

(2012) 06 MAD CK 0186
In the Madras High Court
Case No : Second Appeal No. 654 of 2003

Kantian

APPELLANT

Vs

Maragathammal, Chinnaponnu, Mariammal and
Ananthakumari

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(3)
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 18(2), 20, 21, 4
Hindu Marriage Act, 1955 — Section 2, 9
Hindu Succession (Amendment) Act, 2005 — Section 6
Hindu Succession Act, 1956 — Section 19, 23, 6, 6(1), 6(5)
Transfer of Property Act, 1882 — Section 39

Citation : (2012) 3 LW 632

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : D. Govinda Reddy, for the Appellant; R. Karthikeyan for Respondents 1 to 3 and No Appearance for Respondent 4, for the Respondent

Judgement

M. Venugopal, J.—The Appellant/First Defendant has preferred the present Second Appeal as against the Judgment and Decree dated 11.12.2002 in A.S. No. 25 of 2002 passed by the Learned Principal District Judge, Tiruvannamalai in affirming the Judgment and Decree dated 04.12.2001 in O.S. No. 482 of 1982 passed by the Learned District Munsif No. 1, Tiruvannamalai. A resume of germane averments of the Plaint (filed by the Respondents/Plaintiffs) are hereunder:-

The First Respondent/First Plaintiff is the legally wedded wife of the Appellant/First Defendant. Respondents 2 and 3/Plaintiffs 2 and 4 and the Third Plaintiff are the daughters and son of the First Respondent/First Plaintiff and the Appellant/First Defendant, born out of their legal wedlock. Other than the Second Respondent/Second Plaintiff, Third Respondent/Fourth Plaintiff and Third Plaintiff, there are two daughters of the First Respondent/First Plaintiff and the Appellant/

First Defendant viz., Tamizselvi and Kalayarasi. The Third Defendant is the father of the Appellant/First Defendant. The marriage took place about 11 years ago at Kamalaputhur Village as per caste, custom and rites. From the date of marriage, the First Respondent/ First Plaintiff and the Appellant/First Defendant were living together as husband and wife.

2. One son and one daughter viz., Second and Third Plaintiffs are in the custody of the First Respondent/First Plaintiff while other two daughters are in the custody of the Appellant/First Defendant. The Appellant/First Defendant became addicted to drink about four or five years ago and from that time onwards, he has completely neglected the family and began to treat the Plaintiffs cruelly and used to beat them mercilessly. The Third Defendant joined hands with the Appellant/First Defendant and started to ill-treat the Plaintiffs. About two years ago, the cruelty meted out by the First and Third Defendants exceeded the limits and in spite of the same, the First Respondent/First Plaintiff bore with them with the fond hope that good sense would prevail upon the First and Second Defendants.

3. About 2-1/2 years ago, the First Respondent/First Plaintiff's father died. When the First Respondent/First Plaintiff sought a permission of the First and Second Defendants to attend the funeral, they refused the permission for the same. When the First Respondent/First Plaintiff insisted for permission, the First and Third Defendants beat her and drove her out along with the Second and Third Plaintiffs. Even after, the death obsequies of the First Respondent/First Plaintiff's father, the First and Third Defendants had not come. Afterwards, when the First Respondent/First Plaintiff intended to go back to her husband's house, she was threatened with dire consequences and therefore, apprehending danger to her life, she remained in her mother's house with the Second and Third Plaintiffs and eking out her livelihood by doing coolie work. In spite of several mediations, the Appellant/First Defendant had not agreed to take back the Plaintiffs.

4. The Appellant/First Defendant married the Fourth Respondent /Second Defendant and he is living with her. The marriage between the Appellant/First Defendant is void in law. On that sole ground, the Appellant/First Defendant is to provide separate maintenance to the First Respondent/First Plaintiff.

5. Because of the Appellant/First Defendant's Second marriage, it is impossible for the First Respondent/First Plaintiff to go and live with him. He had not cared to provide food and shelter and also without any reasonable cause neglected to maintain the Plaintiffs. As such, the Plaintiffs were entitled to separate maintenance. Moreover, the properties mentioned in the "A" schedule were the joint family properties of the Third Plaintiff and the First and Third Defendants, in which the Third Plaintiff was entitled to 1/4th share. The Appellant/First Defendant was entitled to 1/4th share and the Third Defendant was entitled half share. Therefore, the Plaintiffs filed the present suit for separate maintenance and for partition and separate possession of the Third Plaintiff's 1/4th share in the suit properties. The Third Plaintiff was out of possession in the suit properties.

6. The "A" schedule properties were of valuable lands and there would be at least an annual income of minimum of Rs. 10,000/-after deducting all expenses and also the income from the family properties. The First Respondent/First Plaintiff was entitled to a maintenance of Rs. 100/- per month while the Second Respondent/ Second Plaintiff was entitled to a maintenance of Rs. 50/- per month. The First Respondent/First Plaintiff was entitled to Rs. 250/- per annum for clothing. The Second Respondent/Second Plaintiff was entitled to Rs. 100/- per annum for clothing apart from that Respondents 1 and 2/Plaintiffs 1 and 2 were entitled to Rs. 180/- per annum for residence. The Plaintiffs were entitled to past maintenance at the aforesaid rate from July 1975 till this day. The Third Plaintiff was entitled to 1/4th share in the suit properties. The properties were only in the possession of the First and Third Defendants.

7. Manickkammal, wife of the Third Defendant and mother-in-law of the First Respondent/First Plaintiff already filed a suit for her maintenance, since she was driven out of the family by the Appellant/First Defendant, Fourth Respondent/ Second Defendant and Third Defendant.

8. The Plaintiffs filed O.S. No. 102/1977 on the file of the Learned District Munsif Court, Tiruvannamalai for maintenance which was converted for partition of Third Plaintiff's 1/4th share. Also, they withdrew the same with liberty to file a fresh suit on the same cause of action.

9. Hence, the Plaintiffs filed the present suit for partition and separate possession of 3/5th share in the "A" schedule properties and also to direct the Appellant/ First Defendant to pay maintenance at the rate of Rs. 100/- per month to the First Respondent/First Plaintiff and Rs. 250/- per annum towards clothing and Rs. 180/- towards residence and also a charge over the Appellant/First Defendant 1/5th share in the "A" schedule properties. As per the recent Tamil Nadu Amendment in Hindu Succession Act the unmarried daughters were entitled to equal share along with the sons. The Fourth Respondent/ Second Defendant marriage took place before 25.03.1989. Therefore, she was not entitled for any share.

10. Under these circumstances, Plaintiffs 2 to 4 were entitled to each 1/5th share in the "A" schedule properties. Therefore, the Plaintiffs prayed for partition of "A" schedule properties into five equal shares by metes and bounds with reference to good and bad soil and to allot three such share to Plaintiffs 2 to 4 by appointing an Advocate Commissioner. Also, they sought for an order in directing the Appellant/First Defendant to pay to the First Respondent/First Plaintiff a sum of Rs. 100/-per month towards maintenance and Rs. 250/-per annum towards her clothing from the date of plaint till her life time. Further they prayed for issuance of a direction to the Appellant/ First Defendant to pay to the Second Respondent/ Second Plaintiff a sum of Rs. 50/- per month towards her maintenance and Rs. 100/- per annum towards her clothing from the date of plaint till her marriage. Added further, they sought for issuance of a direction to the Appellant/First Defendant to pay to the Plaintiffs a sum of Rs. 180/- per annum towards

residence and also they sought for issuance of a direction to the Appellant/First Defendant to pay the Plaintiffs past maintenance at the rate from July 1975 and to create a charge over the undivided 1/5th share of the Appellant/First Defendant for the due payment of the maintenance allowance that was to be granted by the Court.

11. Written Statement pleas of the Appellant/ First Defendant on behalf of Defendants 3:-

The suit for partition and for maintenance is not sustainable either in law or on facts. The suit properties are the joint Hindu family properties of the Appellant/ First Defendant and his father, the Third Defendant. They are not the ancestral properties nor or the acquired from out of any ancestral nucleus. The Third Plaintiff is not entitled to any share in the suit properties during the life time of the Third Defendant. He is not entitled to maintain the suit for partition in the life time of the Third Defendant, and that too against the Third Defendant, is liable to be dismissed.

12. The Second Respondent/Second Plaintiff and the Third Plaintiff were aged 7 and 5 years respectively and they were liable to be under the care and custody of the First Defendant, who was their natural and legal guardian. The suit filed by the First Respondent/First Plaintiff on their behalf, was not maintainable. The suit was also not in the interest of, and for the benefit of minors.

13. The Appellant/First Defendant was not addicted to drinks about 4 or 5 years ago or at any other time and for any other reason he had not completely neglected the family. He had not started to treat the Plaintiffs cruelly and used to beat them mercilessly or otherwise. The Third Defendant never ill-treated the Plaintiffs. About two years ago or at any other time, no cruelty was meted out to the Plaintiffs, exceeding the limits or otherwise. The Appellant/First Defendant was not a drunkard. He never drunk and never beat or ill-treated the Plaintiffs, either by himself or along with the Third Defendant. The Appellant/First Defendants and the Third Defendant had not refused permission to the First Respondent/First Plaintiff from taking part in the funeral of her father. They had not beat her and drove her out, along with Plaintiffs 2 and 3 in that regard, or at any other time. The Appellant/First Defendant and the Third Defendant had attended the funeral and had taken part in all the ceremonies connected with the funeral. When the First Respondent/ First Plaintiff wanted to get back to the Appellant/First Defendant's house, she was not threatened with dire consequences. She was not residing in her mother's house, apprehending danger from the First Defendant and the Third Defendant. There was no danger to the life of the Plaintiffs.

14. The First Respondent/First Plaintiff, at the instigation and evil advise of her mother and brothers had taken Plaintiffs 2 and 3 and left the house of the Appellant/ First Defendant without informing him or his mother or the Third Defendant during the First week of September 1975 of her own accord without

any justifiable cause. She was not entitled to live separately and claim maintenance. In law, she was bound to join the Appellant/First Defendant and live with him.

15. The Appellant/First Defendant had nothing to do with the Fourth Respondent/Second Defendant, except that she was the First Defendant's maternal uncle's daughter. He was not liable to provide for separate maintenance to the First Respondent/First Plaintiff. The First Respondent/First Plaintiff had abandoned the Appellant/First Defendant. With ulterior motives the income from the lands was highly inflated, without any proportion to the real income.

16. In the entire properties, the net annual income was Rs. 1,600/- only, and in that the net annual income for the Appellant/First Defendant's undivided half share was only Rs. 800/-. The Third Plaintiff was not entitled to any share in the suit properties. Without admitting, the Appellant/First Defendant submits that the Third Plaintiff was entitled to 1/4th share in the suit properties and on the Plaintiffs own showing, he would be entitled to 1/4th share only and the income from the suit properties was only Rs. 400/- per annum. The First Defendant submits that without admitting, the claim of maintenance for Plaintiffs 1 and 2 that out of this Rs. 400/- per annum, Plaintiffs 1 and 2 were entitled to only Rs. 100/- per annum towards their maintenance, clothing, residence etc., if any to be awarded to them. The First Respondent/First Plaintiff was not entitled to a maintenance of Rs. 100/- per month and for Rs. 250/- per annum for her clothing. The Second Plaintiff was not entitled to a maintenance of Rs. 50/- per month and Rs. 100/- per annum for her clothing. Both of them were not entitled to Rs. 180/- per annum for residence.

17. The Appellant/First Defendant's sister Kamala and her husband, who were inimical to him, and to the Third Defendant in collusion with the First Respondent/First Plaintiff etc., had filed the suit in the name of his old mother.

18. The Additional Written Statement pleas of the Appellant/First Defendant are set out below:-

The Plaintiffs had not co-related to the new survey numbers to old survey numbers. Items 2 to 4 of the suit property in the amended plaint were not the family properties or they had no relation with the suit property in the original plaint. The Third Defendant (deceased) was the absolute owner of items 5, 6, 8 to 18, 23 to 26 of the suit property described in the amended plaint. He had purchased the same from and out of his own fund. He treated and enjoyed the above said items as his separate and self acquired property. There was no ancestral nucleus.

19. The Third Defendant (deceased) purchased 76 cents in Wet S. No. 2/5 under the registered sale deed dated 9-7-45, 2.12 acres in Dry S. No. 54/2 under the registered sale deed dated 29-8-47, 1.43 acres in Dry S. No. 55/2 under the registered sale deed dated 6-2-50, 80 cents in Dry S. No. 53/1, 57 cents in S. No. 53/2 under the registered sale deed dated 29-4-56, 15 cents in Wet S. No.

7/1, 16 cents in Wet S. No. 17/2 under the registered sale deed dated 6-2-57, 2.86 acres in Dry S. No. 54/1 under the registered sale deed dated 9-2-1957, 17 cents in Wet S. No. 8/3, 33 cents in Wet S. No. 8/4 under the registered sale deed dated 20-9-58, 15 cents in S. No. 55/1 under the registered sale deed dated 1-6-65, 7 cents in Dry S. No. 55/1 under the registered sale deed dated 24-12-65, 14 cents in Dry S. No. 7/3 under the registered sale deed dated 23-7-68. Therefore, in the properties purchased by the Third Defendant, Appellant/First Defendant had no manner of right, title and interest. Resultantly, the Plaintiffs had no right to create charge or claim partition and separate possession.

20. The Third Defendant(deceased) executed two registered Wills dated 30-6-88 and 1-4-92 duly attested by witnesses in favour of his grandsons Thirunavukkarasu and Ramesh.

After his death, the lagetees took possession of the properties. The properties bequeathed under the Wills were some of the items of the suit properties.

21. The Appellant/First Defendant purchased 74 cents in Dry S. No. 54/2, 43 cents in Dry S. No. 55/1, 1-85 acres in Dry S. No. 70/2 under the registered sale deed dated 1-11-73, 64 cents in Dry S. No. 54/2 under registered sale deed dated 17-12-84, 40 cents in dry S. No. 55/1, under the registered sale deed dated 17-12-84, (i.e.) items 19 to 22, item 7, portion of items 10 to 13 of the suit property. He had purchased the above suit properties from and out of his own earnings. There was no ancestral nucleus to purchase the above said properties. The Plaintiffs 2 to 4 had no right to claim share in the properties purchased by the Appellant/First Defendant.

22. The Second Respondent/Second Plaintiff was given in marriage during the year 1988. The Appellant/First Defendant spent Rs. 20,000/- for her marriage. She had no right to claim share or maintenance. Subsequent to the suit, the First Defendant/First Plaintiff voluntarily joined with the Appellant/First defendant and lived together as husband and wife. The suit properties were the separate and self acquired properties of the Appellant/First Defendant and the Third Defendant. Hence, the Plaintiffs had no right to file the suit for partition or maintenance from the Defendants.

23. At the time of admission of the Second Appeal, this Court has formulated the following Substantial Questions of Law:-

1. Whether the contents in Ex. A18 the copy of the sale deed executed by Elian alias Ellappan will amount to conclusive proof that the property is ancestral property?

2. Whether the Courts below are justified in allotting the share to the Second Respondent/Second Plaintiff viz., Chinnaponnu who has got married prior to 26.05.1989 before the commencement of amended Act, when it is clearly admitted in the plaint itself, even assuming itself as ancestral properties?

3. When the properties allotted to the son Srinivasan-Third Plaintiff, who died during the pendency of the First Appeal, devolve upon his heirs either by succession or survivorship?

24. At the time of hearing of the Second Appeal, this Court has formulated the following Additional Substantial Question of Law:-

1. Whether the married daughters after commencement of Hindu Succession Act, 2005 (Amendment Act 39/2005) are entitled to equal share as that of sons in the coparcener property of a Joint Hindu Family?

25. The Contentions, Discussions and Findings on Substantial Questions of Law No. 1 to 3 and Additional Substantial Question of Law No. 1:-

The Learned Counsel for the Appellant/First Defendant submits that the First Appellate Authority viz., the Learned Principal District Judge, Tiruvannamalai ought to have allowed A.S. No. 25 of 2002 by setting aside the Judgment Decree of the trial Court dated 04.12.2001 in O.S. No. 482 of 1982 by dismissing the suit.

26. It is the contention of the Learned Counsel for the Appellant/ First Defendant that during the year 1982, there is no right for the daughters over the suit property of the father during his life time even if it is the ancestral properties. However, this vital aspect has not been taken note of by the Courts below.

27. Proceeding further, the Learned Counsel for the Appellant/First Defendant projects an argument that the suit properties are not the ancestral properties and Ex. A18 Sale Deed dated 24.07.1945 filed by Respondents 1 to 3/Plaintiffs is not a conclusive proof to show that the properties are ancestral one in the hands of Elian @ Ellappan (Third Defendant since deceased).

28. According to the the Learned Counsel for the Appellant/First Defendant, the trial Court as well as the First Appellate Court have failed to appreciate that the suit item Nos. 2 to 4 in the amended plaint did not exist for the family and also that Item No. 26 is exclusively belonged to the Fourth Respondent/Second Defendant who got the same by virtue of settlement deed from her maternal aunt Manickammal.

29. Another contention advanced on behalf of the Appellant/First Defendant is that both the Courts below have wrongly held for the issue No. 1 that Item Nos. 1 to 10 of the suit schedule properties are ancestral joint family properties.

30. That apart, the Learned Counsel for the Appellant/First Defendant contends that both the Courts below have committed an error in allotting 1/4th share to the Second Respondent/Second Plaintiff. Because of the fact, even assuming if the properties are ancestral one, then the Second Respondent/ Second Plaintiff is not entitled to any share in the properties, inasmuch as she got married prior to 25.03.1989 i.e. before commencement of the Tamil Nadu Amendment Act 1/90. Therefore, the share allotted to the Second Respondent/Second Plaintiff is liable

to be set aside as per law.

31. The stand of the Appellant/First Defendant is that both the Courts below have gone wrong in allotting 1/4th share of the deceased son to and in favour of the mother by succession and that it is not a separate property of the son.

32. The final submission of the Learned Counsel for the Appellant/First Defendant is that both the Courts below have failed to appreciate that the main suit has been filed for maintenance as well as partition during the year 1976-1978, which is not maintainable in law, either on the date of filing the suit O.S. No. 52 of 1978 or on the date of subsequent suit in O.S. No. 482 of 1982.

33. Per contra, the Learned Counsel for Respondents 1 to 3/Plaintiffs contends that the trial Court in the Judgment in O.S. No. 482 of 1982 on 04.12.2001 has clearly rendered a finding that the suit properties Items 1 to 11 are the ancestral joint family properties of the Appellant/First Defendant, the Third Defendant and the Third Plaintiff and further it is held that Plaintiffs 2 to 4 are the daughters as per the Tamil Nadu Amendment Act, the unmarried daughters/Plaintiffs 2 and 4 are entitled to equal share over the suit properties and accordingly, a decree has been passed holding that the First Respondent/First Plaintiff is entitled to a sum of Rs. 150/- per month towards maintenance, clothing and residence from July 1975 to till her life time (excluding the period from December 1985 to December 1988 for a period of three years) and a charge has been created in respect of 1/4th share of the Appellant/First Defendant in the suit properties and also passed a preliminary decree of partition directing the Appellant/First Defendant to divide the items 1 to 11 and allot 3/4th share jointly to Plaintiffs 2 to 4 with costs.

34. Further in A.S. No. 25 of 2002 filed by the Appellant/First Defendant and the Fourth Respondent/Second Defendant before the First Appellate Court, the Judgment and Decree of the trial Court dated 04.12.2001 in O.S. No. 482 of 1982 has been confirmed and consequently, the appeal has been dismissed and that both the Courts below have not committed any error and as such the Second appeal preferred by the Appellant/First Defendant is liable to be dismissed by this Court.

35. PW1 (the First Respondent/First Plaintiff) in her evidence has deposed that Plaintiffs 2 and 4 are her daughters and Third Plaintiff is her son and that the First Defendant is her husband and the Second Defendant is her husband's Second wife and the Third Defendant is her father-in-law (who died after filing of the suit) and that her marriage with the Appellant/First Defendant has taken place at Kamalaputhur village and two female and one male children are with her and other two children have remained with her husband and that they lived peacefully for seven or eight years.

36. P.W. 1 adds further that her husband used to beat her after consuming liquor and caused cruelty to her by bearing the same she remained with him and that she sought permission to attend her father's funeral but the Appellant/First

Defendant has informed her not to attend the same but she attended her father's funeral rights along with children and returned back two days thereafter.

37. It is the further evidence of PW1 that the Appellant/First Defendant asked her not to come inside of the house and threatened her to kill her if entered the house and because of the said threatening, she has come to her mother's house and from that day onwards, she is doing the coolie work and protecting the children and till this day, her husband has not maintained her.

38. Further, PW1 has deposed that her husband viz., the Appellant/First Defendant after marrying the Fourth Respondent / Second Defendant has been living with her and since he has no intention to live with her, she cannot go and live with him and even if she lives with her husband, there is no safety for her life and with an intention not to pay the maintenance. He informs that he is willing to live with her.

39. Moreover, it is the evidence of PW1 that once again after five or six months, when she has lived with her husband, after the birth of the Third Respondent/ Fourth Plaintiff, she has been driven out by the Appellant/First Defendant by beating her.

40. Continuing further, the evidence of PW1 proceeds to the effect that the suit properties A and B are the ancestral properties of her husband (the Appellant/First Defendant) through his father and from A schedule property per year the income more than of Rs. 60,000/- will be derived and that the Appellant/First Defendant has constructed a house at Chennai for Rs. 4,00,000/-.

41. Also, it is the evidence of PW1 that Thirunavukarasu and Ramesh are the children born to her husband viz., the Appellant/First Defendant and the Fourth Respondent/ Second Defendant and Ex. A3 is the plaint copy in O.S. No. 398 of 1998 filed against her and her husband and Ex. A4 is the photocopy of the Judgment in O.S. No. 398 of 1998 and Ex. A5 is the copy of the decree in O.S. No. 398 of 1998 and that the suit has been dismissed after contesting and A.S. No. 98 of 1999 has been filed as against the dismissal of the suit in O.S. No. 398 of 1998 and Ex. A6 is the decree passed in A.S. No. 98 of 1999 which has not been appealed against it and the said two cases have been filed with a view, not to grant maintenance to her.

42. P.W. 1 adds in her evidence that for her two children viz., Selvi and Kalaiarasi her husband (the Appellant/First Defendant) spent money for their marriage and that her husband has no drinking habit and that he has not beaten her and the children have not ill treated them and kept in a proper manner and further, she has gone to her mother's house before her father's death and that thereafter she remained there for ten years.

43. Apart from the above, it is evidence of PW1 that her father died in the year 1975 and her husband has married the Fourth Respondent/Second Defendant before she gone to her mother's house and she does not know the date, month

and year of the her husband marrying the Fourth Respondent/ Second Defendant and ten years later, again she lived with the Appellant/First Defendant for six months and led the family and that the Third Respondent/Fourth Plaintiff, after living with her husband (the Appellant/First Defendant), four months later, she has born and that the suit properties have been purchased from the income of her father-in-law and no documents have been filed to show that the properties belonged to her father-in-law viz., Chengan and it is not correct to state that suit properties 2, 3, 4, 13 and 25 do not belong to the family of the Appellant/First Defendant and the Third Defendant.

44. PW1 in her evidence has further stated that in respect of suit property No. 26, the Appellant/ First Defendant's mother viz. Manickkammal has executed a Gift Deed in favour of the Fourth Respondent/Second Defendant and that the Third Respondent/ Fourth Plaintiff has come of age and that she is 13 years old. For her husband viz., the Appellant/First Defendant and her father-in-law the Third Defendant, agriculture is the occupation and other than the agriculture, there is no other job for then and her father-in-law/Third Defendant has purchased lands in his name from and out of the income derived from his father land and that the aforesaid lands are in enjoyment of her husband (the Appellant/ First Defendant).

45. Further more, it is the evidence of PW1 that the Third Plaintiff is presently aged about 26 years and that the Second Respondent/Second Plaintiff's age is 28 years and at the time of filing of the suit for suit items 1 to 11 of properties, she has mentioned the old survey number and at the time of trial of the suit, the survey No. 11 has been subdivided and new survey numbers have been given and she has removed items of properties 1 to 11 in the plaint and newly given the new survey numbers of 1 to 26 items of properties and that in respect of items of properties 15, 20 to 22 in Ex. A19, it is not mentioned and in respect of those properties, a revision has been filed in High Court and those items have been deleted and hence she has not claimed relief in respect of those items and only in respect of items 1 to 14, 16 to 19, 23 to 26, she is claiming the reliefs.

46. PW2 has deposed that the Appellant/First Defendant is her father and the First Respondent/First Plaintiff is her mother and their marriage has taken place 40 years ago and they lived unitedly for 15 years and thereafter, her father (the Appellant/First Defendant) has joined with the Fourth Respondent/Second Defendant and ill-treated her mother after consuming liquor and 25 years ago, her father driven away her mother and at that time her mother has three daughters and one son and her mother has taken a long with her. Plaintiffs 2 and 3, who are born to her, and the Appellant/First Defendant and she and her sister Kalaiarasi have remained with her father(the Appellant/ First Defendant), and for two of them her father conducted marriage and that her father viz., the Appellant/First Defendant has not maintained Plaintiffs 1 to 4 and thereafter her and mother have joined at the intervention of an Advocate and they lived for six months jointly and the Appellant/First Defendant, listening to the words of the

Fourth Respondent/Second Defendant has driven her mother (First Respondent/First Plaintiff) and at the time along with her mother and Plaintiffs 2 to 4 have remained with her and that the Appellant/First Defendant has no desired to live with her mother jointly.

47. It is the further evidence of PW2 that her father (Appellant/First Defendant) is having 30 acres of land and agriculture is the father's occupation and Ramesh and Thirunavukarasu are in Chennai and that they are not in enjoyment of the suit properties and they are doing rice business, and that her grandfather viz., Elian @ Ellappan used to put his thumb impression and he has not executed any Will in favour of Thirunavukarasu and Ramesh.

48. DW1 (Appellant/First Defendant) in his evidence has deposed that the First Respondent/First Plaintiff is his wife and that Plaintiffs 2 and 3 are born to him and his wife (First Respondent/First Plaintiff) and his marriage has taken place in the year 1967, and from the time of marriage, the First Respondent/First Plaintiff has not conducted the family affairs properly and after remaining with him for one month frequently she used to go her mother's house, and the reason for that is that he has not acted as per directions of the First Respondent/First Plaintiff and therefore, ill-feeling has cropped up between them and that he has no drinking habit and at the time of the First Respondent/First Plaintiff father's death, she remained in her father's house and that he has not attended the death of his father-in-law and during the year 1975 his father-in-law broke her hand and therefore there has been strained relationship between him and her family and during the year 1975, the First Respondent/First Plaintiff has left Plaintiffs 2 to 4 and Kalaiarasi and Selvi two female daughters with him and has gone to her mother's place and she has not come back again for living with him.

49. Also, it is the evidence of P.W. 1 that he lived with his parents along with four children and his mother is aged and has no proper eyesight but she used to cook and during the year 1976 the First Respondent/First Plaintiff has given a complaint that he has married the Fourth Respondent/Second Defendant and at the time of enquiry the First Respondent/First Plaintiff has taken along with her Plaintiffs 2 and 3 and that he married the Fourth Respondent/Second Defendant because of the fact that there is no one to cook for himself and his mother and Thirunavukarasu and Ramesh are male sons and Thenmozhi and Mala are female children born to him and the Fourth Respondent/Second Defendant and her performed the marriage of Kalaiarasi and Selvi and for the said marriage, the First Respondent/First Plaintiff has not attended.

50. Furthermore, D.W. 1 proceeds to state that during the year 1985, the First Respondent/First Plaintiff has come to his house and he along with his father, the Fourth Respondent/Second Defendant and her children have lived as a one family and the First Respondent/First Plaintiff has lived with his family and later, a quarrel has taken place between the Fourth Respondent/Second Defendant and the First Respondent/First Plaintiff and the First Respondent/First Plaintiff has gone to her mother's house during the year 1988 and thereafter, she never

returned to come and live with him and that he has paid a sum of Rs. 28,000/- towards maintenance.

51. DW1 has also deposed that in the suit properties, there are properties purchased by his father separately and also properties purchased by him separately and the suit items 11, 17, 18, 19 and 20 have been purchased by him through Sale Deeds and the remaining suit properties belonged to his father separately and his grandfather has no right in any of the properties and his father has executed a Will in favour of his sons Thirunavukarasu and Ramesh and presently 1 acre and 15 cents belonged to him as self-acquired one and the Will properties are now enjoyed by Thirunavukarasu and Ramesh and that his father has expired during the year 1997 and for the death of his father, the First Respondent/First Plaintiff has not taken part and after his father's death the Fourth Respondent/Second Defendant has looked after the Will properties and that the suit item No. 26, it is not belonged to him and belongs to the Fourth Respondent/Second Defendant and his mother has executed a Settlement Deed in respect of suit item No. 26, which is in enjoyment of the Fourth Respondent/Second Defendant and in the suit property, he and the Plaintiffs have no right or share and the suit items 2, 3 and 4 does not belong to him or his father and the said property belongs to another person viz., Kannan of his Village.

52. DW1's evidence is also to the effect that item No. 13 belongs to one Duraisamy of his village, and items of suit properties 9 and 24 there are not two wells and there is only one well and Thirunavukarasu and Ramesh are cultivating the land, which they got by virtue of the Will. Further, it is the evidence of DW1 that his marriage with the Fourth Respondent/Second Defendant has taken place during the month of Puratasi in 1976 at Vellore Chenpakkam Temple and it does not remember the date of marriage and the First Respondent/First Plaintiff has filed an Execution Petition to realise the decree amount and for the period from 06.01.1999 to 31.01.2001 he has paid a sum of Rs. 16,000/-towards maintenance and subsequently, as per High Court Order, he has paid a sum of Rs. 10,000/- and the suit items 2 to 4 does not belong to him and he does not know to whom it belonged to, but those items belong to his family and in the suit property, there are two pump sets and if there is water, harvest can be done three times in the land and after deduction of expenses, an income of Rs. 20,000/- will come from the land.

53. DW2 (Fourth Respondent/Second Defendant) in her evidence has stated that at the time of her marriage, the First Respondent/First Plaintiff has remained at Thiruvannamalai and not at Kamalaputhur and during the year 1985, the First Respondent/First Plaintiff has come to Kamalaputhur village, and the First Respondent/First Plaintiff has already been married by her husband (Appellant/First Defendant) and the Appellant/First Defendant along with her and the First Respondent/First Plaintiff have resided with them as a one family. The First Respondent/First Plaintiff has gone to her mother's house for delivery and has not returned thereafter and the suit properties are the properties purchased by

her father-in-law and her husband and her father-in-law in respect of certain items of properties has executed a Will in favour of her sons Thirunavukarasu and Ramesh and those properties are cultivating by her son Thirunavukarasu and the Appellant/First Defendant has no connection whatsoever in respect of the properties written in favour of her sons and her mother-in-law viz., Manickkammal has executed Ex. B1 Gift deed in respect of 1 acre and 75 cents in her favour and in the said deed, Manickkammal has signed in every page and Elia @ Ellappan and Selvaraj has signed as witnesses and that the Gift Deed has been registered on the same day and handed over to her and in the said property, either her father-in-law or her husband has no right and the said suit property is item No. 26.

54. It is evidence of DW2 of that her sons Thirunavukarasu and Ramesh are not working at Chennai and they are cultivating the lands at Kamalaputhur and it is not correct to state that Ex. B1 Gift Deed has not come into force.

55. DW3 (son of Fourth Respondent/Second Defendant) in his evidence has deposed that his sisters are Thenmozhi, Mala and his brother is Ramesh. The First Respondent/First Plaintiff is his elder mother and he knows his grandfather Elia @ Ellappan and his grandfather has executed a Will in respect of properties and he died during the year 1972 and he is enjoying the Will properties and in the said properties either his father or others have no right or share and Ex. B2 is the patta passbook given in respect of the Will properties and Ex. B3 to B5 are Kist receipts paid by him and that he does not know for what reason is grandfather has executed the Will in his favour and as per Ex. B2 Will, he has total extent of land of 11 not 10 acres and there is only one well with 5 HP motor and electricity connection and O.S. No. 311 of 1998 has been filed by him and his brother, and the said suit has gone against them and that he does not know about the quarrel between the First Respondent/First Plaintiff and his father viz. the Appellant/First Defendant.

56. At this stage, this Court relevantly quotes Section 18 of the Hindu Adoptions and Maintenance Act, 1956, which runs as follows:-

18. Maintenance of Wife:-

(1) Subject to the provisions of this Section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life-time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her;

(b) if he has treated her without such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her

husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

57. As per the ingredients of Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a statutory right is conferred on a Hindu wife to live separately without forfeiting her claim for maintenance during the life time of her husband, whether she got married before or after the commencement of the Act. Moreover, she is entitled to live separately and further, claim maintenance only when one or more of the (a) to (g) grounds specified in Sub-Section 2 of Section 18 of Hindu Adoption and Maintenance Act, 1956 are satisfied. Further more, she should remain chaste and should not cease to be a Hindu by conversion to another religion as per Sub-Section (3) of Section 18 of the Hindu Adoptions and Maintenance Act, 1956.

58. The right of a Hindu wife to claim maintenance is a incident of the status of matrimony and if the relationship of husband and wife is proved, as matter of course and routine, the wife is entitled to claim maintenance in law as long as her husband is alive, she is not a dependent as per Section 21. Indeed, a Hindu Woman's marriage is solemnised with a Hindu husband as per the Hindu Marriage Act. If the said marriage is not dissolved by a divorce decree or a void one, then, she is "a Hindu Wife" coming within the meaning of Section 18 of Hindu Adoptions and Maintenance Act, 1956.

59. To put it differently, the terms of "Hindu Wife" figuring in the Section is to be interpreted as a wife, whose marriage is a valid one as per the Hindu Marriage Act, 1955. It is to be noted that the Hindu Adoptions and Maintenance Act, 1956 is conspicuously is silent in regard to a claim for maintenance by a coparcener's wife out of the joint family property. As per then prevailing old Hindu Law, such a claim can be enforced against the joint family property as per decision Krishna v. Padmini Bai, 1977 Mah. LJ 402. The expression that "a Hindu Wife" as such denotes that a wife, she is a Hindu, as defined by Section 2 of the Hindu Marriage Act in its widest amplitude has a right to be maintained by her husband during her life time as per Section 18 of the Hindu Adoptions and Maintenance Act, 1956. It is to be borne in mind that Section 18 of the Hindu Adoptions and Maintenance Act, 1956 does not prescribe any procedure to claim maintenance.

Therefore, ordinarily a maintenance claim can be enforced through a Civil Court by instituting a suit inasmuch as the said right is an absolute one, in the considered opinion of this Court.

60. This Court worth recalls the decision *Raghavan Radhakrishnan Vs. Sathyabhama Jayakumari and Another*, wherein it is observed and held that "it is sufficient for the wife to prove the factum of desertion and it is not necessary for her to prove further the existence of animus "deserendi". Also, in *Jasbir Kaur v. Ranjit Singh*, AIR 1975 Punj. LR 129, it is held that "the conduct of the husband taken as a whole may amount to total disregard of the fundamental obligations of matrimony and would constitute an intention to desert".

61. In *Channekashavaiah v. Lakshmi* 2001 (2) HLR 163 (Kar.) it is held that ordinarily "a wife" is entitled to live separately and claim maintenance if the circumstances mentioned in Sub-Section 18(2) of the Hindu Adoptions and Maintenance Act, 1956 are established or shown to be existing.

62. This Court points out the decision of the Hon"ble Supreme Court *Kirtikant D. Vadodaria Vs. State of Gujarat and Another*, wherein it is held that the obligation of a Hindu to maintain his wife, minor sons, unmarried daughters and aged or infirm parents is personal, legal and absolute in character and arises from the very existence of the relationship between the parties and further that the husband is obliged to maintain his wife if he is capable of earning and that he cannot plead that he is unable to maintain her due to financial constraints.

63. It is relevant for this Court to point out that Section 6 of the Hindu Secession Act, 1956, concerns with the devolution of the interest of a male Hindu in coparcenary property. While recognising the rule of devolution by survivorship among the members of the coparcenary, it makes further exceptions to the rule in the proviso. After the demise of a coparcener, his undivided interest, is taken by his heirs as per Section 6 of the Hindu Succession Act as tenants-in-common.

64. The object of the amendment to Hindu Succession Act, 1956, is to remove the discrimination between sons and daughters and to give equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. The provisions contained in Section 6 of the Hindu Succession Act, 1956 recognises the Rule of devolution by survivorship among the members of coparcenary. The Amendment Act has come in to force with effect from 09.09.2005. A conjoint reading of Section 6(1), Section 6(5) shows that the provisions are prospective and not retrospective. But the same only mean that the daughters will get rights as coparceners only after 09.09.2005 irrespective of the fact, they are born earlier.

65. That apart, in *Dunn v. Dunn* (1948) 2 All. ER 822 it is observed that where there is a quarrel between the spouses on the ground that the husband is living with another woman and when the husband says that he would prefer to go and live with other woman, out of anger the wife says that he can go and live as he likes, such a statement by the wife cannot be taken as her consent for

abandoning her.

66. In *Perumal Naiker v. Sita Lakshmi* AIR 1956 Mad 415 =(1956) 69 L.W. 475, it is held that where the wife left the husband due to intemperate habits of the husband, there is no abandonment against her wish or without her consent. Under the Hindu Married Women's Separate Residence and Maintenance Act, 1946, a married woman is entitled to maintenance, if her husband "marries again".

67. This Court pertinently points out the decision of the Hon"ble Supreme Court *Eramma Vs. Verrupanna and Others*, and at p. 1880 wherein it is held hereunder:-

Section 6 applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. The language of S.8 must be construed in the context of S.6 of the Act. The words "The property of the male Hindu dying intestate" and the words "shall devolve" occurring in S.8 make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the Act. The provisions of S.8 are, therefore, not retrospective in operation and where a male Hindu dies before the Act came into force i.e., where succession opened before the Act, S.8 will have no application. AIR 1966 Mys. 130, Affirmed. (Paras 4, 5)

68. Also, this Court points out the decision *A. Annamalan Mudaliar Vs. Perumayee Ammal and Others*, wherein paragraph 7, it is held as follows:-

The provisions of S. 18(2) of the Act (78 of 1956) have purported to give effect to trends of what is claimed to be progressive thought in this country of placing women at par with men in the matter of their marital rights. The true principle behind S. 18(2) is that it should be open to the wife to claim to live separately from her husband in case he has got another wife living, when the wife does not want to seek divorce or judicial separation. On such a principle its operation cannot be restricted to marriages subsequent to coming in to operation of the Act (19 of 1946) (Para 7)

69. Added further, this Court quotes the decision *Chandramma v. Maniam Venkatareddi and others* AIR 1958 AP 396, wherein it is held as follows:-

The Hindu Law Texts and the important commentaries impose a legal personal obligation on a husband to maintain his wife irrespective of his possession of any property, whether joint or self- acquired. They recognise the subordinate interest of the wife in her husband's property arising out of her married status. They also prohibit the alienation of properties by the husband which has the effect of depriving her and other dependants of their maintenance. They further treat her as a member of a Hindu joint family entitled to be maintained out of joint funds. The decisions of the various High Courts tow the same line, recognise her subordinate interest in her husband's property and enforce his personal obligation by creating a charge on his properties either self-acquired or ancestral.

A wife, therefore is entitled to be maintained out of the profits of her husband's property and, if so, under the express terms of S.39 she can enforce her right against the properties in the hands of the alienee with notice of her claim Pavayamal and Another Vs. Samiappa Goundan and Others, , Banda Manikyam Vs. Banda Ven-kayamjoaaVand Approved. Case law discussed. (Para 39)

70. In Banda Manikyam Vs. Banda Ven-kayamjoaaVand it is held as follows:-

The Hindu Married Women's Right to Separate Residence and Maintenance Act is intended to enlarge and liberalise the rules of Hindu Law governing the rights of a Hindu Woman to maintenance from her husband in the contingencies therein specified. The Act does not curtail or cut down the right of maintenance conferred either by the Hindu Law or by S.39 of the Transfer of Property Act. It does not affect the right of a wife to have payment of her separate maintenance secured by a charge on her husband's properties in his hands or in the hands of his gratuitous transferee if, under any other law, she has such a right, (para 3)

Though the right of the wife to separate maintenance does not form a charge upon her husband's property, ancestral or self-acquired, yet, when it becomes necessary to enforce or preserve such a right effectively, it can be made a specific charge on a reasonable portion of the property. If the right of maintenance is imperiled or jeopardised by the conduct and dealings of the husband or father with reference to his properties, the Court can create a charge on a suitable portion thereof, securing the payment of maintenance to the wife or children. Such a charge can be created not only over the properties in the hands of the husband or father but also over properties transferred by him either gratuitously or to persons having notice of the right to maintenance.

A transferee (in this case, the mother) who joins in a fraudulent and clandestine arrangement for defeating the right of maintenance binding on the conscience of the transferor and who pays no consideration for the transfer by her son in her favour, takes the properties subject to that right. The property in her hands is legally chargeable with the payment of maintenance to the wife and children of the transferor under S.39 of the Pavayamal and Another Vs. Samiappa Goundan and Others,

71. In A. Bhagavathi Ammal and others v. Sethu alias Manickavasagam Pillai - Volume C (100)-1987 LW at p. 419, this Court has held as follows:-

Clause (2), S. 18 of the Hindu Adoptions and Maintenance Act, 1956, corresponds to the former S.2 of the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, which was substantially the same as S. 18(2) of this act, provides for cases where the wife is entitled to live separately from her husband without forfeiting her claim to maintenance. There are seven grounds mentioned in S. 18 (2) which justify the wife in her claim for separate maintenance and they are : (a) husband's desertion, (b) his cruelty, (c) his suffering from a virulent form of leprosy, (d) existence of another wife; (e) his keeping a concubine, (f) his conversion to another religion and (g) any other

case which justifies the wife's separate living. Ordinarily, when a wife lives away from her husband for no justifiable reason and without his consent and against his wish, the wife will not be entitled to claim maintenance. This clause merely lays down that the wife does not forfeit her claim to be separately maintained if she has any of the grounds for separate living mentioned in this clause. This clause does not say that if the wife lives separately from her husband and cannot urge any of the grounds mentioned in this clause she does or does not forfeit her claim to separate maintenance. C1.3 of the Section which provides for her not being entitled to maintenance mentions only two grounds, namely, unchastity and her conversion to another religion. For a case which does not fall under any of the specific grounds in C1.2 or C1.3, the answer is to be found in the discretion of the Court to award suitable maintenance dependent upon the circumstances of the particular case.(Para 18)

If the husband has another wife living, then that would be a ground for claiming separate maintenance. It does not matter whether that wife was married before or after the wife claiming maintenance *Kiran Bala Saha Vs. Bankim Chandra Saha*, nor does it matter that that wife is living or not living with the husband (Vide: *Kalawati v. Ratan Chand* (AIR 1960 All. 60). (Para 19)

72. This Court in the interest of justice cites the following decisions:-

(i) in *G. Sekar Vs. Geetha and Others*, It is held as follows:-

It is evident from the 174th Report of the Law Commission and the Statement of Objects and Reasons of the Hindu Succession (Amendment) Act, 2005 that Parliament intended to achieve the goal of removal of discrimination not only as contained in Section 6 of the Act but also conferring an absolute right in a female heir to ask for a partition in a dwelling house wholly occupied by a joint family by removing the bar u/s 23 of the 1956 Act. If after the amendment, the disability of a female heir to inherit the equal share of the property together with a male heir so far as joint coparcenary property is concerned has been sought to be removed, it is not understandable how such a disability could be allowed to be retained in the statute book in respect of the property which had devolved upon the female heirs in terms of Section 8 of the Act read with the Schedule appended thereto, (paras 22 to 25) 174th Report of the Law Commission, relied on

In terms of Articles 14 and 15 of the Constitution of India, the female heirs, subject to the statutory rule operating in that field, are required to be treated equally to the male heirs. Gender equality is recognised by the world community in general in the human rights regime. The Act brought about revolutionary changes in the old Hindu Law. It was enacted to amend and codify the law relating to intestate succession amongst Hindus. By reason of the Act, all female heirs were conferred equal right in the matter of succession and inheritance with that of the male heirs, (paras 52 and 15)

Bhe V. Magistrate, Khayelitsha, (2005) 1 SA 580: (2004) 18 BHRC 52 (CC) Anuj

Garg and Others Vs. Hotel Association of India and Others, relied on Section 23 of the 1956 Act carves out an exception in regard to obtaining a decree for possession inter alia in a case where dwelling house was possessed by a male heir. Apart there from, the right of a female heir in a property of her father, who has died intestate is equal to her brother. Section 23, however, recognises the right of residence in respect of the class of females who come within the purview of the proviso thereof. Such a right of residence does not depend upon the date on which the suit has been instituted but can also be subsequently enforced by a female, if she comes within the purview of the proviso appended to Section 23. (Para 21)

Section 23 proviso confers a right on the daughter who is separate from her husband and gives a right to the widow in spite of the fact that her husband has left a dwelling house. Although the right of a female heir to claim partition of the family dwelling house is restricted so long as the male heirs do not choose to affect partition of the same, it expressly recognises her right to reside therein. (Para 20)

In the present case, the daughters had a right to maintain a suit for partition and were entitled to 1/5th share in their father's self-acquired property. The property in the hands of the father was not a coparcenary property of Hindu Mitakshara family. It was his self-acquired property. The said property belonging to him, therefore, having devolved upon all his heirs in equal shares on his death, it would not be correct to contend that the right, title and interest in the property itself was subjected to the restrictive right contained in Section 23. The title by reason of Section 8 of the 1956 Act devolved absolutely upon the daughters as well as on his sons. (Paras 21 and 19)

The question as to whether an amendment is prospective or retrospective in nature, would depend upon its construction. Neither the 1956 Act nor the 2005 Act seeks to reopen vesting of a right where succession has already taken place. Where a partition has not taken place, Section 6 of the 1956 Act would apply. The operation of the said statute is no doubt prospective in nature. The High Court might have committed a mistake in opining that the operation of Section 3 of the 2005 Act is retrospective in character, but for the reasons mentioned, it does not make any difference. What should have been held was that although it is not retrospective in nature, its application is prospective. (Paras 30, 30 and 28)

(ii) In Prema Vs. Nanje Gowda and Others, it is held hereunder:-

The Karnataka Legislature amended the Hindu Succession Act and inserted Sections 6A to 6C for ensuring that the unmarried daughters get equal share in the coparcenary property with a view to achieve the goal of equality enshrined in Articles 14 and 15(1) of the Constitution and to eliminate discrimination against daughters, who were deprived of their right to participate in the coparcenary property. Similar provisions were inserted in the Act by the legislatures of the States of Andhra Pradesh, Maharashtra and Tamil Nadu. Section 29A inserted in

the Act by the Andhra Pradesh Act 13 of 1986 is in pari materia with Section 6A introduced by the Karnataka Amendment Act. In the context of the said Section 29-A, the Supreme Court in *S. Sai Reddy v. S. Narayan Reddy*, (1991) 3 SCC 647 observed: "Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete... A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. Hence,... unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast Section of the fair sex of the benefits conferred by the amendment". (Paras 10, 11 and 14)

In this case, by virtue of the preliminary decree passed by the trial Court, which was confirmed by the lower appellate Court and the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. If in the interregnum any party to the partition suit dies, then his/her share is required to be allotted to the surviving parties and this can be done in the final decree proceedings. Likewise, if the law governing the parties is amended before the conclusion of the final decree proceedings, the party benefited by such amendment can make a request to the Court to take cognizance of the amendment and give effect to the same. If the rights of the parties to the suit change due to other reasons, the Court dealing with the final decree proceedings is not only entitled but is duty-bound to take notice of such change and pass appropriate order. *Venkata Reddi and Others Vs. Pothi Reddi*, and *Gyarsi Bai and Others Vs. Dhansukh Lal and Others*, only hold that as to the matters covered by it, a preliminary decree is regarded as embodying the final decision of the court passing that decree. They do not hold that in a partition suit, a preliminary decree cannot be varied in the final decree proceedings, (paras 16, 18, 23 and 29)

By the preliminary decree, shares of the parties were determined but the actual partition/division had not taken place. Therefore, the proceedings of the suit instituted by Respondent 1 cannot be treated to have become final so far as the actual partition of the joint family properties is concerned. As on 30.07.1994 when Section 6-A came into force the final decree proceedings were pending, tech appellant had every right to seek enlargement of her share by pointing out that the discrimination practiced against the unmarried daughter had been removed by the legislative intervention and there is no reason why the Court should hesitate in giving effect to an amendment made by the State Legislature in exercise of the power vested in it under Article 15(3) of the Constitution. The trial court and the Single Judge were clearly in error when they held that the appellant was not entitled to the benefit of Karnataka Act 23 of 1994 because she had not filed an application for enforcing the right accruing to her u/s 6-A during the pendency of the First and Second appeals or that she had not challenged the preliminary decree by joining Defendants 1, 4 and 5 in filing the

Second appeal. (Paras 15 and 17)

73. Section 8 of the Hindu Succession Act, 1956 is concerned with the General rules of succession in the case of males. If a male Hindu dies intestate, the property will devolve upon the heirs mentioned in Clause I of the Schedule. In Hindu Law "ancestral property" is a species of coparcenary property. If a Hindu inherits a property from his father, then the same becomes ancestral in nature, in his hands.

74. Explanation I of Section 6 of the Hindu Succession Act, 1956 speaks a mechanism in and by which the undivided interest of a deceased coparcener can be ascertained and that the interest of 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. As such, for the purpose of finding out the undivided interest of a deceased coparcener, a notional partition has to be assumed immediately before his death and the same shall devolve upon his heirs by succession which would obviously include the surviving coparcener who, apart from the devolution of the undivided interest of the deceased upon him by succession, would also be entitled to claim his undivided interest in the coparcenary property which he would have got in national partition.

75. In terms of Section 8 of the Hindu Succession Act, 1956, the same ought to be construed in the context of Section 6 of the Hindu Succession Act, 1956. One cannot ignore an important fact that Section 4 of the Hindu Adoptions and Maintenance Act, 1956 provides for a non obstante clause. As per the terms of the said provision itself any obligation on the part of in-laws in terms of any text, rule or interpretation of Hindu Law or any custom or usage as part of law before the commencement of the Act, are no longer a tenable one.

76. This Court, in the interest of justice, points out the decision of Hon'ble Supreme Court Bhanwar Singh Vs. Puran and Others, and at p. 88 = 2008 2 L.W. 424, wherein it is held as follows:

B left behind S and three daughters. In terms of Section 8 of the Hindu Succession Act, 1956 ("the Act"), therefore, the properties of B devolved upon S and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record-of-rights. A partition had taken place amongst the heirs of B.

The First appellate Court rightly held that Section 6 of the Hindu Succession Act was not attracted to the facts of the case as S and his sisters having partitioned their properties became owners to the extent of 1/4th share each, he had the requisite right to transfer the lands falling within his share.(Paras 15 and 24)

It was rightly held that having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal

representatives of B would succeed to his interest as tenants-in-common and not as joint tenants. Therefore, the properties devolved upon them per capita and not per stirps, each one of them was entitled to alienate their share, particularly when different properties were allotted in their favour. In a case of this nature, the joint coparcenary did not continue. (Paras 15 & 25)

77. Also, this Court points out the decision of the Hon'ble Supreme Court State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh and Others, at p.327 and p. 328 = (1985) 98 L.W. 745 in paragraph 7 and 8, it is observed hereunder:

7. As observed in Mayne on Hindu Law and Usage (1953 Edn.) the joint and undivided family is the normal condition of a Hindu society. An undivided Hindu family is ordinarily joint not only in estate but in food and worship but it is not necessary that a joint family should own joint family property. There can be a joint family without a joint family property. At para 264 of the above treatise it is observed thus:

264. It is evident that there can be no limit to the number of persons of whom a Hindu joint family consists, or to the remoteness of their descent from the common ancestor, and consequently to the distance of their relationship from each other. But the Hindu coparcenary is a much narrower body... For, coparcenary in the Mitakshara law is not identical with coparcenary as understood in English law: when a member of a joint family dies, "his right accretes to the other members by survivorship, but if a coparcener dies, his or her right does not accretes to the other coparceners, but goes to his or her own heirs". When we speak of a Hindu joint family as constituting a coparcenary, we refer not to the entire number of persons who can trace descent from a common ancestor, and amongst whom no partition has ever taken place; we include only those persons who, by virtue of relationship, have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, to burden it with their debts, and at their pleasure to enforce its partition. Outside this body, there is a fringe of persons possessing only inferior rights such as that of maintenance, which however tend to diminish as the result of reforms in Hindu law by legislation.

8. A Hindu coparcenary is, however, a narrower body than the joint family. Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of a joint family and his sons, grandsons and great grandsons constitute a coparcenary. A coparcener acquires right in the coparcenary property by birth but his right can be definitely ascertained only when a partition takes place. When the family is joint, the extent of the share of a coparcener cannot be definitely predicated since it is always capable of fluctuating. It increases by the death of a coparcener and decreases on the birth of a coparcener. A joint family, however, may consist of female members. It may consist of a male member, his wife, his mother and his unmarried daughters. The property of a joint family does not cease to belong to the family merely because there is only a single male member in the family.

(See *Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, and Smt. Sitabai and Another Vs. Ramchandra*, A joint family may consist of a single male member and his wife and daughters. It is not necessary that there should be two male members to constitute a joint family. (See *N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh*, While under the Mitakshara Hindu Law there is community of ownership and unity of possession of joint family property with all the members of the coparcenary, in a coparcenary governed by the Dayabhaga law, there is no unity of ownership of coparcenary property with the members thereof. Every coparcener takes a defined share in the property and he is the owner of that share. But there is, however, unity of possession. The share does not fluctuate by births and deaths. Thus it is seen that the recognition of the right to a definite share does not militate against the owners of the property being treated as belonging to a family in the Dayabhaga law.

78. Also, in the aforesaid decision of the Hon"ble Supreme Court at page Nos. 330 and 331 in paragraph No. 10, it is observed as follows:

10. We have carefully considered the above decision and we feel that this case has to be treated as an authority for the position that when a female member who inherits an interest in the joint family property u/s 6 of the Act files a suit for partition expressing her willingness to go out of the family she would be entitled to get both the interest she has inherited and the share which would have been notionally allotted to her, as stated in Explanation I to Section 6 of the Act. But it cannot be an authority for the proposition that she ceases to be a member of the family on the death of a male member of the family whose interest in the family property devolves on her without her volition to separate herself from the family. A legal fiction should no doubt ordinarily be carried to its logical end to carry out the purposes for which it is enacted but it cannot be carried beyond that. It is no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member u/s 6 of the Act but she cannot be treated as having ceased to be a member of the family without her volition as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such female heirs. To illustrate, if what is being asserted is accepted as correct it may result in the wife automatically being separated from her husband when one of her sons dies leaving her behind as his heir. Such a result does not follow from the language of the statute. In such an event she should have the option to separate herself or to continue in the family as long as she wishes as its member though she has acquired an indefeasible interest in a specific share of the family property which would remain undiminished whatever may be the subsequent changes in the composition of the membership of the family. As already observed the ownership of a definite share in the family property by a person need not be treated as a factor which would militate against his being a member of a family. We have already noticed that in the case of a Dayabhaga family, which recognises unity of possession but not community of interest in the family

properties amongst its members, the members thereof do constitute a family. That might also be the case of families of persons who are not Hindus. In the instant case the theory that there was a family settlement is not pressed before us. There was no action taken by either of the two females concerned in the case to become divided from the remaining members of the family. It should, therefore, be held that notwithstanding the death of Sham Rao the remaining members of the family continued to hold the family properties together though the individual interest of the female members thereof in the family properties had become fixed.

79. The Learned Counsel for the Appellant/First Defendant submits that on and from 09.09.2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son, in this connection relies on the decision of the Hon"ble Supreme Court Ganduri Koteswaramma and Another Vs. Chakiri Yanadi and Another, .

80. PW1 (First Respondent/First Plaintiff) filed Ex. A18 registration copy of the Sale Deed dated 24.07.1945 by Third Defendant Elan (later on exonerated as per the memo, dated 13.10.1993 before the trial Court). As a matter of fact, a perusal of page No. 3 of Ex. A18 Sale Deed shows that the Appellant/First Defendant's father got the properties from his father and it is lucidly clear that it is an ancestral property. More so, in Ex. A18 Sale Deed, dated 24.07.1945 in page No. 3, it is mentioned that it belonged to the Appellant/First Defendant ancestrally. Ex. A7 Chitta extract for the Fasali 1377 to 1396, dated 03.10.2001 shows that several items do stand in the name of the Appellant/First Defendant's father Elan (originally Third Defendant in the suit and later exonerated).

81. Also, in Ex. A8 Chitta extract, dated 03.10.2001 for the Fasali 1397 to 1407 in and by which the suit survey number has been changed under updating scheme and a new survey number was given, in the name of the Appellant/First Defendant's father (Elan). In Ex. A19, the suit First item is subdivided as S. No. 25/8 in new survey number and other items 2 to 13 were correlated to resurvey numbers in Ex. A19 Encumbrance Certificate dated 07.12.1997. In Ex. A19, the suit item No. 11 was not co-related in new survey number. In Ex. A8 Chitta extract, dated 03.10.2001, the suit items No. 6 to 10 were co-related as new survey numbers in R.S. Nos. 74/2, 74/1, 74/3 and 75/1. Further, these items were shown in the name of the Appellant/First Defendant's father (Elan). As per Ex. A7 Chitta extract, dated 03.10.2001, suit items 1 to 3 do stand in the name of Appellant/First Defendant's father(Elan). In the present case on hand, no evidence was adduced before the trial Court to establish as to how the Appellant/First Defendant's father (Elan) has purchased the suit properties namely, whether it was a self-acquired one. Before the Trial Court, though it was pleaded that the Appellant/First Defendant's father (Elan) got the suit First item as per the Sale Deed, dated 09.04.1975 and other suit items were obtained as per numerous Sale Deeds. The concerned Sale Deeds were not filed as regards the purchase made by the Appellant/First Defendant's father. However, the recitals

in Ex. A18, Sale Deed dated 24.7.1945 unerringly point out that survey number No. 52/1 and 52/4 were the properties of the ancestral joint family properties of the Appellant/ First Defendant and his father Elan (Third Defendant).

82. The trial Court had come to a clear conclusion that the suit properties were purchased by the Appellant/First Defendant from and out of the ancestral nucleus of the joint family properties. Furthermore, the Plaintiffs proved their case that suit properties were the ancestral joint family properties of the Appellant/First Defendant and Third Defendant. Inasmuch as Ex. A18 Sale Deed Dated 24.07.1945 tacitly refers to the ancestral ownership as mentioned of by the Appellant/First Defendant's father Elan, it is a clear-cut proof (or) a conclusive proof that the properties mentioned in survey numbers in the documents are ancestral properties and the Substantial Question of Law No. 1 is so answered.

83. It is to be pointed out that in regard to the plea as to whether the Appellant/ First Defendant's father Elan (3rd Defendant) has executed a Will dated 30.06.1988 and 1.4.1992 to and in favour of the Appellant/First Defendant's sons (born through the Second wife -Fourth Respondent/Second Defendant) that after filing of the present suit, the legatee projected O.S. No. 311 of 1998 claiming right in respect of the properties as per Will in the Judgment in O.S. No. 311 of 1998 marked as Ex. A4 before the trial Court. It is held that the execution of Wills are not established and further it is held that the Appellant/First Defendant's father Elan has no right to write a Will and that Plaintiffs 2 to 4 are entitled to share in respect of the suit properties. As against the Judgment and Decree in O.S. No. 311 of 1998, dated 02.06.1999, A.S. No. 98 of 1999 has been filed and the same has been dismissed. When already the plea of execution of Wills by the Appellant/First Defendant's father namely, Third Defendant (later on exonerated) has been negated by the trial Court in O.S. No. 311 of 1998, then, in law the Appellant/First Defendant and the Fourth Respondent/Second Defendant are not entitled to take once again a plea of execution of Wills and in fact, "the Principle of Estoppel" squarely applies, in the considered opinion of this Court. Moreover, once again in the present suit in O.S. No. 482 of 1982, the Appellant/First Defendant and the Fourth Respondent/Second Defendant cannot take a plea as regards the two Wills dated 30.06.1988 and 01.04.1992 allegedly executed by the Appellant/First Defendant's father viz., Elan because of the simple fact that the principles of Res Judicata are clearly attracted.

84. In Smt. Raj Rani Vs. Chief Settlement Commissioner, Delhi and Others, , it is held that "the shares should be determined having regard to all the heirs and allotted to all of them irrespective of the fact that some of them failed to make any claim."

85. In regard to the contention of the Learned Counsel for the Appellant/First Defendant that both the Courts below have committed an error in allotting 1/4th share to the Second Respondent/Second Plaintiff and even assuming that the suit properties are ancestral properties and she is not entitled to any share over the properties because she got married prior to 25.03.1989 (viz., commencement of

the Amendment Act-Tamil Nadu Act 1 of 1990), it is pointed out by this Court that Section 6 of the Hindu Succession Act has been amended from 09.09.2005. From. 09.09.2005, the devolution of interest in a coparcenary property is governed by this Section. In a Mitakshara joint Hindu family, a daughter of a coparcener shall:

- (i) by birth become a coparcener in her own right in the same fashion as the son;
- (ii) have the same rights in the coparcenary property as she would have had if she had been a son;
- (iii) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

86. At this stage, this Court points out the decision Pravat Chandra Pattnaik and Others Vs. Sarat Chandra Pattnaik and Another, wherein it is observed and held as follows:

Submission that the daughters, who have born only after 2005, will be treated as coparceners, is not accepted. If the provision of the Act is read with the intention of the legislation the irresistible conclusion is that S.6 (as amended by Act 39 of 2005) rather gives a right to the daughter as coparcener, from the year 2005, whenever they may have born. They can claim for partition of the property which has not been partitioned earlier. But if the same was effected earlier i.e. prior to 20th December, 2004 the same should not be reopened. The daughters are entitled to a share each equal with the son as a coparcener. (Para 8)

The (Amendment) Act, 2005 was enacted to remove the discrimination as contained in S.6 of the Hindu Succession Act, 1956 by giving equal rights and liabilities to the daughters in the Hindu Mitakshara coparcenary property as the sons have. The said Act was come into force with effect from 9.9.2005 and the statutory provisions create new right. The provisions are not expressly made retrospective by the legislature. Thus, the Act itself is very clear and there is no ambiguity in its provisions. The law is well settled that where the statute's meaning is clear and explicit, words cannot be interpolated. The words used in provisions are not bearing more than one meaning. The amended Act shall be read with the intention of the legislation to come to a reasonable conclusion. Thus, looking into the substance of the provisions and on conjoint reading of sub-sections (1) and (5) of S.6 of the said act are clear and one can come to a conclusion that the Act is prospective. It creates substantive right in favour of the daughter. The daughter got a right of coparcener from the date when the amended Act was come into force i.e. 09.09.2005. (Para 7)

87. The Hindu Succession Act, 1956 is a Central Act and it overrides Tamil Nadu Act 1 of 1990, which has inserted Chapter IIA Succession by survivorship as follows:-

29-A. Equal rights to daughter in coparcenary property-Notwithstanding anything

contained in section 6 of this Act,-

(i) in a joint Hindu family governed by the mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the 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 a 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 pre-deceased 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, not with standing 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.

88. In *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum and others*, (1973) 3 SCC 283, it is held as follows:

(1) There is no justification for limiting the plaintiff's share to 1/24th ignoring the 1/4th share she would have obtained had there been a partition during the husband's life-time. In order to ascertain the shares of the heirs in the property of a deceased coparcenary property. The Explanation provides a fictional expedient namely that his share shall be deemed to be the share in the property that would have been allotted to him if a partition had taken place immediately before his death. It is therefore assumed that a partition had in fact taken place between the deceased and his coparceners immediately before his death. The assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on the assumption and ascertain the shares of the heirs without reference to it. All the

consequences which flow from a real partition have to be logically worked out, which means that the shares of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life-time of the deceased. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition. (Paras 11, 12 & 13).

89. No obligation is caused upon a Hindu to maintain the children when they attained majority and Section 20 of the Hindu Adoptions and Maintenance Act, 1956 can be considered as a bar to claim maintenance of children who have attained majority.

90. The wife is entitled to claim maintenance if her husband has any other wife living. The wife's legal right to claim as per Section 9 of the Hindu Marriage Act, 1955 the relief of restitution of conjugal rights is also not lost, in the considered opinion of this Court.

91. The Hindu Succession Act, 1956 (Central) supersedes Tamil Nadu Amendment Act 1 of 1990. In view of the Hindu Succession (Amendment) Act, 2005, Second and Third Respondents/Second and Fourth Plaintiffs are not entitled for maintenance, claim etc., since they have become coparceners with effect from 09.09.2005.

92. As a matter of fact, Hindu property right is in the concurrent list of the Constitution of India. The Central Act viz., the Hindu Succession Act, 1956 will prevail over the State Amendments.

93. One cannot be a maintenance holder and also a sharer in the estate of coparcenary property.

94. Therefore, it is clear that the Second Respondent/Second Plaintiff and the Third Respondent/Fourth Plaintiff are rightly allotted 1/4th share in the suit properties. As such, the contra contention advanced on behalf of the Appellant/First Defendant is out rightly rejected by this Court and the Substantial Question of Law No. 2 and the Additional Substantial Question of Law No. 1 are answered accordingly.

95. It is not in dispute that the Third Plaintiff (Srinivasan) born to Appellant/First Defendant and the First Respondent/First Plaintiff died during the pendency of First Appeal in A.S. No. 25 of 2002. As per Section 6 of the Hindu Succession Act, 1956, the First Respondent/First Plaintiff, being a mother of her son (Third Plaintiff), is an heir by means of succession. In law, the First Respondent/First Plaintiff (wife of the Appellant/First Defendant) is entitled to get monthly maintenance amount of Rs. 150/- (including clothing and residence) from the Appellant/First Defendant (her husband) from July 1975 till the death of her son (Srinivasan-Third Plaintiff) and thereafter, she becomes a sharer. As a sharer, she

is entitled to 1/4th share in the joint family properties. The First Respondent/First Plaintiff is entitled to receive the said sum of Rs. 150/- per month towards maintenance etc. from the Appellant/First Defendant, since she has been neglected by him and also because of the reason that the Appellant/First Defendant has married the Fourth Respondent/ Second Defendant as second wife. Accordingly, the First Respondent/ First Plaintiff (wife) is entitled to get a monthly sum of Rs. 150/- per month towards maintenance, clothing and residence from the Appellant/First Defendant (her husband) from July 1975 [leaving the period from December 1985 to December 1988 viz., for a period of three years] till the date of demise of her son (Srinivasan-Third Plaintiff). As the mother of the deceased son (Srinivasan-Third Plaintiff), the First Respondent/First Plaintiff derives 1/4th share (by means of succession) in the suit properties and therefore the allotment of 1/4th share of her in respect of the suit properties cannot be found fault with, as opined by this Court. Accordingly, the Substantial Question of Law No. 3 is answered against the Appellant/ First Defendant.

96. Respondents 1 to 3/Plaintiffs 1, 2 and 4 have filed the present suit before the trial Court praying for division of "A" Schedule properties in to five equal shares and allot three such shares to 2 to 4 plaintiffs, besides claiming maintenance to the First Respondent/First Plaintiff a sum of Rs. 100 per month, Rs. 250/- per annum for her clothing from the date of plaint till her life time and also the past maintenance for July 1975. They have also sought for maintenance a sum of Rs. 50/- per month to the Second Respondent/Second Plaintiff and Rs. 100/- per annum to be paid for her clothing from the date of plaint till date of marriage. Further, a direction has been sought to be issued to the Appellant/First Defendant to pay the Plaintiffs a sum of Rs. 180/- per annum towards residence.

97. The trial Court has awarded a sum of Rs. 150/- per month towards maintenance, clothing and residence from July 1975 to till her life time to the First Respondent/First Plaintiff (excluding the period from December 1985 to December 1988 (i.e.) for a period of three years) and also created a charge in respect of 1/4th share of the Appellant/First Defendant in the suit properties and passed a Preliminary Decree of Partition and also allotted 3/4th share jointly to Plaintiffs 2 to 4 in suit properties items 1 to 11 with costs.

98. The First Appellate Court has dismissed the A.S. No. 25 of 2002 filed by the Appellant/First Defendant by confirming the Judgment and Decree of the trial Court dated 04.12.2001 in O.S. No. 482 of 1982.

99. In the instant case on hand, the Appellant/First Defendant has married the Fourth Respondent/Second Defendant as second wife. He has neglected to maintain the First Respondent/First Plaintiff (first wife). In law, the First Respondent/First Plaintiff is validly entitled to live separately from him, when he has contracted the second marriage with the Fourth Respondent/Second Defendant.

100. Therefore, this Court, taking note of the right to claim maintenance by the

First Respondent/First Plaintiff and to provide clothing to her by the Appellant/First Defendant, directs the Appellant/First Defendant to pay a sum of Rs. 150/- per month towards maintenance, clothing and residence from July 1975 to the First Respondent/First Plaintiff (excluding the period from December 1985 to December 1988, i.e. for a period of three years) till the date of death of her son (Srinivasan-Third Plaintiff). Since the First Respondent/First Plaintiff succeeds to her deceased son's (Srinivasan-Third Plaintiff's) share, she is entitled to 1/4th share in the joint family suit properties. Till the maintenance etc. sum are paid/discharged, this Court creates a charge in respect of the 1/4th share of the Appellant/First Defendant in the suit properties. Since Respondents 2 and 3/Plaintiffs 2 and 4 are the daughters of the Appellant/First Defendant and the First Respondent/First Plaintiff, they are entitled to claim 1/4th share each in the suit properties, because they have become sharers by virtue of their coparcenary rights and legitimately in law are entitled to get their enlarged rights being determined by this Court as per Section 6 of the Hindu Succession (Amendment) Act, 2005. Inasmuch as they have become respective sharers along with other heirs and derive their rights to obtain shares in the coparcenary joint family properties, they are not entitled to claim any maintenance amount etc. by invoking the relevant provisions of the Hindu Adoptions and Maintenance Act, 1956 and accordingly, the point is so answered.

101. In the result, the Second Appeal is allowed in part, leaving the parties to bear their own costs. The Appellant/First Defendant (Husband) is directed to pay a sum of Rs. 150/- per month towards maintenance, clothing and residence to the First Respondent/ First Plaintiff (wife) from July 1975 till the date of death of her son (Srinivasan-Third Plaintiff) (excluding the period from December 1985 to December 1988 i.e., for a period of three years). Accordingly, a charge is created in respect of 1/4th share of the Appellant/First Defendant in the suit properties. The Second Respondent/Second Plaintiff and the Third Respondent/Fourth Plaintiff are allotted 1/4th share each in the suit properties, since they have become sharers. But since a substantial relief of their respective shares have been allotted by this Court in respect of the suit properties by means of partition, it is held by this Court that they are not entitled to claim any maintenance amount etc., by resorting to the provisions of the Hindu Adoptions and Maintenance Act, 1956. Accordingly, the Judgment and Decree of the trial Court in the main suit in O.S. No. 482 of 1982 dated 04.12.2001 and the Judgment and Decree in A.S. No. 25 of 2002 dated 11.12.2002 of the First Appellate Court stand modified.

102. Further, P.W. 2 Selvi and her sister Kalaiarasi born to the Appellant/First Defendant and the First Respondent/First Plaintiff have not been added as a party to the suit in O.S. No. 482 of 1982 on the file of the trial Court. Admittedly, the Appellant/First Defendant (as father) have performed their marriages. Further, they have also not claimed any right to partition. Hence, at this stage, no share can be allotted to them in respect of the suit properties. However, it is open to them to produce such evidence as permissible in law, at the time of Final

Decree Proceedings and to claim their distinct and separate share as a coparcener in the family. If that is established, it is open to the trial Court to recalculate the share (if need be) and make necessary adjustments in the allotment of shares to the respective parties.

103. In regard to the plea of the Appellant/First Defendant that some properties mentioned in the plaint schedule are not in actual existence, this Court points out that existence or non existence of properties can also be considered/taken note of by the trial Court at the time of passing of the Final Decree. Before parting with the case, on Equity, it is made clear that any excess sum paid by the Appellant/First Defendant to the First Respondent/First Plaintiff and the amounts paid to the Second and Third Respondents/ Second and Fourth Plaintiffs towards maintenance etc. shall not be recovered by the Appellant/First Defendant.