a Hindu Mitakshara coparcener shall be deemed to be 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.

Explanation 2: Nothing contained in the proviso to this Section shall be construed as enabling a person who has separated himself from the

coparcenary before the death of the deceased or any of his heirs to claim on intestacy, a share in the interest referred to therein.

A bare perusal of the said provisions would clearly show that where the deceased had left him surviving a female relative specified in Class I of the

Schedule, his interest in the Mitakshara coparcenary property shall devolve by intestate succession and not by survivorship.

24. I would like to extract here under an excerpt from the famous treatise N.R. Raghavachariar's Hindu Law (Principles and Precedents) Eighth

Edition 1987 relating to the scope of Section 6 of the Hindu Succession Act.

7. Proviso: Exception to rule of survivorship in the Mitakshara coparcenary: This

proviso says that so long as there is a female relative specified in

Clause (1) of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the

Mitakshara coparcenary property shall devolve by testamentary or intestate succession as the case may be under this Act and not by survivorship.

Under the Mitakshara coparcenary as it obtained prior to the Act, no Will left by a coparcener would be valid, the reason being that as between

testamentary devolution and devolution by survivorship, the latter took precedence barring the operation of the testamentary disposition. This

proviso provides that if any female relative or a male relative claiming through the female relative as specified in Clause (1) of the Schedule survives

the deceased, then the devolution is under this Act, whether the devolution is testamentary or by intestate succession. The words, "such female

relative" found in the proviso to the Section refers to a female relative who comes in the 1st class but who is dead but through whom the male

relative claims *Ranganathan Chettiar v. Annamalai Mudaliar* 80 L.W. 258 : (1967) 1 MLJ 389 : ILR (1968) Mad 685 : 1968 Mad. 65.

(emphasis supplied)

25. An excerpt from the famous Treatise Mayne's Hindu Law and Usage 16th Edition relating to Section 6 of the Hindu Succession Act would

run thus:

Position prior to 9.9.2005

2. Scope:- Prior to the commencement of this Act, codifying the rules of succession, the concept of a Hindu family under Mitakshara school of law

was that it was ordinarily joint not only in estate but in food and worship. Coparcenary property, in contra-distinction with the absolute or separate

property of an individual coparcener, devolved upon the surviving coparceners in the family, according to the rule of a devolution by survivorship.

Thus the right of a male Hindu coparcener by birth was recognised and approved under the Hindu Law. With a view to confer certain rights on the

female members of the joint family and to prefer certain near bandhus, or cognates to distant agnates in the matter of succession to the estate of a

Hindu male dying without male issue, the Hindu Law of Inheritance (Amendment) Act, 1929 was passed and the order of intestate succession

under Mitakshara was altered by including a son's daughter, daughter's

daughter, sister, and sister's son, in that order of succession, after the paternal grandfather and before the paternal uncle in the list of heirs. As a result there was a limited restriction on the rule of survivorship. The right of the coparcener under the rule of survivorship was further abridged, by conferring greater rights on women, under the Hindu Women's Rights to Property Act, 1937, which brought about revolutionary changes in the Hindu Law of all schools, and affected not only the law of coparcenary but also the law of partition, alienation of property, inheritance and adoption. The Act of 1937 conferred on the widow, the widow of a predeceased son and the widow of a predeceased son of a predeceased son, a right of inheritance to the deceased's property even when the deceased left male issue and were allowed to claim partition, though they would take only a limited estate in the property of the deceased.

The present Section deals with the devolution of the interest of a male Hindu in coparcenary property and while recognising the rule of devolution by survivorship among the members of the coparcenary, makes further exceptions to the rule in the proviso. According to the proviso, if the deceased has left him surviving a female relative specified in that Class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession under this Act and not by survivorship. Further u/s 30 a coparcener may make a testamentary disposition of his undivided interest in joint family property. Thus the rule of survivorship comes into operation only: (i) where the deceased does not leave him surviving a female relative specified in Class I, or a male relative specified in Class I, who claims through such female relative in Class I, (ii) when the deceased has not made a testamentary disposition of his undivided share in the coparcenary property.

As the rule of survivorship under this Section operates in respect of the interest of the deceased it becomes necessary to ascertain the share of the deceased coparcener in the Hindu Mitakshara coparcenary property. As to what constitutes Hindu Mitakshara coparcenary property as distinguished from separate property and the incidents, thereof, see Chapter 12 (paragraphs 292, 293, 294, 298, 301, 310 and 312). The present Section in its Explanation I states that 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 that property had taken place immediately before his death. Thus a notional partition of coparcenary property as if the property was partitioned immediately before the death of the deceased and not by survivorship. While proceeding on the footing of a notional partition in a given case, one should not take into consideration a person who had separated himself from the coparcenary before the death of the deceased or the claim of any heirs of such a person as stated in Explanation 2.

An excerpt from the Apex Court decision reported in Pavitri Devi and Another Vs. Darbari Singh and Others, would run thus:

13. However, she is right in her contention that she is a successor in interest under Order 22 Rule 3 of CPC as is seen by operation of the proviso

to Section 6(1) of the Act and explanation I of which reads thus:

Explanation 1.- For the purpose of this 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.

A reading of Section 6 thereof clearly provides that when a male Hindu dies, after the commencement of the Act, having at the time of his death an

interest in a Mitakshara coparcenary property, his interest by operation of the proviso devolves on his surviving members of the relatives specified

in Class I of the Schedule. The interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate

succession, as the case may be, under the Act and not by survivorship. In other words interposition of a female class I heir in the family of the

deceased coparcener interjects the operation of succession to coparcenary property by survivorship and opens up the intestate or testamentary

succession under the Act among the heirs in the order specified in the Schedule. For the purpose of this Section the interest of a Hindu 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. It is, therefore, statutorily assumed that the partition had, in fact,

taken place between the deceased and the other coparceners immediately before his death by fiction of law. The inevitable corollary being that

Pavitri Devi, female class I heir as per schedule will get her share in the interest which the deceased had in the coparcenary property at the time of his death at a notional partition.

26. A bare perusal of the above excerpts would leave no doubt that during the life time of Doraisamy Naidu, after he separated himself from

Perumal Naidu, his half share in the suit property belonged to Doraisamy Naidu and his son D1 in equal moiety, so to say, each one was entitled to

half share in the half share. In other words, Doraisamy and D1 had 1/4th share each in the entire suit property. D1's son D6 could claim under the

principle of per stirpes or doctrine of representation only half share in the 1/4th share of D1. The 1/4th share of Doraisamy Naidu on his death in

1972 devolved upon D1 his son and his five daughters, viz., the plaintiff, D2, D3, D4 and D5. In fact, the children of Doraisamy Naidu became

entitled to 1/6th share in the 1/4th share of Doraisamy Naidu in the entire suit property. Without understanding this method of division, both the

Courts below committed error in holding as though the plaintiff is entitled to 1/6th share in the half share which belonged to Doraisamy Naidu.

27. Totally ignoring and throwing to winds the aforesaid salient and relevant provisions of law in a distorted manner, on the side of D1 and D7 the

case was projected and consequently the case laws cited on their side are not relevant, as those case laws were picked out and cited in support of

their wrong pleas.

28. In the result, the substantial question of law No. 1 is answered to the effect that the plaintiff is not entitled to 1/6th share in the half share of the

suit property, but she is entitled to 1/6th share in the 1/4th share of deceased Doraisamy Naidu in the suit property. Both the Courts below fell into

error in allotting shares of the respective parties and hence this Court details here under the respective shares of the parties:

D6 : 12/24th share

D1 : 4/24th share

D7 : 3/24th share

Plaintiff 1/24th share

Deceased D2(D8 to D12

her legal heirs) : 1/24th share

D3 : 1/24th share

D4 : 1/24th share

D5 : 1/24th share

29. In view of the discussion supra, the second substantial question of law is decided to the effect that the plea of D1 and D7 are untenable as they

claimed the entire property to the exclusion of all other parties to the suit.

30. Accordingly the judgment and decree of both the Courts below shall stand modified as above. The preliminary decree shall follow accordingly.

Both the parties shall bear the respective costs.

In the result, this Second Appeal is partly allowed as above. Consequently, connected miscellaneous petition is closed.