

(2007) 09 KAR CK 0032

In the Karnataka High Court

Case No : Regular Second Appeal No. 904 and 1026 of 2001

Sugalabai

APPELLANT

Vs

Gundappa A. Maradi and Others

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Constitution of India, 1950 — Article 254, 254 (2)
Hindu Succession Act, 1956 — Section 6, 6 A, 6 A (d)

Citation : (2007) ILR (Kar) 4790 : (2008) 2 KarLJ 406

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : K.S. Desai, Harsha Desai and G. Gangireddy, for the Appellant; M. Ram Bhat, for R1, G. Balakrishna Shastry and K.S. Hemalekha Advs. for R1, for the Respondent

Judgement

V. Jagannathan, J.—These two appeals are clubbed together and a common judgment is rendered in view of common question of law of considerable importance being raised concerning the question relating to a married daughter also being entitled to be treated as a coparcener irrespective of the marriage taking place prior to the Karnataka Amendment Act, 1990 coming into force or afterwards, in view of the amendment affected to the Hindu Succession Act, 1956, (for short "the Principal Act") by the State of Karnataka by The Hindu Succession (Karnataka Amendment) Act, 1990 (Karnataka Act No. 23/1994), with effect from 30th July 1994 and the subsequent amendment brought to the Principal Act by the Central Government by the Hindu Succession (Amendment) Act, 2005 (C.A. 39/2005) with effect from 9.9.2005.

2. Briefly stating the facts, RSA No. 904/2001 is preferred by the plaintiff in the trial Court questioning the judgment and decree passed by the lower Appellate Court in modifying the share of the plaintiff/appellant from 1/4* to 1/8* on the ground that the appellant being one of the daughters was not entitled to claim partition as she was not a coparcener and the said conclusion of the lower Appellate Court therefore let to the judgment and decree of the trial Court being

modified to the extent of the share of the appellant being reduced from 1/4th to 1/8th Hence, this second appeal by the plaintiff.

3. As far as R.S.A. No. 1026/2001 is concerned, the first defendant before the trial Court is the appellant herein and as the suit filed by the respondents-plaintiffs for declaration and separate possession came to be allowed by the trial Court and the appeal preferred by the appellant also came to be dismissed by the lower Appellate Court, he is before this Court in this second appeal.

4. The substantial questions of law raised for consideration in R.S.A. No. 904/2001 are as under:

i) Whether the court below could have decreed the suit when one of the respondents who had been granted 1/4th share had died during the pendency of the appeal and her heirs were not brought on record and whether the lower appellate court's judgment, therefore, is a nullity in the eye of law?

ii) Whether the court below is justified in modifying the decree passed by the trial court?

5. As regards R.S.A. No. 1026/2001 is concerned, this Court had framed the following substantial questions of law for consideration at the time of admission:

i) Whether the courts below were right in holding that suit schedule properties were self-acquired properties in the absence of evidence regarding source of income of the plaintiff and also without taking into consideration the presumption available under the Hindu Law in respect of joint family where the parties pleaded as self-acquired properties.

ii) Whether the courts below were right in applying the proviso to Section 6 of the Hindu Succession Act?

iii) Whether the impugned judgment of the courts below are erroneous for non-consideration of documentary evidence vide D-4, D-16 and D-18?

6. I have heard the submissions made by the learned Counsel Shri K.S. Desai for the appellant in R.S.A. No. 904/2001 and the learned senior counsel Shri M. Ramabhat for respondent No. 1. Arguments were addressed by the learned Counsel Shri Gangireddy for the appellant and by Shri G. Balakrishna Shastry for the first respondent in R.S.A. No. 1026/2001, but other respondents in both the appeals though served remained unrepresented.

7. Learned Counsel Shri K.S. Desai for the appellant submitted that the lower appellate court was in error in reducing the share of the appellant and following the daughter being made a coparcener by virtue of the Karnataka Amendment Act of 1990, the lower appellate court could not have taken the view that the appellant is not entitled to be treated as a coparcener. Referring to the Karnataka Amendment Act, 1990, it was submitted that by virtue of Section 6-A of the said amendment Act, 1990, a daughter of a coparcener by birth became a coparcener in her own right and therefore, at a partition in a joint Hindu family, coparcenery

property shall have to be so divided as to allot to a daughter, the same share as is allotted to a son. Hence, having regard to the change in the law effected by the Karnataka Amendment Act, 1990, the lower appellate court could not have taken the view that the appellant being one of the daughters of the deceased Ariveppa Maradi is not entitled to a share in the joint family property. It was submitted that in view of the said amendment, the question whether a daughter is also to be treated as a coparcener on par with that a son no longer remains in a doubt. It was further submitted that as the amendment Act (K.A. No. 23/94 was passed during the pendency of the appeal before the lower appellate court, it was the duty of the lower appellate court to have taken note of the changes in the law.

8. Yet, another submission made was that the appellant though was married prior to 1990, yet by virtue of amendment brought to the Principal Act by the Central Government by way of the Hindu Succession Act (Amendment) 2005, (C.A. No. 39/2005), and the said amendment Act having removed any distinction whatsoever between a married daughter and an unmarried one, the appellant is therefore entitled to be treated as a coparcener by virtue of the said amendment and therefore, even on this ground also, the view taken by the lower appellate court in reducing the share of the appellant cannot be sustained in law. In support of his submission, the learned counsel placed reliance on the decisions reported in *United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others*, : *Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc.*, : *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, : *K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai*, and also *State of Maharashtra Vs. Mrs. Kamal Sukumar Durgule and Others*, to contend that as the Karnataka Amendment Act, 1990 is repugnant to the amendment brought in by the Central Government in 2005, the law made by the parliament will have to prevail over the State legislation and, therefore, to the extent of repugnancy, Section 6A(d) of the State Amendment Act, 1990 will have to be held as void and ineffective.

9. In reply to this, learned senior counsel Sri M.Ram Bhat for R-1 submitted that the view taken by the lower appellate court does not suffer from any infirmity and as far as the application of the two amendment Acts are concerned, it is his submission that the Central amendment has been made effective only from coming into force of the Hindu Succession (Amendment) Act, 2005 and, as such, the said amendment Act has no application to the case on hand. As far as the position of a married daughter is concerned, it is submitted that by virtue of the State amendment, the question of the daughter getting a share equal to that of a son in a joint family coparcenary property will not arise in respect of a daughter who was married prior to the coming into force of the Karnataka Amendment Act, 1990 and in the instant case, as the plaintiff was married prior to the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, the question of the appellant being entitled to a share as a coparcener, therefore, will not arise and hence the lower appellate court has not committed any error while modifying the judgment and decree passed by the trial court.

10. It was further submitted by Shri M. Ram Bhat that the Central Amendment Act, 2005 is applicable only prospectively i.e., with effect from the commencement of the said amendment Act, 2005 and, as the Karnataka Amendment Act, 1990 has specifically provided in Section 6-A(d) that nothing in clause (b) therein shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, the said provision will have to prevail and the Central amendment effected in 2005 cannot be made applicable to the case of a daughter married prior to the coming into force of the Karnataka Amendment Act, 1990. In other words, it was contended that there is no repugnancy between the State amendment and the Central amendment and both can operate in their respective spheres.

11. The next submission was that, if this court were to take the view that even a married daughter will have to be treated as a coparcener even prior to the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, then, it would mean opening of the flood gate and this was not the intention of the State legislation while bringing the amendment to the Hindu Succession Act by adding Section 6A to the Principal Act. In this connection, he placed reliance on a Division Bench ruling of this court in the case of Smt. Nanjamma v. State of Karnataka ILR 1998 Kar 1094 to submit that the object of excluding the married daughters as well as cases of partition already effected from the application of the amendment Act appears to be reasonable and extending the benefit of the amendment Act to a daughter married even prior to the commencement of the Karnataka Amendment Act, 1990 is likely to unsettle the things which stood settled long back in the family.

12. Learned Counsel Shri G. Gangi Reddy for the appellant in R.S.A. No. 1026/2001, on his part, referring to the amendment to the Principal Act effected by the Central Amendment Act of 2005 as well as by the Karnataka State Amendment Act, 1990 submitted that there is no repugnancy between the provisions of the two amending Acts and insofar as the position of a married daughter is concerned, in view of the Karnataka Amendment Act, 1990 clearly providing u/s 6-A(d) the criteria for application of Sub-section (b) of Section 6A, a daughter married prior to the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, therefore, is not entitled to be allotted a share equal to that of a son at a partition in a joint family coparcenary property. It was contended that as the Central Act came to be passed subsequent to the coming into force of the State Amendment Act and when the Central Act did not delete Section 6A(d) of the State Amendment Act, it will have to be deemed that the Amendment Act of 2005 by the Centre did not repeal the State amendment and, therefore, it will have to be construed that the provisions of the Statement Amendment Act had the approval of the Centre. Therefore, there is no repugnancy between the State amendment and the Central amendment and both can hold the field and operate in their respective spheres.

13. In this regard, the learned counsel also pointed out that the Central Amendment Act, 2005 clearly mentions in Section 4 of the Amending Act, 2005 that Section 23 of the principal Act shall be omitted. Therefore, referring to this particular Section of the Amending Act, 2005, it is submitted that had the Centre intended to omit Section 6A(d) of the Karnataka Amendment Act, then, it would have declared its intention as it had done in the case of Section 23 of the principal Act. Therefore, unless the State Amendment Act stood repealed by the Central Amendment Act, the inference to be drawn is that both the amending Acts will stay in the field and both will operate. In this connection, learned counsel Shri Gangi Reddy also referred to Article 254 of the Constitution to submit that as the State Amendment Act had the assent of the President, by virtue of Sub-section (2) of Article 254, the State amendment will prevail insofar as the State of Karnataka is concerned. The said submissions were sought to be supported by the decisions reported in *Zaverbhai Amaldas v. State of Bombay* AIR 1951 SC 752, *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, *M. Karunanidhi Vs. Union of India and Another*, ; AIR 1939 74 (Federal Court) and *Deep Chand Vs. The State of Uttar Pradesh and Others*, .

14. Learned counsel Shri G. Balakrishna Shastri for R-I in R.S.A. No. 1026/2001, repelling the above submissions made by the learned counsel for the appellant, submitted that insofar the daughter being entitled to be treated as a coparcener is concerned, by virtue of the State amendment, a daughter will be entitled to the same share as is allottable to a son in a partition in the joint family coparcenary property and as far as the position of a married daughter is concerned, the learned counsel referred to the Central Amendment Act, 2005 to contend that when no such distinction is made by the Central Act between a married daughter and an unmarried daughter, it will have to be deemed that the Central Act will prevail over the State amendment as the State Amendment Act is repugnant to the provisions of the Central Amendment Act, 2005.

15. It was then submitted that when the two amending Acts are applied to a particular situation, as in the case on hand, two different results will emerge and in such an event, the amending Act that was brought into force later will have to prevail over the former. Reference was also made to Article 254 of the Constitution to submit that notwithstanding the State legislation making a law which is repugnant to the provisions of an earlier law made by the Parliament or an existing law, and the assent of the President having been received in respect of the State law, yet, the proviso to Sub-section (2) further makes it clear that nothing in Sub-section (2) shall come in the way of the Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repelling the law made by State legislature and, therefore, a careful reading of the proviso to Sub-section (2) of Article 254 will make it clear that the law made by the Parliament will prevail over the law made by the State legislature if the law made by the State legislature is repugnant to the law that is made by the Parliament.

16. In the instant case, it is submitted that, as the Central Amendment Act came into force in the year 2005, it will, therefore, have to be deemed that the Central amendment effected in 2005 will prevail over the State amendment. In support of his submissions, the learned counsel placed reliance on the decisions, V.L. Shankar and Another Vs. State of Karnataka and Another, , Zaverbhai Amaidas Vs. The State of Bombay, and Balawwa v. Hasanabi ILR 2000 Kar 4809.

17. Learned senior counsel Shri V. Tarakaram, assisting Shri Balakrishna Shastri, brought to the attention of this Court the decisions in Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., , Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, and T. Barai Vs. Henry Ah Hoe and Another, and by relying on the aforesaid decisions, it was submitted that the proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent and though the subsequent law made by the Parliament does not expressly repeal the State law, even then, the State law will become void as soon as the subsequent law of the Parliament creating repugnancy is made. Therefore, it is submitted that when the Parliament stepped in and enacted the Central Amendment Act, 2005, it being a later law made by the Parliament with respect to the same matter, the State Amendment Act, 1990, therefore, will have to be understood as having been impliedly repealed.

18. Yet another submission made was that the assent of the President was obtained in respect of the State amendment because as the law stood then, the Principal Act had no provision entitling a daughter to be treated as a coparcener on par with a son and that is the reason why the assent of the President was obtained in respect of the State Amendment Act. Once the Centre stepped in with the Amendment Act of 2005, it is submitted, that the Central Act having become a complete Code in itself, the Central amendment, therefore, will prevail over the State amendment.

19. Having thus heard the learned counsel for the parties as above, insofar as the questions of law raised in both the appeals concerning entitlement of the married daughter to a share in the property as a coparcener is concerned, two important points arise for consideration at this juncture, and they are:

(1) Whether the Hindu Succession (Amendment) Act, 2005 enacted by the Parliament providing for the daughter of a coparcener to be a coparcener by birth in her own right is applicable to the cases before us?

(2) Whether there is repugnancy between the Central Act and the State Act insofar as entitlement of a married daughter to be treated as a coparcener in view of Section 6A(d) of the Statement Amendment Act, 1990? and if so, whether Section 6-A(d) of the State Amendment Act is void and ineffective?

Point No. (1)

20. As far as applicability of the Central Act is concerned, the submission of the learned counsel Shri Ram Bhat is that the said Central Amendment Act, 2005 will come into force only from the date or the year mentioned in the Amendment Act of 2005 and not earlier to that. No doubt, in this regard, the learned counsel referred to the year mentioned in Section 3 of the Amendment Act of 2005 viz., "on and from the commencement of the Hindu Succession (Amendment) Act, 2005", to submit that the very mention of the date 20th day of December, 2004 in the proviso to Section 6(1) and the very mention of the expression "commencement of the Hindu Succession (Amendment) Act, 2005" at several places in the amendment Act, therefore, is an indication of the intention of the legislature to bring the said amendment Act into force only from the year 2005 onwards.

21. As this involves interpretation of the provisions of the amendment Act of 2005, it will be useful to keep in view the settled principles of interpretation of statutes as laid down by the Apex Court and referred to by a Division Bench of this court in the case of Mercury Press Vs. Ameen Shacoor and Others, , the principles laid down by the Apex Court in the case of Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, , have been extracted and they are as under:

(1) Statutory provisions which create or take away substantive rights are ordinarily prospective. They can be retrospective if made so expressly or by necessary implication and the retrospective operation must be limited only to the extent to which it has been so made either expressly or by necessary implication.

(2) The intention of the legislature has to be gathered from the words used by it, giving them their plain, normal, grammatical meaning.

(3) If any provision of a legislation, the purpose of which is to benefit a particular class of persons is ambiguous so that it is capable of two meanings, the meaning which preserves the benefits should be adopted.

(4) If the strict grammatical interpretation gives rise to an absurdity or inconsistency, such interpretation should be discarded and an interpretation which will give effect to the purpose will be put on the words, if necessary, even by modification of the language used.

The observations in paragraphs 15.2 to 15.4 are as under:

15.2 In Commissioner of Income Tax, Madras Vs. Indian Bank Ltd., , the Supreme Court reiterated:

In our opinion, in construing the Act, we must adhere closely to the language of the Act. If there is ambiguity in the terms of a provision, recourse must naturally be had to well established principles of construction, but it is not permissible first to create an artificial ambiguity and then try to resolve the ambiguity by resort to some general principles.

(emphasis supplied)

15.3 The principles are so succinctly stated in American Jurisprudence (2nd Edition, Vol. 73, Page 434, Pr. 366), quoted with approval in S.R. Bommai v. Union of India AIR 1994 S.C. 1980.

While it has been held that it is duty of the courts to interpret as statute as they find it without reference to whether its provisions are expedient or inexpedient. It has also been recognised that where a statute is ambiguous and subject to more than one interpretation, the expediency of one construction or the other is properly considered. Indeed, where the arguments are nicely balanced, expediency may trip the scales in favour of a particular construction. It is not the function of a court in the interpretation of statutes, to vindicate the wisdom of the law. The mere fact that the statute leads to unwise results is not sufficient to justify the Court in rejecting the plain meaning of unambiguous words or in giving to a statute a meaning of which its language is not susceptible, or in restricting the scope of a statute. By the same token an omission or failure to provide for contingencies, which it may seem wise to have provided for specifically, does not justify any judicial addition to the language of the . statute. To the contrary, it is the duty of the Courts to interpret a statute as they find it without reference to whether its provisions are wise or unwise, necessary or unnecessary, appropriate or inappropriate, or well or ill conceived.

(emphasis supplied)

15.4 Rule of interpretation are meant to ascertain the true intent and purpose of the enactment and set right any anomaly, inconsistency or ambiguity, while giving effect to it. The several rules of interpretation when juxtaposition may give an impression that they are " inconsistent with each other. Further, the same provision, when interpreted with reference to different Rules of interpretation may lead to different results. This is because the Rules of interpretation are meant to set right different types of defects. It is not possible to apply all rules of interpretation together, to a provision of law. An appropriate rule of interpretation should be chosen as a tool depending upon the nature of the defect in drafting which has to be set right. The Rules of interpretation are to be applied in interpreting the statutes, only if there is ambiguity, inconsistency, absurdity or redundancy. Where the words are clear and unambiguous, there is little need to open the tool kit of Interpretation.

22. The Apex Court, in the case of S. Sai Reddy v. S. Narayana Reddy (1993)3 SCC 647, dealing with the question with regard to the daughter's share in coparcenary property, where, on facts, the partition had taken place prior to the commencement of the amending Act, answered the point concerning disentitlement of the daughter under clause (iv) of Section 29-A of the Hindu Succession (A.P. Amendment) Act, 1986 by observing that the said question will have to be determined on the basis of the date of passing of the final partition decree by metes and bounds and where the preliminary decree had been passed

prior to the commencement of the amending Act, the final decree passed after such commencement, daughter would be entitled to a share in the coparcenary property under clause (ii) of the said Section 29-A and observed that since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women who are a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it.

23. Whether the change in the law will also affect pending appeals or not was the question considered by the Apex Court in the case of Lakshmi Narayan Guin and Others Vs. Niranjan Modak, and the observations made at paragraph-9 are as under:

9. That a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties was laid down by this court in Ram Sarup Vs. Munshi and Others, , which was followed by this Court in Mula and Others Vs. Godhu and Others, . We may point out that in Smt. Dayawati and Another Vs. Inderjit and Others, , this Court observed:

If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance.

24. As far as the use of the words "on" and "from" in the Central Act, 2005 is concerned, the submission of the learned counsel Shri Balakrishna Shastry has sufficient force behind it inasmuch as the use of the word "on" means immediately and the word "from" has been explained by a Division Bench of this court in the case of Srinivasa Silk Mills v. State of Mysore AIR 1962 Mysore 117 thus:

The word "from" is akin to "after" and if the word "from" is used for the purpose of and in reference to the computation of time, as for example, from a stated date, stated date is prima facie excluded from computations.

Thus, the two words "on" and "from" mean, therefore, immediately and after the commencement of the Amendment Act of 2005. In other words, as soon as the Amending Act of 2005 was brought into force, the daughter of a coparcener becomes, by birth, a coparcener in her own right in the same manner as the son. Since the change in the law has already come into effect during the pendency of these appeals, it is the changed law that will have to be made applicable to the case on hand. A daughter, therefore, by birth, becomes a coparcener and there is nothing in the Central Amendment Act, 2005 to indicate that the said Amendment Act will be applicable in respect of daughter born on and after the commencement of the Amending Act of 2005. The effect of the use of the expressions "on" and "from" and the expression "by birth becomes a coparcener in her own right", therefore, will have the effect of the amended law being made applicable to the pending appeals as well, having regard to the aforesaid propositions of law laid down by the Apex Court and also by a Division Bench of

this court.

25. For the aforesaid reasons, I am unable to agree with the submissions made by learned counsel Shri Ram Bhat for the respondent that the Amending Act of 2005 shall be applicable only in respect of a daughter born after coming into force of the Amending Act of 2005. The provisions of the Amending Act of 2005 will be applicable even to the pending cases as well. Point No. (1) is accordingly answered.

Point No. (2)

26. Learned senior counsel Shri Ram Bhat and Shri Gangi Reddy strongly contended that there is no repugnancy between the provisions of the Karnataka Amendment Act, 1990, which disentitles a daughter married prior to coming into force of Karnataka Amendment Act, 1990 from being entitled to be a coparcener as per Section 6-A(d), and that of the Central Amendment Act of 2005 which makes no such distinction between a married daughter and an unmarried daughter. It has been strenuously contended that as the State Amendment Act of 1990, which was brought into force from 30.7.1994 had not been expressly repealed by the Centre by specifically stating so in the Amending Act of 2005, it will have to be deemed that the provisions of both the Amending Acts shall be operative. As already referred to by me earlier, specific mention was made of the omission of Section 23 of the principal Act in the Central Amending Act of 2005.

27. Therefore, it is the argument of the learned counsel that as the State Amendment Act of 1990 had not been repealed, by virtue of Article 254 of the Constitution, the State amendment, even if appears to be repugnant to the Central Amendment Act, yet, as the State Amendment Act, 1990 had received the assent of the President, it shall prevail in the State.

28. At this juncture, it has to be mentioned that the learned counsel appearing for the parties have no disagreement with regard to the subject matter of the two amendment Acts viz., succession falling under List-III - Concurrent List of Seventh Schedule to the Constitution, and both the Centre and the State having the power to legislate on the said subject, "succession", which falls in item No. 5 of List-III - Concurrent List.

29. Before referring to the law laid down by the Apex Court in regard to Article 254, it is necessary to reproduce the said Article of the Constitution of India. It reads as under:

Article 254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent

of repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

30. When there is repugnancy between the Statement amendment and the Central amendment, which of the two will prevail, is the next question to be answered. It is not in controversy that the Karnataka Amendment Act, 1990 came into effect from 30.7.1994, whereas the Central amendment was brought by virtue of the Hindu Succession (Amendment) Act, 2005 and came into effect from 9.9.2005. It thus becomes clear that the Central Amendment Act is a later Act. So far as the propositions of law with regard to repugnancy between the law made by the State Legislature and the one made by the Parliament is concerned, dealing with Article 254 of the Constitution, the Apex Court, in the case of *T. Barai v. Henry Ah Hoe* (SUPRA), has laid down the following principles:

15. There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is "repugnant" to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception, viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent-Parliament may repeal or amend the repugnant State law, either directly, or by

itself enacting a law repugnant to the State law with respect to the same matter". Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1). That being so, when Parliament stepped in and enacted the Central Amendment Act, it being a later law made by Parliament "with respect to the same matter", the West Bengal Amendment Act stood implied repealed.

emphasis supplied"

31. In the case of *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of Tamil Nadu (SUPRA)*, referred to by the learned counsel for the appellant Shri Desai, dealing with Article 254 of the Constitution and repugnancy between the Central Act and the State Act, the Apex Court has observed thus at paragraphs-26, 31 and 32 thus:

26. It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent Legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sangi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10-A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country.

31. It would thus appear that in Section 10-A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country. No further scope is left for the operation of the State legislation in the said field which is fully covered by the law made by Parliament. Applying the tests laid down by this Court, it must be held that the proviso to Sub-section (5) of Section 5 of the Medical University Act which was inserted by the State Act requiring prior permission of the State Government for establishing a college are repugnant to Section 10-A inserted in the Indian Medical Council Act, 1956 by the Central Act which prescribes the conditions for establishing a new medical college in the country. The said repugnancy is, however, confined to the field covered by Section 10-A, viz., establishment of a new medical college and would not extend to establishment of other colleges.

32. The fact that the State Act has received the assent of the President would be of no avail because the repugnancy is with the Central Act which was enacted by Parliament after the enactment of the State Act. In view of the proviso to sub-Article (2) of Article 254 Parliament could add to, amend, vary or repeal the State Act. In exercise of this power Parliament could repeal the State Act either expressly or by implication. (See *Zaverbhai Amaldas Vs. The State of Bombay*, ; *Deep Chand Vs. The State of Uttar Pradesh and Others*, . Although the Central Act does not expressly amend or repeal the State Act but the effect of the non obstante clause in Sub-section (1) of Section 10-A which gives overriding effect to the provisions of Section 10-A over anything contained in the Indian Medical Council Act, 1956 or any other law for the time being in force, is to render inapplicable, and thereby repeal impliedly, the proviso in served in Sub-section (5) of Section 5 of the Medical University Act in the matter of establishment of a new medical college in the State of Tamil Nadu and its affiliation by the Medical University. In other words, as a result of insertion of Section 10-A in the Indian Medical Council Act, 1956 by the Central Act, with effect from August 27, 1992, the proviso to Section 5(5) of the Medical University Act has ceased to apply in the matter of establishment of a medical college in the State of Tamil Nadu and its affiliation to the Medical University and for the purpose of establishing a medical college permission of the Central Government has to be obtained in accordance with the provisions of Section 10-A. If such a permission is granted by the Central Government a further permission of the State Government under the proviso to Section 5(5) of the Medical University Act would not be required for the purpose of obtaining affiliation of such a college to the Medical University.

32. In the case of *Kulwantkaur v. Gurd1al Singh Mann* (Supra), dealing with the applicability of Section 100 of the C.P.C. as amended in 1976 vis-a-vis Section 41 of Punjab Courts Act, the Apex Court has observed thus at paragraphs-13 and 14:

13. On the doctrine of implied repeal, Mr. Mehta contended that procedural law must be having a meaningful existence without being in conflict with a parliamentary legislation. Undoubtedly, the doctrine of implied repeal is not to be favoured but where a particular provision cannot co-exist or intended to subsist in the event of there being the repugnancy between Central and State Legislature the Courts cannot but declare it to be so on the ground of repeal by implication. Uniformity of law, being the basic characteristics of Indian jurisprudence cannot be termed to be at sufferance by reason of a State Legislation which runs counter to the Central legislation. It is not necessary that one legislation should be on the positive side whereas the other one in the negative. Such a stringent requirement is not the requirement in order to bring home the issue of repugnancy, but all the same it might result when both the legislations cover the same field. This observation find support from the decision of this Court in *Zaverbhai Amaldas Vs. The State of Bombay*, wherein this Court observed (Para 11):

It is true, as already pointed out, that on a question under Article 254(1)

whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together; then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law. We must accordingly hold that Section 2 of Bombay Act No. XXXVI of 1947 cannot prevail as against Section 7 of the Essential Supplies (Temporary Powers) Act No. XXIV of 1946 as amended by Act No. LII of 1950. (vide page 809).

14. In *Zaverbhai Amaldas Vs. The State of Bombay*, this Court in no uncertain terms laid down that the important thing to consider is whether the legislation is in respect of the same matter and it is on this score true effect of Article 254(2) has been said to the effect that if both the Centre and the State though competent to enact the same, the law of the Centre should prevail over that of the State. There cannot be any divergence of views on this score having regard the language of the Article 254 and this is irrespective of the factum that constitutionality of a statute being always presumed in affirmative rather than in the negative. It is in this context that a Constitution Bench of this Court in the decision in *Karunanidhi M. Karunanidhi Vs. Union of India and Another*,) stated that before any repugnancy can arise the following conditions must be satisfied:

- (a) That there is clear and direct inconsistency between the Central Act and the State Act;
- (b) That such an inconsistency is absolutely irreconcilable;
- (c) That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

The requirement is thus a clear and direct irreconcilable inconsistency between the Central Act and the State Act and the inconsistency would be of such an extent that it would be otherwise impossible to obey the one without disobeying the other.

Further, at paragraphs-17, 18 and 19, the Apex Court went on to make the following observations:

"17. Article 254 makes it unequivocal of the supremacy of the Parliament in the matter of repugnancy of any matter falling under List I or List III. There is one exception carved under Clause (2) to a matter falling under the Concurrent List III. This supremacy is further reinforced by the proviso of this Clause (2), which records:

Provided that nothing in this clause shall prevent Parliament for enacting at any time any law with respect to the same matter including a law adding to,

amending, varying or repealing the law so made by the Legislature of the State. (Noticed again for convenience).

18. Thus, even in cases falling under Clause (2), where State law prevail, such law could be amended, varied or repealed by the Parliament by enacting law subsequently both by virtue of Clause (1) or proviso to Clause (2).

19. It is in this context a decision of this Court (I.T.C. v. State of Karnataka 1985 SCC 476) may also be noted, wherein this Court in paragraph-18 of the judgment (see page 496) had the following to state:

Thus, in my opinion, the five principles have to be read and construed together and not in isolation - where however, the Central and the State legislation cover the same field then the Central legislation would prevail. It is also well settled that where two Acts, one passed by the Parliament and the other by a State Legislature, collide and there is no question of harmonising them, then the Central legislation must prevail.

33. In the decision, M. Karunanidhi v. Union of India (Supra) referred to by the learned counsel Shri Gangi Reddy, the test for determining repugnancy has been laid down by the Supreme Court thus:

24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied -

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

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35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.
2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. That where the two statutes occupy a particular field, but there is room or

possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

In the very same decision, in paragraph-25, it is observed thus:

25. In Colin Howard's Australian Federal Constitutional Law, 2nd Edition, the author while describing the nature of inconsistency between the two enactments observed as follows:

An obvious inconsistency arises when the two enactments produce different legal results when applied to the same facts.

At paragraph-8 of the aforesaid decision, it has been laid down thus:

"8. It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e., the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however, a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.

Thus, it is clear from the above proposition of law laid down by a Constitution Bench of the Apex Court that a law made by the State Legislature which is inconsistent with and repugnant to a previous law made by the Parliament can be protected by obtaining the assent of the President under Article 254(2) of the Constitution and the said assent would enable the State law to prevail in the State and overrule the provisions of the Central Act in its applicability to the State only.

34. In yet another decision in the case of M.P. Shikshak Congress and Others Vs. R.P.F. Commissioner, Jabalpur and Others, , the Supreme Court, dealing with the issue concerning repugnancy between the State Act and the Parliamentary legislation, has observed thus at paragraph-10:

10. ...Under Article 254(1) of the Constitution, if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, then subject to the provisions of Cl.(2), the law made by the Parliament, whether passed before or after the law made by the Legislature of such State, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. The ordinary rule, therefore, is that when both the State Legislature as well as Parliament are competent to enact a law on a given subject, it is the law made by Parliament which will prevail. The exception which is carved out is under Cl. (2) of Article 254. Under this Cl.(2) where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law-made by Parliament, then the law so made by the Legislature of such State shall, if it has

been reserved for the consideration of the President and has received his assent, prevail in the State. Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

(emphasis supplied)

35. As, at the time when the Karnataka Amendment Act, 1990 was brought into force, the Central Amending Act of 2005 was not in existence and as the Central enactment which was in existence at that time was the Principal Act, the change effected by the Karnataka Amendment Act, 1990 to the Principal Act by providing for in Section 6-A of the Amending Act that a daughter of a coparcener also will have to be treated as a coparcener and that she will have to be allotted the same share as that allottable to a son, was a radical change brought about by the Karnataka Amendment Act, 1990 the assent of the President, therefore, gave protection to the said provision enabling the State amendment to prevail in the State.

36. But, the picture changed soon after the Central Amendment Act of 2005 was brought into force. Therefore, the provision of the Karnataka Amendment Act, 1990 will have to be viewed and examined in the light of the amendment brought in by the Centre by way of the Hindu Succession (Amendment) Act, 2005, and also having regard to the well settled proposition of law laid down by the Apex Court in the above mentioned cases and also the interpretation given by the Apex Court with regard to Article 254 of the Constitution.

37. In the decision reported in Zaverbhai Amaldas Vs. The State of Bombay, referred to by the learned counsel Sri. Balakrishna Shastry, the Apex Court, dealing with the question of punishment for contravention of the orders under the Essential Supplies (Temporary Powers) Act both under Bombay Act No. 36 of 1947 and under Central Act No. 52 of 1950 referring to the proviso of Article 254(2) of the Constitution has observed thus:

Now, by the proviso to Article 254(2) the Constitution has enlarged the powers of Parliament, and under that proviso, Parliament can do what the Central Legislature could not u/s 107(2) of the Government of India Act, & enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can acting under the proviso to Article 254(2), repeal a State law. But where it does not expressly do so, even then, the State law will be void under that provision if it conflicts with a later "law with respect to the same matter" that may be enacted by Parliament.

38. Further, at para 11 of the judgment, the Apex Court has ruled thus:

On a question under Article 254(1) whether an act of Parliament prevails against a law of the State, no question of repeal arises: but the principle on which the

rule of implied repeal rests, namely, that if the subject matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) where the further legislation by Parliament is in respect of the same matter as that of the State Law. We must accordingly hold that Section 2 of Bombay Act No. 36 of 1947 cannot prevail as against Section 7 of the Essential Supplies (Temporary Powers) Act (24 of 1946), as amended by Act No. 52 of 1950.

39. The important aspect to be considered with respect to Article 254(2) of the Constitution has been laid down by the Apex Court in the very same decision and the observations are as under:

The important thing to consider with reference to this provision is whether the legislation is "in respect of the same matter". If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254(2) will have no application. The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the Central and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State.

40. Learned senior counsel Sri. V. Tarakaram has also brought to the attention of this Court, the decision of the Apex Court in the case of *Kanaka Gruha Nirman Sahakara Sangha Vs. Smt. Narayanamma (Since deceased) by Lrs. and Others*, , and the Apex Court dealing with the issue concerning repugnancy between the State Legislation vis-a-vis, the Central Legislation has made the observations at paragraph Nos. 10 and 11 as under:

10. There cannot be any doubt that the article gives supremacy to the law made by Parliament, which Parliament is competent to enact. But, for application of this article, firstly, there must be repugnancy between the State law and the law made by Parliament. Secondly, if there is repugnancy, the State legislation would be void only to the extent of repugnancy. If there is no repugnancy between the two laws, there is no question of application of Article 254(1) and both the Acts would prevail. Similar issue was exhaustively dealt with by the Constitution Bench of this Court in *M. Karunanidhi v. Union of India*. In that case, the Madras Legislature, after obtaining the assent of the President of India, made an Act known as the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 (hereinafter referred to as "the State Act"). That Act was repealed in 1977. Meantime against the appellant of that matter, FIR was recorded on 16.6.1976 for prosecution under Sections 161, 468 and 471 Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. It was contended that by virtue of Article 254(2) of the Constitution of India, the provisions of the Central Act stood repealed and could not revive after the State Act was repealed. In that context, the Court considered Article 254(2) and held that there must be real repugnancy resulting from an irreconcilable inconsistency

between the State Act and the Central Acts. The Court held thus: SCC p.444, para 24)

"24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

11. The Court also referred to the earlier decisions including *Deep Chand v. State of U.P.* (SCR at p.43) wherein various tests to ascertain the question of repugnancy between the two statutes were indicated and inter alia it were held that repugnancy between two statutes may be ascertained by considering whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature. The Court also referred to *Megh Raj v. Allah Rakhia* AIR at p.30 wherein it was observed that the safe rule to follow was that where the paramount legislation does not purport to be exhaustive or unqualified there is no inconsistency and it cannot be said that any qualification or restriction introduced by another law is repugnant to the provision in the main or paramount law. The Court also referred to *T.S. Balai v. T.S. Rangachari* SCR at pp. 68, 69, 72 wherein it was inter alia observed that before coming to the conclusion that there is a repeal by implication, the court must be satisfied that the two enactments are so inconsistent that it becomes impossible for them to stand together. Finally, the Court held thus:

35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.
2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
4. That where there is no inconsistency but a statute occupying the same field

seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

41. This Court in a recent decision in *V.L. Shankar and Another Vs. State of Karnataka and Another*, , dealing with the question as to whether the assent of the President to a State Law under Article 254(2) does confer irrevocable immunity to the State Law or not, has observed thus:

It is relevant to state that the President's assent to a State Law under Article 254(2) does not confer irrevocable immunity to the State Law from the operation of the rule of repugnancy. The fact that the President's assent has been obtained for a State law under clause (2) of Article 254 will not make it immune from attack for repugnancy to a subsequent parliamentary enactment. The immunity will be available only till parliament makes any law with respect to the same matter making a provision conflicting with the State law. In view of the Proviso to clause 2 of Article 254, parliament can enact any law repugnant to the earlier State law which had received the assent of the President. When parliament enacts such a law, the State law would be void to the extent of repugnancy.

(emphasis supplied)

42. Thus, in the light of the above settled proposition of law laid down by the Apex Court and also by this Court in the aforementioned cases, I am of the view that the provision of Section 6-A(d) of the Karnataka Amendment Act, 1990 is repugnant to the Central Act of 2005 and as the Central Act is later in point of time, it will prevail over the State Act to the extent the provision of Section 6-A(d) of the State Act is repugnant or to the Central Act in so far as position of married daughter is concerned. In other words, as a result of substitution of Section 6 of the Principle Act by way of the Central Amendment Act of 2005, the State Act, which is earlier in point of time, cannot have any effect. Supremacy of the parliament, therefore renders Section 6-A(d) of the Karnataka Amendment Act, 1990, void.

43. As far as the apprehension raised by the learned senior counsel Sri. M. Ram Bhat that the flood gate would be opened, is concerned, I do not see any rational basis for the said apprehension for two reasons. (1) The Central Act of 2005 clearly mentions that a daughter of coparcener shall by birth become a coparcener in her right from the commencement of the Hindu Succession (Amendment) Act of 2005. (2) The said Central Act of 2005 also mentions in proviso to Section 6(1) that nothing contained in the sub-section 6(1) shall affect or invalidate any disposition or alienation or including any partition or testamentary or disposition of property which have taken place before 20 day of December 2004. Thus, the question of the Central Act of 2005 opening flood gates, will not arise in view of the above provisions contained in the Central Act.

44. Further, the object behind the Central Legislation also will have to be borne in mind and in the statement of "objects and reasons" to the Hindu Succession Amendment Act 2005 it has been clearly stated that having regard to the need to

render social justice to women, it is proposed to remove the discrimination contained in Section 6 of the Hindu Succession Act of 1956 by giving equal rights to daughters amongst coparcener's property as the sons have. It is this goal that has also led to Section 23 of the Principal Act being omitted by the Central Act of 2005.

45. Thus, the Central Amendment Act of 2005 is progressive legislation intended to ensure that there shall be no more discrimination on the ground of gender. I, therefore, do not find any substance in the apprehension raised by the learned counsel with regard to the opening of the Pandora's box.

46. Having thus arrived at the conclusion that the provision of Section 6-A(d) of the Karnataka Amendment Act 1990 is repugnant to the Central Act of 2005 and to the extent of repugnancy, the said provision of 6-A(d) is void and rendered ineffective, the question will arise as to from when the repugnancy of the State Act will come into effect.

47. As regards this, it is useful to refer to the decision of this Court in the case of *Ramappa Gudadappa Gudadannavar v. Chandangouda Neelangowda Goudar* 1960 MYS LJ 476. In the said case, this Court has observed that the provisions of the Hindu Succession Act, 1956 are not retrospective in their operation and in a case where succession had already opened and the estate in question had already vested in persons in accordance with the law which was in force before the Hindu Succession Act, 1956 came into force, the said succession cannot be reopened and the vesting which has taken place, cannot be divested. Following the aforesaid law laid down by this court, in the cases on hand, the repugnancy of the provision of Section 6-A(d) of the Karnataka Act will take effect from the date on which the Central Amendment Act of 2005 came into force i.e. 9.9.2005 and further, the Central Act itself makes it clear in the proviso to Section 6(1) that nothing contained in the said sub-Section 6(1) shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which have taken place before 20th December 2004. It thus becomes obvious that cases, which are covered by the said proviso, however will not be affected by the change in the law brought about by the Central Amendment Act of 2005.

48. But, as regards the pending proceedings are concerned, the law laid down by the Apex Court in the case of *United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others*, referred to by the learned Counsel Sri Desai will have to be taken note of. In the said decision, the Apex Court has observed thus:

It is well settled that it is the duty of a court whether it is trying original proceedings or hearing an appeal, to take notice of the change in the law affecting pending actions and to give effect to the same. If the law states that after its commencement, no suit shall be "disposed of or "no decree shall be passed" or "no court shall exercise powers or jurisdiction". The Act applies even to the pending proceedings and has to be taken judicial notice by the Civil Courts.

49. to view of the aforesaid position in law, in so far as the pending matters are concerned, be it suit or an appeal, the change effected by the Central Act of 2005 will have to be taken note of and hence, in respect of the pending proceedings, the Central Amendment Act of 2005 brought into force w.e.f. 9.9.2005 will have to be applied.

50. Thus, to conclude the discussion on the point under consideration, in the wake of the aforesaid principles laid down by the Apex Court and by this Court in the cases referred to above, and also taking into account the provisions contained in Section 6-A(d) of the Karnataka Act 1990 and the Central Amendment Act of 2005, I find myself fully in agreement with the submissions made by the learned senior counsel Sri. V. Tarakaram and learned counsel Sri. Desai and Sri. Balakrishna Shastry that Section 6-A(d) of the Karnataka Amendment Act 1990, cannot, but be termed as repugnant to the Central Act of 2005 and as such, the said provision contained in Section 6-A(d) which excludes a daughter, married prior to coming into force of the Karnataka Amendment Act, 1990, from being entitled to be treated as a coparcener, is void and ceases to have any affect. Point No. 1, is accordingly answered.

51. Coming to the merits of the case, in so far as RSA No. 904/2001 is concerned, as regards the first substantial question of law raised is concerned, it has to be mentioned that a perusal of the record of the lower appellate Court reveals that the third defendant, though served, remained absent and the order sheet dated 6.2.1990 mentions that the notice was served on respondent No. 3 personally and he remained absent and, therefore, service to respondent No. 3 was held sufficient. Therefore, in view of the material on record, and respondent No. 3 having been placed ex-parte, I do not see any error in so far as the lower appellate Court proceedings to pass the judgement without the heirs of the third respondent being brought on record.

52. As far as the second question of law is concerned, it is the submission of the learned counsel Sri. Desai that the lower appellate Court erred in modifying the share of the appellant from 1/4th to 1/8th and in effecting the said modification, the lower appellate Court proceeded on the footing that the appellant being a married daughter will not be entitled to claim partition as she was not a coparcener. In view of the change in the law brought about by the Karnataka Amendment Act of 1990, giving the daughter equal right as that of a son at partition in respect of co-parcenary property, and further, this Court having taken the view that Section 6-A(d) of the State Act being repugnant to the Central Act of 2005 the disability that a daughter married prior to coming into force the Karnataka Amendment Act, 1990, being ineligible, ceases to have any effect and consequently the view taken by the lower appellate Court in reducing the share of the appellant from 1/4th to 1/8th cannot be upheld in law. The Trial Court in the course of its judgement, has clearly stated that the facts which are admitted are that the plaintiff Smt. Suglabai, her sister Bhagawa and the second defendant Gollalappa, all were the children of Adivappa and Kashibai. Therefore,

following the death of Adivappa, those who remained in the family were the two sons, two daughters and wife Kashibai. Following the death of Kashibai, there were only four heirs and each one of them therefore gets 1/4th share in the suit properties. The Trial Court has therefore, rightly allotted 1/4th share to the Plaintiff Sugalabai and as the matter is still pending, it is the amended law that will have to be made applicable to the case on hand as already indicated by me while answering point No. 1.

53. The lower appellate court's judgement, therefore, cannot be sustained for the aforesaid reason. Since, as on the date of the decision rendered by the lower appellate Court in the year 2001, the Karnataka Amendment Act 1990 was already in force, the daughter also gets a share in the co-parcenary property and she gets the same share as is allotted to a son by virtue of she having become a coparcener. As on the date of this judgement being delivered, the Central Act of 2005 also having been brought into force, even the disability with regard to the disentitlement of a married daughter as mentioned in Section 6-A(d) of the Karnataka Act, also ceases to apply. I, therefore, hold that the findings of the lower appellate Court being contrary to law, cannot be sustained and thus, interference by this Court against the judgement and decree of the Lower Appellate Court becomes inevitable. Accordingly, the second substantial question of law stands answered.

54. As regards the merits of RSA No. 1026/2001 is concerned, the appellant is the first defendant before the trial court and it is his case that the court below committed serious error in allowing the suit filed by the respondent-plaintiff Ramakka and decreeing the suit of the plaintiff for declaration, partition and separate possession of the plaintiffs share in the suit property. The main contention put forward by the learned counsel Sri Gangireddy for the appellant is that the suit properties were the joint family properties and the courts below were in error in holding that the suit properties 1 to 3 are the self-acquired properties of Ravanappa, the father of the plaintiff as well as the defendants Venkata Ramanappa. It was also his submission that items 4 and 5 were the properties of the defendant as he was given the occupancy rights in respect of those two items and if at all the plaintiff has any grievance, the forum for him to agitate in respect of the suit items 4 and 5, is before the Tribunal and not the civil court. In this connection, the learned counsel placed reliance on the decision of the Apex Court reported in Mudakappa Vs. Rudrappa and others,

55. On the other hand, the learned counsel Sri Balakrishna Shastry for the respondent No. 1 -plaintiff submitted that this appeal is preferred against the concurrent finding of facts of the courts below and no error can be found in the findings recorded by the trial court as affirmed by the lower appellate court, because the said findings are based on the pleadings as well as the evidence on record. It was submitted that there was absolutely no evidence placed by the appellant or defendants to show that the suit items 1 to 3 were the joint family properties of the family and there is also no evidence to indicate that the gold

and other ornaments were sold in order to purchase the suit items 1 to 3. As regards suit items 4 and 5 are concerned, submission made is that the Tribunal under the Land Tribunals Act cannot decide the issue of partition and it is only the Civil Court that can grant the relief of partition and therefore, as the suit was filed by the plaintiff for partition and other reliefs, the trial Court had every jurisdiction to go into the said aspect of the matter notwithstanding that the suit items 4 and 5 came to the hands of the family of Ravanappa under the Tenancy Act. The decision referred to in this connection by the learned counsel is ILR 2000 KAR 4809.

56. Having thus heard the submissions made by the learned counsel for the parties and also having carefully gone through the findings recorded by the courts below on the question of the nature of the suit properties, I am of the view that both the Courts have arrived at a concurrent finding of facts by holding that all the suit properties are the self-acquired properties of Ravanappa, the father of the plaintiff and the appellant herein as well as the mother of the defendants 2 and 3. On examination of the evidence on record, the Courts below have come to the conclusion that it was Ravanappa, father of the plaintiff and the first defendant-appellant herein, who has purchased the suit items 1 to 3 on 29.12.1954 from one Smt. Parvathamma and as far as the suit items 4 and 5 are concerned, it was Ravanappa who was the tenant of the said items and he had even applied for grant of occupancy rights before the Land Tribunal, but died during pendency of the said proceedings.

57. Therefore, based on the said evidence on record and in the absence of the appellant herein, placing convincing evidence in proof of the suit items 1 to 3 having been purchased by selling the gold jewels, it cannot be said that the conclusion arrived at by the trial Court as well as the lower appellate Court that the suit items 1 to 3 were the self-acquired properties of Ravanappa, is erroneous.

58. As far as the suit items 4 and 5 are concerned, in the decision referred to by the learned counsel Sri Gangireddy, it has been laid down by the Apex Court that the rival claims for tenancy rights are to be decided by the Tribunal under the Karnataka Land Reforms Act, 1961 and the Civil Court's Jurisdiction u/s 9 of the CPC by necessary implication, therefore, stood excluded. The Court also ruled that pending the suit, the question arose as to "whether the appellant or the joint family is the tenant," and that question should be decided by the Tribunal alone u/s 48-A read with Section 133 and not by the Civil Court. The correctness of the decision of the Tribunal could be tested either in appeal or by judicial review under Article 226 or under Article 227 as the case may be.

59. Whereas, in the decision *Balawwa and Anr. v. Hasanabiand Ors.* (Supra), dealing with the suit filed by a daughter for partition in respect of the land, the occupancy rights of which had been granted to the daughter-in-law and husband of the mother of the tenant, the Apex Court has laid down the following proposition of law at paragraph No. 8:

Looking at the provisions of Section 48-A of the Karnataka Land Reforms Act and the relief which is sought for in the present case, it is difficult to hold that the Tribunal had the jurisdiction to grant the said relief so as to oust the jurisdiction of the Civil Court. u/s 48-A, the Tribunal can only grant the relief of declaring the occupancy right in favour of an appellant provided the preconditions for the same are satisfied, namely, that the land was in the possession of the tenant concerned on the relevant date. That being the position and the Tribunal under the Land Reforms Act not having the jurisdiction to grant relief of partition, the Civil Court itself has the jurisdiction to entertain the suit for partition.

60. In my considered opinion, it is the decision of the Apex Court in the above mentioned BALAWWA's case that comes into application to the case on hand and not the decision referred by the learned counsel for the appellant. This is because, in the decision referred to by the appellant's counsel, the question was with regard to who is entitled to the occupancy rights and therefore, it is only the Tribunal under the Land Tribunal's Act, which has got jurisdiction to decide the said question and not the Civil Court. Whereas, the case on hand being one in which the respondent-plaintiff had filed the suit for declaration, partition and separate possession of her share in the suit property, it is the law laid down by the Apex Court in Balawwa's case referred supra that becomes applicable.

61. Even in the said case, the facts reveal that the daughter had filed the suit for partition in respect of the land, the occupancy rights of which had been granted to the daughter-in-law and the husband of the mother of the tenant. In the case on hand also, though it was Ravanappa who was the tenant and had applied for occupancy rights, following his death during the pendency of the grant, the appellant herein stepped into his shoes and was granted the occupancy rights. As such, grant of occupancy rights in favour of the appellant herein, will have to be construed as grant made in the favour of the entire family and the rights of the parties therefore can be adjudicated by the Civil Court in a suit filed for partition. I, therefore, do not find any merit in the submission made in this regard by the learned counsel for the appellant. As such, in so far as the trial Court's finding concerning items 4 and 5 of the suit items is concerned, the said finding also does not appear to be erroneous.

62. Coming to the last of the suit items i.e. item No. 6 which is a house property, the trial court has decreed the suit of the plaintiff by declaring that even in respect of the suit item No. 6, the plaintiff is entitled to 1/3rd share. The lower appellate court has confirmed the findings of the trial court on all the issues as well as allotment of share due to the plaintiff in all the suit properties. With the enactment of the Central Amendment Act of 2005 and Section 23 of the Principal Act being omitted, the view taken by the trial court therefore, cannot be termed as erroneous or contrary to law.

63. Thus, on a careful analysis of the entire evidence on record and the reasons given by the trial court in allowing the suit of the plaintiff as well as the reasons given by the lower appellate court in confirming the judgement and decree

passed by the trial court, in my opinion, the said concurrent findings of fact of the courts below do not suffer from any of the infirmities so as to give rise to interference by this court in second appeal. In this connection, it is pertinent to refer to the law laid down by the Apex Court in the case of *Hero Vinoth v. Seshammal* AIR 2006 SCW 2833. In the said case, the Apex Court summarised the principles relating to scope of Section 100 of the Code of Civil Procedure, thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (a) the Courts below have ignored material evidence or acted on no evidence; (b) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (c) the Courts have wrongly cast the burden of proof. When refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

64. Applying the above principles of law laid down by the Apex Court with regard to interference by High Court in second appeal, I do not find any one of the exceptions mentioned in (a), (b) and (c) being attracted to the case on hand. As such, the concurrent findings of fact recorded by both the courts below do require any interference at the hands of this court. The substantial question of law raised with regard to the merits of this appeal, stands accordingly answered.

65. In the result, I proceed to pass the following:

(1) The provision of Section 6-A(d) of the Karnataka (Amendment) Act 1990 is

repugnant to the Central Amendment Act of 2005 insofar as the position of a daughter married prior to coming into force of the Karnataka Amendment Act, 1990, is concerned and as such, the Central Amendment Act of 2005 which makes no such discrimination will prevail over the State Act.

(2) To the extent the provision of Section 6-A(d) of the Karnataka Amendment Act 1990 is repugnant to the Central Amendment Act, 2005, the said provisions of Section 6-A(d) of the Karnataka Amendment Act 1990 is declared void and it shall cease to have any effect.

(3) The Central Amendment Act of 2005, which has been brought into force from 9.9.2005, shall not have any effect insofar as any disposition or alienation including any partition or testamentary disposition of property which had taken place, before the 20th day of December, 2004.

(4) In respect of pending proceedings i.e. suits/appeals, the provisions of Section 6-A(d) of the Karnataka Amendment Act 1990, to the extent it is repugnant to the Central Amendment Act of 2005, shall cease to have any effect and the said pending proceedings shall be governed by the Central Amendment Act of 2005 which has been brought into force from 9.9.2005.

RSA No. 904/2001 is allowed and judgment and decree passed by the lower appellate court is set aside and that of the trial court stands restored. No costs.

RSA No. 1026/2001 is dismissed. No costs.

This court also places on record its appreciation of the assistance rendered by the learned senior counsel Sri V. Tarakaram.

ORDER ON "BEING SPOKEN TO"

VJJ 5-10-2007

1. After this court dictated the judgment in these two appeals on 18.9.2007, subsequently, learned Senior Counsel Shri Ram Bhat for the first respondent in R.S.A. No. 904/2001 brought to my attention, two decisions of the Apex Court and wanted this court to hear him in respect of the said decisions. Therefore, this court heard the learned senior counsel Shri Ram Bhat for respondent No. 1 and also heard the learned counsel Shri K.S. Desai and learned senior counsel Shri V. Tharakaram who had assisted this court on the earlier occasion in the very same matter and the learned senior counsel Shri S.P. Shankar who also made certain submissions in respect of the decisions referred to by the learned senior counsel Shri Ram Bhat.

2. Referring to the decisions of the Apex Court reported in Sheela Devi and Others Vs. Lal Chand and Another, and Anar Devi and Others Vs. Parmeshwari Devi and Others, , learned senior counsel Shri Ram Bhat submitted that in the aforesaid decisions, the Apex Court has held that provisions of the Amendment Act, 2005, would have no application and it is the law that was prevailing under the old Act, i.e., Hindu Succession Act, 1956, that will have to be considered.

Therefore, it was contended that Central Amendment Act of 2005 could not have been applied to the case on hand and the view taken by the lower Appellate court in reducing the share of the appellant/plaintiff to 1/8th from 1/4th is just and proper. As such in the light of the aforesaid decisions of the Apex Court, this court may have to review its judgment.

3. By way of reply to the above submissions, learned counsel Shri K.S. Desai submitted that in the two decisions referred to by the learned counsel for the first defendant, what was under consideration was Sections 6 and 8 of the Hindu Succession Act, 1956, whereas in the case on hand, this court considered the case of the parties in the light of the Karnataka Amendment Act of 1990, by which Section 6-A was brought in by way of amendment to the Principal Act, and by virtue of Section 6-A(b), the daughter also became entitled to the same share as is allottable to a son in a co-parcenary property and in view of the said amendment, which was brought into force on 30.7.1994, daughter also became a coparcener by birth. Therefore, having regard to the said amendment affected by Section 6-A of the Amendment Act 23 of 1994, read with Section 8 of the Principal Act, the view taken by this court in restoring the judgment and decree of the trial court is just and proper and in the two decisions referred to by the learned senior counsel Shri M. Ram Bhat, Section 6-A which was brought in by way of amendment by the Karnataka Amendment Act of 1994 was not in question before the Apex Court, and it was under those circumstances, the Apex Court took the view that the provisions of the Amendment Act, 2005, would have no application.

4. Learned Senior Counsel Shri V. Tarakaram also submitted that the Central Amendment Act, 2005, makes it clear that Section 6 of the Principal Act stood substituted by the new Section 6 and, therefore, for all purposes, the new Section 6 will have to be read as having been incorporated into the Principal Act from day one itself. In this connection, he referred to the observations of His Lordship Justice Vivian Bose in the case of Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, which observations were also referred to by the learned senior counsel Shri S.P. Shankar.

5. In the aforesaid decision, it has been observed by His Lordship Justice Vivian Bose that the rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.

6. In view of the submissions made by the learned counsel Shri K.S. Desai and also by the learned senior counsel referred to above, I am of the opinion that two decisions referred to by the learned senior counsel Shri Ram Bhat are not applicable to the facts and circumstances of the cases on hand as Section 6-A of the Karnataka Hindu Succession (Amendment) Act (Karnataka Act No. 23/94) was not the subject matter of interpretation before the Apex Court in the

aforesaid decisions. As far as commencement of Hindu Succession Act (Amendment Act, 2005) is concerned, this court has already discussed this aspect elaborately.

7. I, therefore, see no need to change the view taken earlier. This order shall be read as part and parcel of the judgment rendered on 18.9.2007.