2026 INSC 499

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (C) NO.23709 OF 2024)

B.S. LALITHA AND OTHERS ... APPELLANT(S)

VERSUS

BHUVANESH AND OTHERS ... RESPONDENT(S)

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. Leave granted.

2. The present appeal, directed against the judgment and order dated 29.08.2024 of the High Court of Karnataka at Bengaluru in Civil Revision Petition No. 144 of 2023, whereby the revision petition filed by Respondent Nos. 1 and 2 (legal representatives of Defendant No. 4 in the suit), stood allowed setting aside the order dated 15.11.2022 passed by the LXI Additional City

Civil and Sessions Judge, Bengaluru in O.S. No. 5352/2007, allowing I.A. No. IV filed under Order VII Rule 11(a), (b) and (d) of the Code of Civil Procedure, 1908 (hereinafter, 'the CPC'), and rejecting the plaint.

3. The central question that arises in this appeal is whether the High Court was justified in allowing a second application under Order VII Rule 11 of the CPC seeking rejection of the plaint in a suit for partition filed by the daughters of a Hindu male who died intestate, when an earlier application under Order VII Rule 11(d) raising substantially the same issue had been dismissed by the High Court itself in Regular First Appeal No. 168 of 2009, and that order had attained finality. The appeal also raises the connected question of whether Section 6(5) of the Hindu Succession Act, 1956 (hereinafter, 'the H.S. Act'), as substituted by the Hindu Succession (Amendment) Act, 2005 (39 of 2005) (hereinafter, 'the 2005 Amendment'), operates as a jurisdictional bar to the institution of a suit for partition, or whether

it is in the nature of a saving clause only.

4. Sri B.M. Seenappa (hereinafter, 'the propositus') died intestate on 06.03.1985. He was survived by three daughters, namely, B.S. Lalitha, B.S. Vasanthi, and B.S. Jayanthi (Appellant Nos. 1 to 3 herein, who were the plaintiffs in the suit); his widow, Smt. Lakshmidevamma (Defendant No. 1 in the suit); and four sons, namely, B.S. Subhas (Defendant No. 2), B.S. Jai Prakash (Defendant No. 3), B.S. Ramesh (Defendant No. 4, since deceased, now represented by his sons Bhuvanesh and Venkatesh, being Respondent Nos. 1 and 2 herein), and B.S. Ravindranath (Defendant No. 5). The widow and the sons/legal representatives, are the Respondents before this Court.

5. According to the defendants, the properties of the propositus were divided orally among the sons on 06.09.1985 in the presence of Panchayatdars, pursuant to oral directions given by the propositus before his death. It is further claimed by the defendants that on

25.10.1988, money was paid to the three daughters, and they endorsed a written family partition document (Palupatti) as consenting witnesses, recording their no-objection for the brothers to divide the properties among themselves.

6. The appellants dispute both the nature and validity of these transactions. The plaint does not acknowledge or admit the Palupatti of 1988 or any oral partition; it treats the registered Partition Deed dated 16.06.2000 as the only relevant partition and characterises it as having been done “secretly” on the back of the plaintiffs. This deed was executed among the mother and the four sons whereby the properties of the propositus were divided exclusively amongst the sons and the mother. The three daughters were not parties to this deed and no share whatsoever was allotted to them.

7. On 11.07.2007, the plaintiffs/appellants filed a suit seeking partition of five suit schedule

properties and allotment of 1/8th share to each of the eight legal heirs (three daughters, four sons, and the mother). The plaint set up the case that the propositus died intestate and that the three daughters, as co-owners were entitled to a share in the properties.

8. On 25.01.2008, Defendant Nos. 1 to 3 filed I.A. No. 2 under Order VII Rule 11(d) of the CPC read with Section 151 thereof, seeking rejection of the plaint on the ground that the suit was barred by the proviso to Section 6(1), Section 6A(d) of the Hindu Succession (Karnataka Amendment) Act, 1990, and Section 6(5) of the H.S. Act. The reliance was on the registered Partition Deed dated 16.06.2000 to contend that the daughters, having been married prior to the Karnataka Amendment, had no right to seek partition. By judgment and order dated 29.11.2008, the XXII Additional City Civil Judge, Bangalore, allowed the application and rejected the plaint, holding that the suit was barred by the statutory provisions.

9. The appellants preferred R.F.A. No. 168 of 2009

before the High Court of Karnataka. The High Court, by its judgment dated 31.01.2013, allowed the appeal and set aside the order of plaint rejection, remanding the matter to the Trial Court for fresh disposal. The operative reasoning of the High Court reads as follows:

> *"In my opinion, even assuming that there is a partition in 2000 prior to 2004, even assuming that the daughters will not get the share, but it is not disputed that their father had died intestate. If they have a share in the father's share, still the suit can be maintained. If that is so, the Trial Court could not have rejected the plaint without even considering the scope of Order 7 Rule 11(d) of CPC. It is not for the Trial Court to find out whether the plaintiffs would succeed or not. That is not the ground to reject the plaint. Even assuming that the plaintiffs are likely to fail in the suit, that cannot be a ground to go into the merits and decide the matter under Order 7 Rule 11(d) of CPC. Hence, rejection per se being misconceived, is liable to be set aside."*

10. Two aspects of the 2013 order deserve emphasis. First, the High Court proceeded on the assumption most favourable to the defendants, that the partition of 2000 is valid and that the daughters do not get a coparcenary share and still held the plaint to be maintainable because the father had died

intestate and the daughters have a right in the father's share under Section 8. In other words, the ratio of the 2013 order rested not on the coparcenary rights of daughters under the 2005 Amendment, but on the independent right of daughters as Class I heirs under Section 8 of the Act. Second, this order was not challenged further by any party and attained finality. The matter was remanded to the Trial Court, issues were framed, and the suit was set down for evidence.

11. On 16.12.2021, more than eight years after the 2013 order attained finality, the legal representatives of Defendant No. 4 (Respondent Nos. 1 and 2 herein) filed a second application under Order VII Rule 11(a), (b) and (d) of the CPC, being I.A. No. IV, seeking rejection of the plaint. It is pertinent to note that the other defendants did not join this application. The application contended that the suit was barred in view of a 'change in law' brought about by the decision of this Court in *Vineeta Sharma v.*

Rakesh Sharma and Others[1], which, it was asserted, had settled that Section 6(5) of the H.S. Act operates as a complete bar to suits seeking reopening of partitions effected before 20.12.2004.

12. The appellants objected, contending that: (a) the application was barred by *res judicata* as the identical issue had been decided by the High Court in R.F.A. No. 168 of 2009; and (b) the appellants claim as daughters of a father, who died intestate, are entitled under Section 8 of the H.S. Act.

13. The LXI Additional City Civil and Sessions Judge, Bengaluru, by order dated 15.11.2022, dismissed I.A. No. IV, holding that the 2013 order of the High Court in R.F.A. No. 168 of 2009 operated as *res judicata*. The Trial Court also held, on the merits, that Section 6(5) of the H.S. Act does not create a bar to the filing of the suit.

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[1] (2020) 9 SCC 1

14. Respondent Nos. 1 and 2 thereupon filed C.R.P. No. 144 of 2023 before the High Court of Karnataka. It is significant that the other defendants did not challenge the Trial Court's order.

15. The High Court, by its impugned judgment and order dated 29.08.2024, allowed the revision petition, set aside the Trial Court's order dated 15.11.2022, allowed I.A. No. IV, and rejected the plaint.

16. While deciding the matter, the High Court addressed two issues: the first being *res judicata* and the second being the effect of proviso to Section 6(1) and Section 6(5) of the H.S. Act to the present matter. On the question of *res judicata*, it held that the principle does not apply for two reasons: first, the earlier application (I.A. No. 2) was filed by Defendant Nos. 1 to 3, whereas the second application (I.A. No. IV) was filed by the legal representatives of Defendant No. 4, and therefore the earlier order "was not passed on an application filed by Defendant No.

4(a), (b) and (d)"; and second, the decision of this Court in *Vineeta Sharma (supra)* constituted a 'change in law' which rendered the 2013 High Court order inapplicable as *Res judicata*.

17. On the question of Section 6(5) of the Act, the High Court held that the registered Partition Deed dated 16.06.2000 was saved under the proviso to Section 6(1) and Section 6(5) of the Act. The Court observed that the appellants themselves had admitted in paragraph 5 of the plaint that the defendants had partitioned the suit schedule properties, and that the only partition this could refer to was the registered deed of 16.06.2000. Since the Partition Deed was annexed to the plaint, its contents would have to be read as part and parcel of the plaint. The Court held that the saving does not distinguish between the property of the father and the property partitioned amongst other members; the partition was in respect of all properties, and therefore the question of the appellants claiming any particular right in the share of the father did not arise. The Court

further held that since the suit sought partition of the entire suit schedule property and not just the father's share, the Partition Deed was saved and the suit unsustainable.

18. The above decision of the High Court dated 29.08.2024 stands assailed in the present Appeal. On 25.10.2024, this Court issued notice and directed that status quo be maintained with respect to the subject properties. It is in the aforesaid factual backdrop and stand of the parties that the present appeal has been heard.

19. Learned counsel appearing for the appellants submitted that the impugned order is vitiated on three grounds, each of which is independently sufficient to set it aside.

20. *First*, it was submitted that the second application under Order VII Rule 11 (I.A. No. IV) is barred by the principle of *res judicata*, both inter-party and interlocutory. The issue of whether the plaint discloses a cause of action notwithstanding the registered Partition Deed

was directly and substantially in issue in the first Order VII Rule 11 proceedings, the same was heard and decided on merits by the High Court in R.F.A. No. 168 of 2009, and that decision became final. Reliance was placed on *Satyadhyan Ghosal and Others v. Deorajin Debi (Smt) and Another*[2], for the proposition that the principle of *res judicata* applies between two stages of the same litigation. It was further submitted that the High Court's observation that *res judicata* does not apply because the first application was filed by Defendant Nos. 1 to 3 and the second by the legal representatives of Defendant No. 4 is untenable, inasmuch as all defendants share a common interest and litigate under the same title within the meaning of Explanation VI to Section 11 of the CPC.

21. It was further submitted that the reliance placed by the High Court on *Vineeta Sharma (supra)* as constituting a 'change in law' which overrides *res judicata* is misplaced. The exception recognised in *Mathura Prasad Bajoo*

[2] AIR 1960 SC 941

Jaiswal and Others v. Dossibai N.B. Jeejeebhoy[3] that a subsequent change in law can render an earlier decision on a pure question of law ineffective as *res judicata* has no application, because *Vineeta Sharma (supra)* does not alter the settled position that where a Hindu male dies intestate, his property devolves under Section 8 on all Class I heirs including daughters, which was the very basis of the 2013 order.

22. *Second*, it was submitted that Section 6(5) of the H.S. Act is a saving clause, not a jurisdictional bar. It saves valid, completed partitions from the retroactive reach of the 2005 Amendment; it does not, in and of itself, bar the institution of a suit. A daughter can always file a suit for partition, and it is a matter for trial whether a valid partition within the meaning of Section 6(5) had in fact been effected. Even if the registered Partition Deed is 'saved' from being invalidated by the 2005 Amendment, the validity of that partition executed without the

[3] (1970) 1 SCC 613

knowledge or consent of the daughters and that too without giving them any share is itself a contested question that must be adjudicated at trial. An invalid or illegal partition is not saved merely because it is registered.

23. On the scope of Order VII Rule 11, the learned counsel submitted that the provision permits rejection of the plaint only where the suit appears, from the statement in the plaint, to be barred by any law. Reliance was placed on *Nusli Neville Wadia v. Ivory Properties and Others*[4], for the proposition that disputed questions of fact cannot be decided under Order VII Rule 11; and on *Mayar (H.K.) Ltd. and Others v. Owners & Parties, Vessel M.V. Fortune Express and Others*[5], for the proposition that the Court is not required to examine at the threshold stage whether the plaintiffs will ultimately succeed but only whether a cause of action is disclosed.

24. *Third*, it was contended that even assuming that the daughters are not coparceners and the

[4] (2020) 6 SCC 557 (Para 64)
[5] (2006) 3 SCC 100 (Para 11)

registered Partition Deed is saved under Section 6(5), the propositus having died intestate on 06.03.1985, his undivided share in the coparcenary property devolved by succession on all Class I heirs including the three daughters by virtue of the proviso to the erstwhile unamended Section 6 read with Section 8 of the H.S. Act. This right is independent of the 2005 Amendment and is wholly unaffected by Section 6(5). The suit is, at minimum, maintainable to the extent of the daughters' share in the father's property.

25. In such circumstances referred to above, the learned counsel prays that the appeal be allowed, the impugned order be set aside, the plaint be restored for trial, and the status quo be maintained.

26. Learned counsel appearing for the respondents submitted that the registered Partition Deed dated 16.06.2000 is a partition "effected" before 20.12.2004 within the meaning of Section 6(5) read with its Explanation, and is therefore

saved. It was submitted that the appellants themselves produced this deed with the plaint and admitted that the defendants had partitioned the suit schedule properties. Since the Partition Deed was duly registered, acted upon, and several properties further alienated to third parties who have constructed buildings and are in possession, the proviso to Section 6(1) and Section 6(5) of the amended H.S. Act save this partition from being reopened, and the suit is barred by law. Reliance was placed on the decision in *Vineeta Sharma (supra)*.

27. On *res judicata*, it was contended that *Vineeta Sharma (supra)* constitutes a change in law that overrides the 2013 order of the High Court. It was submitted that the first application was filed by Defendant Nos. 1 to 3 only, and the second by the legal representatives of Defendant No. 4 who were not applicants in the earlier proceedings, and therefore *res judicata* does not strictly apply. The learned counsel further submitted that the two applications were filed under different sub-clauses of Order VII Rule

11, the first being under clause (d) alone while the second under clauses (a), (b) and (d).

28. On merits, it was argued that there was an oral partition in 1985, a Palupatti (family settlement document) in 1988 in which the daughters received monetary consideration and endorsed the family partition, which amounts to relinquishment and estoppel. It was also submitted that the appellants have not specifically pleaded a claim under Section 8 in the plaint and cannot be allowed to take advantage of clever drafting. Reliance was placed on *T. Arivandandam v. T.V. Satyapal and Another*[6], and *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust*[7], for the proposition that frivolous and vexatious plaints are liable to be rejected.

29. We have heard the learned counsel appearing for the parties and have perused the materials

[6] (1977) 4 SCC 467
[7] (2012) 8 SCC 706

on record. The following questions fall for our consideration:

(i) Whether the second application under Order VII Rule 11 (I.A. No. IV) is barred by the principle of *res judicata*;

(ii) Whether Section 6(5) of the H.S. Act operates as a bar to the institution of a suit, warranting rejection of the plaint under Order VII Rule 11(d);

(iii) Whether the appellants have a right under Section 8 of the H.S. Act that is independent of the 2005 Amendment and unaffected by Section 6(5).

30. Before adverting to the rival submissions canvassed on either side, it is apposite to briefly advert to the settled principles governing the scope of Order VII Rule 11 of the CPC, as they form the doctrinal backdrop against which each of the three questions must be assessed for decision.

31. Order VII Rule 11(d) of the CPC provides that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. The provision is designed to weed out, at the threshold, suits which are *ex*

facie unsustainable. The scope of inquiry under this provision is, however, circumscribed. In *Saleem Bhai and Others v. State of Maharashtra and Others*[8], this Court in Para 9 held that for deciding an application under Order VII Rule 11, only the averments in the plaint are relevant and the Court cannot look into the written statement or any other external material.

32. In *Mayar (H.K.) Ltd. (supra)*, this Court in Para 9 held that the question whether the plaint discloses a cause of action is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety, taking those averments as correct. The Court cannot reject a plaint under Order VII Rule 11 if any cause of action is disclosed. In *Nusli Neville Wadia (supra)*, this Court reiterated that disputed questions of fact cannot be decided under Order VII Rule 11.

33. With the aforesaid principles as the touchstone, we proceed to examine the three questions

[8] (2003) 1 SCC 557

formulated above.

34. The principle of *res judicata* is codified in Section 11 of the CPC. It is convenient, at this stage, to reproduce the provision:

> *"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*
>
> *Explanation I.—The expression 'former suit' shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*
>
> *Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*
>
> *Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.*
>
> *Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.*

> *Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*
>
> *Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."*

35. The provision embodies a rule of conclusiveness that is founded in considerations of public policy. It rests upon the salutary doctrine that there must be a finality to litigation, and that a party which has once succeeded or failed on an issue should not be permitted to re-agitate the same at a subsequent stage. The principle applies not only between two separate suits but also between two stages of the same litigation what is referred to as 'interlocutory *res judicata.*' In *Satyadhyan Ghosal (supra)*, a three-Judge Bench of this Court in Para 8 held:

> *"The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether a trial court or a higher court having at an earlier stage decided a matter in one way will not allow the*

parties to re-agitate the matter again at a subsequent stage of the same proceedings."

36. The issue that was raised in I.A. No. IV, whether the plaint in O.S. No. 5352/2007 is liable to be rejected on the ground that the suit is barred by Section 6(5) of the Act is the same issue that was raised in I.A. No. 2, heard, and decided by the High Court on 31.01.2013 in R.F.A. No. 168 of 2009. The 2013 order held, in terms, that the plaint cannot be rejected at the threshold; that even assuming there is a partition and even assuming the daughters will not get a coparcenary share, the father having died intestate, the daughters have a right in the father's share; and that whether the plaintiffs would ultimately succeed is not a ground for rejection under Order VII Rule 11(d). That order became final. No materially different ground is raised in the second application.

37. The High Court, in the impugned order, sought to avoid the application of *res judicata* on the ground that the first application was filed by Defendant Nos. 1 to 3, whereas the second was

filed by the legal representatives of Defendant No. 4. This reasoning does not commend itself to us. All defendants are sons (or their legal representatives) of the same propositus. They share a common interest: they defend the same Partition Deed, resist the same suit for partition, and assert the same plea that the daughters have no right to the suit properties. They litigate under the same title within the meaning of Explanation VI to Section 11 of the CPC, as reproduced above.

38. In *Singhai Lal Chand Jain v. Rashtriya Swayamsewak Sangh, Panna and Others*[9], this Court clarified that if litigation was conducted bona fide to protect a common interest, the decision operates as *res judicata* against all persons interested in that right. In the present case, the defendants collectively resisted the suit and participated in the first Order VII Rule 11 proceedings. The legal representatives of Defendant No. 4 cannot be heard to say that the 2013 order does not bind them merely because

[9] (1996) 3 SCC 149

their predecessor did not file the application that gave rise to that order. The interest asserted is indivisible; the parties litigate under the same title.

39. We may further observe that Explanation IV to Section 11 of the CPC provides that "any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit." The respondents' submission that the two applications were filed under different sub-clauses of Order VII Rule 11, the first under clause (d) alone and the second under clauses (a), (b) and (d) is of no consequence. The ground that the plaint does not disclose a cause of action [clause (a)] or is defective [clause (b)] could have been, and indeed ought to have been, raised in the first application. The mere invocation of additional sub-clauses in the second application does not take the matter outside the scope of *res judicata*. The substance of the issue, whether the plaint should be

rejected on the ground that the suit is barred by Section 6(5) of the H.S. Act, remains the same. A party cannot circumvent the finality of an adverse order by re-framing the same challenge under a different procedural provision.

40. The second limb of the High Court's reasoning, that *Vineeta Sharma* constitutes a 'change in law' which overrides *res judicata* is equally unsustainable. It is true that in *Mathura Prasad Bajoo Jaiswal (supra)*, this Court in Para 9 held that a subsequent change in law can render an earlier decision on a pure question of law ineffective as *res judicata*. However, this exception applies only where the legal basis of the earlier decision has been undermined by the subsequent pronouncement.

41. The question, therefore, is whether *Vineeta Sharma* effects any change in the law relevant to the 2013 order. The answer, in our view, is in the negative. The 2013 order proceeded on the basis that even assuming the daughters are not coparceners and the partition is valid, the father

died intestate and the daughters have a right in the father's share under Section 8 of the H.S. Act. *Vineeta Sharma (supra)* deals with the scope of the 2005 Amendment vis-à-vis coparcenary rights and the saving clause for pre-2004 partitions. It holds, inter alia, that daughters become coparceners by birth, that the 2005 Amendment is retroactive in nature, and that Section 6(5) saves only partitions effected before 20.12.2004 by registered deed or court decree. What *Vineeta Sharma* (s*upra)* does not do is alter the settled position which was the foundation of the 2013 order, that where a Hindu male dies intestate, his property devolves under Section 8 on all Class I heirs including daughters. The "basis" of the 2013 judgment remains entirely undisturbed by *Vineeta Sharma*. The High Court's reasoning that *Vineeta Sharma (supra)* did away with the basis of the 2013 order is, with respect, erroneous.

42. The second application is a transparent attempt to re-agitate a concluded issue by dressing it in the garb of *Vineeta Sharma (supra)*, which, as

we have noted above, has no bearing on the core question decided in 2013. The issue raised in the second application was directly and substantially settled by the 2013 judgment. No different factual or legal ground was raised that takes the second application outside the scope of that settled determination. On this ground alone, the impugned order is liable to be set aside.

43. Though the second application is barred by *res judicata*, but for the sake of clarity and completeness, we consider it appropriate to address the question of whether Section 6(5) of the H.S. Act operates as a bar to the suit. Before doing so, it is necessary to set out in brief the relevant statutory provisions and the legislative history.

44. The erstwhile Section 6 of the H.S. Act, as originally enacted in 1956, read as under:

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

property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a shano in the interest referred to therein."

45. The proviso to the erstwhile Section 6 is of particular significance to the present case. It provided that where the deceased coparcener left behind a female relative specified in Class I of the Schedule, which includes daughters, his interest in the coparcenary property would devolve by intestate succession under the H.S.

Act (that is, under Section 8) and not by survivorship. It is this proviso, read with Section 8, that conferred upon the appellant-daughters a right in the father's share upon the father's intestate death in 1985, well before the 2005 Amendment came into force.

46. The substituted Section 6 of the H.S. Act, as amended by the 2005 Amendment and came in force with effect from 09.09.2005, reads as under:

> *"6. Devolution of interest of coparcenary property.—*
>
> *(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—*
>
> *(a) by birth become a coparcener in her own right in the same manner as the son;*
>
> *(b) have the same rights in the coparcenary property as she would have had if she had been a son;*
>
> *(c) 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:*
>
> *Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition*

or testamentary disposition of property which had taken place before the 20th day of December, 2004.

xxx xxx xxx

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.—For the purposes of this section 'partition' means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

47. Two features of the substituted Section 6 merit emphasis. First, sub-section (1) confers upon the daughter of a coparcener the status of coparcener by birth, in the same manner as a son. Second, sub-section (5), read with its Explanation, saves from the reach of the substituted Section 6 only those partitions that have been effected before 20.12.2004 by a registered deed or a court decree. The proviso to sub-section (1) and sub-section (5) are, in substance, saving provisions, they preserve the validity of completed past transactions from being unsettled by the new coparcenary rights conferred upon daughters.

48. The legislative history illuminates the purpose of these saving provisions. The Hindu Succession (Amendment) Bill, 2004 was introduced in the Rajya Sabha on 20.12.2004. The Statement of Objects and Reasons noted that the retention of the Mitakshara coparcenary without including females "contributes to her discrimination on the ground of gender" and "has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution." The Bill sought to remove this discrimination by giving equal rights to daughters. The Standing Committee of Parliament recommended, inter alia, that the partition of Hindu family property should be properly defined in the Amendment Act, and suggested that partition for all purposes should be either by registered documents or by decree of court. This recommendation was incorporated in the Explanation to Section 6(5).

49. Before adverting to the decision of this Court in

Vineeta Sharma (supra), it is necessary to notice the earlier decision of this Court in *Ganduri Koteshwaramma and Another v. Chakiri Yanadi and Another*[10]. The question before the Court was whether a preliminary decree of partition amounts to a "partition effected" within the meaning of Section 6(5). The Court answered in the negative. Reading the Explanation appended to Section 6(5), the Court held that the non-applicability of the section is attracted only where partition has been effected before 20.12.2004 by a registered deed of partition or by a decree of a court. A preliminary decree, the Court reasoned, does no more than determine the rights and interests of the parties and it is the final decree that partitions the immovable property by metes and bounds. The suit for partition remains pending in the interregnum, and if supervening circumstances arise between the preliminary and final decree, there is no impediment to the court amending the preliminary decree or passing a fresh one to

[10] (2011) 9 SCC 788

reflect the changed situation.

50. This Court, in *Vineeta Sharma (supra)*, settled the law governing the interpretation and scope of the substituted Section 6 of the Act. The Court held that Section 6(1), as substituted by the 2005 Amendment, confers coparcenary status upon the daughter by birth, in the same manner as a son, and that the provision is retroactive in nature, the daughter is deemed a coparcener from birth, though the rights are claimable only with effect from 09.09.2005. The Court further held that the father coparcener need not be living as on that date. On the scope of the saving clause, the Court held that Section 6(5), read with its explanation, saves only partitions effected before 20.12.2004 by a registered deed of partition or by a decree of a court; no other form of partition is recognised.

51. The Court in *Vineeta Sharma (supra)* was particularly concerned with the potential for misuse of the saving clause. It held that the special definition of partition in the Explanation

to Section 6(5) was deliberately enacted to prevent daughters from being deprived of their coparcenary rights through fraudulent or collusive pleas of oral partition or unregistered memoranda of partition. A plea of oral partition based solely on oral evidence must be rejected outright and only in exceptional cases, where such a plea is supported by public documents and is evinced in the same manner as a partition effected by a court decree, may it be entertained. The Court underscored that the object of the beneficial provisions of the 2005 Amendment to secure the equal rights of daughters as coparceners must be given full effect, and courts must not permit that object to be defeated by the setting up of sham or frivolous defences.

52. In *Prasanta Kumar Sahoo and Others v. Charulata Sahu and Others*[11], a two-Judge Bench of this Court reiterated the narrow scope of Section 6(5). The Court held, following *Ganduri Koteshwaramma (supra)*, that a

[11] (2023) 9 SCC 641

preliminary decree of partition does not constitute a "partition effected" under Section 6(5); only a final decree effects partition by metes and bounds. The Court also held that a settlement under Order XXIII Rule 3 of the CPC without the consent and signatures of all co-sharers cannot be sustained.

53. The import of the foregoing decisions, read together, is that Section 6(5) is a saving clause of strict and narrow application. It saves from the retroactive reach of the 2005 Amendment only those partitions that have been *effected* that is, completed and finalised before 20.12.2004 by a registered deed or a court decree. It does not create a jurisdictional bar to the institution of a suit. The distinction between a "bar" and a "saving clause" is legally significant. While a bar prevents the Court from entertaining the suit at all, but a saving clause on the other hand provides a defence on merits that must be proved by the party asserting it.

54. In the present case, the plaint does not admit a

concluded and binding partition. It characterises the registered Partition Deed of 2000 as having been executed by the wife and sons on the back of the daughters, without their knowledge or consent. The validity of such a partition executed secretly behind the daughters' backs without giving them any share is quintessentially a contested question of fact and law requiring evidence on the nature of the property, the mode of devolution, and the validity of the alleged partitions (oral, Palupatti, and registered). To treat Section 6(5) as foreclosing this inquiry at the threshold is to conflate the existence of a registered deed with the conclusion that the partition is valid and binding on all persons. That conflation is impermissible at the stage of Order VII Rule 11.

55. The High Court's further reasoning that the saving under Section 6(5) does not distinguish between the property of the father and the property partitioned amongst other members, and that therefore, the question of the appellants claiming any particular right in the

share of the father does not arise amounts, in substance, to an adjudication on the merits of the suit at the threshold stage. Whether the properties devolved on the sons by survivorship as coparcenary property, or whether the propositus having died intestate in 1985, his undivided share devolved by succession under Section 8 on all Class I heirs including the daughters, is the central contested question in the suit. This is a mixed question of fact and law. It cannot be resolved by reference to the Partition Deed alone; it requires evidence and adjudication. The High Court, in answering this question against the appellants at the revisional stage, exceeded the permissible scope of inquiry under Order VII Rule 11 and, indeed, the revisional jurisdiction under Section 115 of the CPC.

56. The respondents' reliance on the oral partition of 1985 and the Palupatti of 1988 to argue relinquishment and estoppel on the part of the appellants is, in substance, a defence on the merits. The plaint does not admit these facts.

They cannot be adjudicated at the Order VII Rule 11 stage. As this Court has consistently held, the averments in the plaint are to be taken as they stand for the purposes of Order VII Rule 11, and the plaint can be rejected only if, taking those averments as correct, the suit is shown to be barred by law. No such bar is disclosed.

57. The respondents' reliance on *T. Arivandandam (supra)* and *Church of Christ Charitable Trust (supra)*, does not assist their case. Those decisions deal with plaints that are palpably frivolous or vexatious or that do not disclose any cause of action whatsoever. The present plaint is not of that character. It sets up a specific case of intestate death of the propositus, claims a right as Class I heirs under Section 8, and challenges the validity of a partition executed without the daughters' knowledge or consent. The plaint discloses a clear cause of action that warrants adjudication at trial.

58. The High Court's reasoning that since the suit sought partition of the "entire" suit schedule

properties and not just the father's share, the suit was unsustainable, conflates the scope of the relief claimed with the maintainability of the suit. Even if the appellants claimed a larger relief than they may ultimately be entitled to, that is not a ground to reject the plaint under Order VII Rule 11. A plaint claiming relief in excess of what may be ultimately decreed is not thereby rendered barred by law.

59. There is a further dimension to the matter which fortifies the conclusion that the plaint cannot be rejected at the threshold. To appreciate this, it is necessary to briefly set out the scheme of devolution under the H.S. Act as it stood at the time of the death of the propositus in 1985.

60. Section 8 of the H.S. Act provides for the rules of succession governing the devolution of property of a Hindu male dying intestate. The provision reads:

> *"8. General rules of succession in the case of males.—The property of a male Hindu dying*

intestate shall devolve according to the provisions of this Chapter—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

61. Class I of the Schedule to the Act includes, inter alia, son, daughter, widow, and mother. The daughter is a Class I heir and takes simultaneously with the son and the widow. There is no dispute that the three appellants are Class I heirs of the propositus under Section 8 of the Act.

62. The scheme of devolution under the unamended Act, as it stood in 1985, operated as follows. Under the main part of the erstwhile Section 6, the interest of a male Hindu in Mitakshara coparcenary property devolved, upon his death, by survivorship upon the surviving members of the coparcenary. However, the proviso to the

erstwhile Section 6 which we have reproduced in paragraph 44 above, created a statutory exception: if the deceased had left behind a female relative specified in Class I of the Schedule (which includes a daughter), then his interest in the coparcenary property would devolve not by survivorship but by testamentary or intestate succession under the Act. The effect of the proviso was to take the deceased's share out of the survivorship pool and subject it to devolution under Section 8. A notional partition was deemed to take place immediately before the death of the coparcener, under Explanation 1 to the erstwhile Section 6, for the purpose of ascertaining the share of the deceased.

63. Applying this scheme to the facts of the present case: the propositus died intestate on 06.03.1985, leaving behind three daughters (who are Class I heirs) besides others. The proviso to the erstwhile Section 6 of the H.S. Act was thereby attracted. A notional partition was deemed to have taken place immediately before the death of the propositus. His undivided

share, as ascertained by such notional partition, devolved by intestate succession under Section 8 on all Class I heirs, including the three daughters. This right of the daughters in the father's share accrued in 1985, under the unamended Act. It is wholly independent of the 2005 Amendment and predates it by two decades.

64. Section 6(5) of the H.S. Act, as substituted by the 2005 Amendment, provides that "nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004." The words "nothing contained in this section" refer to the substituted Section 6, that is, the new coparcenary rights conferred upon daughters by Section 6(1). Section 6(5) saves pre-2004 partitions from the retroactive reach of those new coparcenary rights. It does not, and on its plain language cannot, purport to extinguish the pre-existing rights of Class I heirs under Section 8, which accrued independently of the 2005 Amendment by operation of the proviso to

the erstwhile Section 6 read with Section 8. The saving clause operates within the four corners of Section 6 and it does not override or abrogate the independent devolution that occurs under Section 8 upon the intestate death of a Hindu male. To hold otherwise would be to give Section 6(5) a reach far beyond its language and purpose.

65. The 2013 order of the High Court proceeded on precisely this basis. The operative reasoning of the High Court in R.F.A. No. 168 of 2009 which we have reproduced in paragraph 9 above held that even assuming the daughters are not coparceners and the partition is valid, the father having died intestate, the daughters have a share in the father's share, and the suit can be maintained. *Vineeta Sharma (supra)* does not touch this reasoning rather it deals with the coparcenary rights of daughters under the substituted Section 6(1). It does not address, let alone alter, the independent right of daughters as Class I heirs under Section 8 upon the intestate death of their father. The proposition

that upon the intestate death of a Hindu male, his property devolves on all Class I heirs under Section 8 including daughters is a settled proposition of law that predates the 2005 Amendment and has remained undisturbed by any subsequent decision of this Court.

66. The respondents claim that the appellants failed to specifically request a claim under Section 8 and therefore have no right or entitlement is misplaced as the wording of the plaint itself clearly refutes this argument. The plaint sets up the case that the propositus died intestate and that the daughters, as legal heirs, are entitled to a share in his properties. It claims 1/8th share for each of the eight legal heirs. The plaint need not recite the specific section number, it suffices that the bundle of facts pleaded brings the case within the ambit of Section 8. As this Court held in *Mayar (H.K.) Ltd.* (supra), the question whether the plaint discloses a cause of action is to be gathered on the basis of the averments made in the plaint in its entirety, taking those averments as correct. The rights of the parties

are to be determined by the Court on the basis of the facts pleaded, not on the nomenclature of the statutory provision invoked.

67. The suit is, at minimum, maintainable to the extent of the appellants' claim in the share of the propositus, and the plaint cannot be rejected at the threshold on the ground that Section 6(5) saves the registered Partition Deed. Even assuming the partition is valid and is saved under Section 6(5), a question on which we express no opinion, the daughters' right in the father's undivided share, which devolved on them by operation of law in 1985, is not extinguished by the subsequent partition of 2000. Whether the Partition Deed of 2000 is binding on the daughters, who were not parties to it, in respect of the father's share, is a question for the Trial Court to adjudicate upon evidence.

68. Before concluding, we may advert to a further aspect. The High Court exercised its jurisdiction under Section 115 of the CPC. The revisional

jurisdiction is supervisory in nature and limited in scope; the High Court may interfere only if the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. In the present case, the Trial Court's order dismissing I.A. No. IV was a reasoned order correctly applying the principle of *res judicata* with reference to the 2013 order and rightly holding that Section 6(5) does not bar the suit. In setting aside that order and rejecting the plaint, the High Court surpassed its jurisdiction, it not only conducted an independent and *de novo* appraisal of the merits of the dispute, the scope of the Partition Deed but also the rights of the parties under Section 6(5) at the threshold stage. This exceeded the permissible scope of revisional jurisdiction under Section 115 of the CPC.

69. We express no opinion on the merits of the suit, including the validity of the registered Partition Deed, the nature and devolution of the suit

properties, the effect of the oral partition or the Palupatti, or the shares of the parties. These are questions for the Trial Court to adjudicate upon evidence adduced by the parties. We observe only that the plaint discloses a cause of action that is not barred by any provision of law, and that the rejection of the plaint at the threshold was not warranted. The appellants' right to have their suit adjudicated on the merits cannot be foreclosed by a second Order VII Rule 11 application that is itself barred by *res judicata*.

70. We may draw our conclusions as under:

(i) The second application under Order VII Rule 11 of the CPC (I.A. No. IV, filed 16.12.2021 by the legal representatives of Defendant No. 4) is barred by the principle of *res judicata*, inasmuch as the identical issue was directly and substantially in issue in the first Order VII Rule 11 proceedings, was heard and decided by the High Court in R.F.A. No. 168 of 2009 by its order dated 31.01.2013, and that order

attained finality. The legal representatives of Defendant No. 4 litigate under the same title as Defendant Nos. 1 to 3 within the meaning of Explanation VI to Section 11 of the CPC, and the decision of this Court in *Vineeta Sharma (supra)* does not constitute a 'change in law' relevant to the basis of the 2013 order.

(ii) Section 6(5) of the H.S. Act is a saving clause of narrow and strict application. It does not create a jurisdictional bar to the institution of a suit for partition. Whether a valid partition within the meaning of Section 6(5) has been effected, and whether such partition is binding on persons who were not parties to it, are contested questions of fact and law that must be adjudicated at trial. The High Court erred in rejecting the plaint at the threshold on the basis of Section 6(5).

(iii) The appellants have an independent right under Section 8 of the H.S. Act, 1956

as Class I heirs of the propositus who died intestate on 06.03.1985. This right accrued in 1985 by operation of the proviso to the erstwhile Section 6 read with Section 8, is independent of the 2005 Amendment, and is unaffected by Section 6(5). The suit is maintainable, at minimum, to the extent of the appellants' claim in the share of the propositus.

71. In the light of the foregoing discussion, we are of the considered view that the High Court committed an error in allowing the second application under Order VII Rule 11, which was barred by *res judicata*, in holding that Section 6(5) of the Act creates a bar to the institution of the suit, and in rejecting the plaint at the threshold without permitting the trial to proceed on the contested questions of fact and law. The impugned judgment and order dated 29.08.2024 passed by the High Court of Karnataka in C.R.P. No. 144 of 2023 is accordingly set aside. The order dated 15.11.2022 passed by the LXI Additional City

Civil and Sessions Judge, Bengaluru, dismissing I.A. No. IV, is restored. The plaint in O.S. No. 5352/2007 shall stand restored to file.

72. The status quo with respect to the subject properties, as directed by this Court's order dated 25.10.2024, shall continue to remain in operation until further orders of the Trial Court.

73. The Trial Court shall proceed with the suit expeditiously and endeavour to conclude the trial at an early date.

74. The appeal is allowed in the above terms. No order as to costs.

75. Pending applications, if any, stand disposed of.

.....J.
[SANJAY KAROL]

.....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
MAY 15, 2026.