THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

I.A. Nos. 1, 2, 3 & 4 of 2026
in
A.S. No. 118 of 1990

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Virupaksha Dattatreya Gouda, representing Sri Vivekananda Virupaksha, learned counsel for the applicants in I.A.Nos.1 & 2 of 2026, Sri T. Nikhilesh, learned counsel for the applicants in I.A.Nos.3 & 4 of 2026, Sri Salar Aatif, learned counsel, appearing on behalf of Sri Ganta Ediga Rakesh, learned counsel for respondent No.1 through virtual mode and Sri P. Rajasekhar, learned counsel for respondents No.2 & 3.

I. FACTS:

2. One Vale Mareppa had half share in the property in question. One Vale Nagamma is his widow. Busappa is their son and Mandlem Veeramma @ Eramma is their daughter. The widow and daughter plaintiffs 1 and 2 respectively filed O.S.No.33 of 1988 against the daughters of Busappa (Busappa died in 1985) impleading them as defendants for partition and separate possession. The suit was decreed partly vide decree dated 17.10.1989. The preliminary decree was passed. The 1st plaintiff (widow) was held entitled for partition and separate possession of her 1/4th share in the plaint schedule properties. The 2nd

plaintiff (daughter) was not allowed any share. Based on Gift by late Busappa (son, since deceased), in favour of one of his daughters, the 2nd defendant in the suit, the learned trial Court directed that Ac.5.00 of land out of items 1 to 8 of the plaint schedule properties out of and towards the share determined for late Busappa, shall be worked out at the time of passing of final decree. In other words, as per the trial Court decree, in the share determined for late Busappa (son) after excluding Ac.5.00 of land from the share of late Busappa, in the rest of his share of the plaint schedule properties all his daughters were to be given equally. Plaintiff Nos.1 and 2 (widow and daughter) filed appeal AS No.118 of 1990 and the defendants filed appeal AS No.2209 of 1989. The appeal filed by the plaintiffs (widow and the daughter) AS No.118 of 1990 was partly allowed, vide decree dated 26.09.2003. The trial Court decree was modified to the extent that the plaintiffs and Busappa, were held entitled to 1/6th share each (i.e. 1/3rd each in ½ share of late Vale Mareppa). AS No.2209 of 1989 filed by the defendants was dismissed, vide the common judgment, dated 26.09.2003.

3. The Appellate Court (Coordinate Bench of this Court) in the appeals held that, the widow (1st plaintiff) was interested in the property after the death of her husband and as per Section 14 (1) of the Hindu Succession Act, her share had ripened and she became the absolute and full owner of the property. With respect to the 2nd plaintiff (daughter) the

Appellate Court did not agree with the trial Court in not giving any share to her and holding that there was neither any prohibition nor any bar created by law under Hindu Succession Act that disentitled a person from getting any share from the Joint Hindu Family, if such person was addicted to any vices, the 2nd plaintiff (daughter) was also held entitled to equal share with his brother in the half share of late Mareppa. The Appellate Court thus granted equal shares 1/3rd each in half share of Mareppa to the 1st plaintiff (widow), the 2nd plaintiff (daughter) and Busappa (son). The preliminary decree of the trial Court was thus modified by the Appellate Court (this Court). SLP Nos.11792-11793 of 2004 were filed challenging the Appellate Court's decree but those were dismissed by the Hon'ble Apex Court on 08.12.2006. Review Petition (Civil) No.362 of 2007 filed by the defendants was dismissed on 17.07.2007 and the Curative Petitions (C) No.140-141 of 2011 were also dismissed by the Hon'ble Apex Court on 12.01.2012. So, the preliminary decree passed by the Coordinate Bench of this Court in A.S.No.118 of 1990 attained finality.

4. The defendants filed I.A.No.959 of 2012 under Order 26 Rules 13 and 14 read with Section 151 CPC to appoint an Advocate-Commissioner and to divide the shares by metes and bounds for passing final decree. The 2nd plaintiff had transferred some properties in favour of subsequent purchasers. Out of those subsequent purchasers, the present applicants

in I.A.No.1 of 2026, three in number filed I.A.No.492 of 2021 in I.A.No.959 of 2012 for modification of the preliminary decree in O.S.No.33 of 1988 before the Principle Senior Civil Judge, Kurnool i.e., the trial Court. They claimed to modify the preliminary decree allotting 5/9th share to the 2nd plaintiff (daughter, namely, Mandlem Veeramma @ Erramma) claiming as per the law as laid down by the Hon'ble Apex Court in ***Vineeta Sharma v. Rakesh Sharma***[1] conferring the status as coparcener on the daughter born before or after amendment of Section 6 of the Hindu Succession Act in the same manner as a son with same rights and liabilities. 2nd plaintiff's share 5/9th as claimed included the share of 1st plaintiff based on an alleged Will of 1st plaintiff in favour of the 2nd plaintiff. However, during course of hearing, they filed a Memo restricting the share of Mandlem Veeramma (2nd plaintiff) to ½ share instead of 5/9th share as was originally claimed in the modification application. I.A.No.492 of 2021 wad allowed on 14.12.2022 by the Principal Senior Civil Judge, Kurnool, modifying the preliminary decree to the extent of allotting ½ share to the deceased 2nd plaintiff/Mandlem Veeramma @ Eramma, as a coparcener by virtue of Amendment Act to Section 6 of the Hindu Succession Act in respect of the suit schedule properties. The Order dated 14.12.2022 was passed modifying the preliminary decree as follows, in para-31 of the said judgment:

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[1] (2020) 9 SCC 1

"31. In the result, this petition is allowed without costs modifying the preliminary decree to the extent of allotting ½ share to the deceased 2nd plaintiff/Mandlem Veeramma @ Eramma being coparcener by virtue of Amendment Act to Section 6 of Hindu Succession Act in respect of suit schedule properties in O.S.No.33/1988.

The findings in original preliminary decree regarding equities may be worked out by allotting Ac.5.00 cents out of items No.1 to 8 gifted to 2nd defendant i.e. Kodumuru Saraswathi by her father late Busappa from and out of ½ share of Busappa at the time of passing final decree, stands as it is in the original preliminary decree and unaltered."

5. The 1st defendant in the suit filed CRP No.2822 of 2022 challenging the Order dated 14.12.2022 in I.A.No.492 of 2021. The same was allowed by this Court vide judgment dated 14.06.2023. The Order under challenge was set aside. The learned single Judge had taken the view that the preliminary decree originally passed in the suit was modified in appeal by the Appellate Court, so, the trial Court had no jurisdiction to entertain the application for modification of the preliminary decree under Section 151 CPC. Further direction was issued to the learned trial Court where the proceedings of final decree were pending to expedite the final decree proceedings strictly in accordance with law. Paragraphs 24 and 25 of the judgment in CRP No.2822 of 2022 are reproduced as under:

"24. In the considered opinion of this Court, the Principal Senior Civil Judge, Kurnool has no jurisdiction to entertain the application. In fact, when a ground is raised in the counter, the trial Court ought to have framed point or issue. However, no such issue or point was framed by the trial Court. Since the trial Court has no jurisdiction to entertain the application under Sectionm 151 of CPC, the order under revision if

> allowed to continue would amount to manifest injustice. Accordingly, the Order dated 14.12.2022 in I.A.No.492 of 2021 in I.A.No.959 of 2012 in O.S.No.33 of 1988 on the file of Principal Senior Civil Judge, Kurnool is set aside. I.A.No.491 of 2021 in I.A.No.959 of 2012 in O.S.No.33 of 1988 stands dismissed.
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> Since the preliminary decree was passed way back in the year 1989 and the same was modified by the High Court on 26.09.2003 and the SLP filed by the defendants was dismissed and the curative petition was also dismissed in the year 2012, the Court below shall expedite passing of final decree, strictly in accordance with law, adhering to the instructions given by this Court in Circular R.O.C.No.560/OP/CELL/2022, dated 23.11.2022.
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> 25. Accordingly, the Civil Revision Petition is allowed. No order as to costs."

6. SLP (C) No.16744/2023 was filed against the judgment dated 14.06.2023 in CRP No.2822 of 2022. Initially there was direction that the final decree proceedings shall not be proceeded with without further orders of the Hon'ble Apex Court by interim Order dated 14.08.2023 and finally, by Order dated 02.02.2026 the SLP was dismissed. The Order dated 02.02.2026 is as follows:

> "Heard the learned counsel for the parties.
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> We are not inclined to interfere with the impugned judgment and order passed by the High Court.
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> The Special Leave Petition is dismissed and the accompanying interlocutory application(s), if any, stands disposed of."

7. The applicants in I.A.Nos.1 & 2 of 2026 (the alleged subsequent purchasers from P2) filed those applications, with the prayer to modify the

preliminary decree dated 26.09.2003 in A.S.No.118 of 1990 (vide I.A.No.1 of 2026) and for stay of further proceedings for preparation of final decree in I.A.No.959 of 2012 in O.S.No.33 of 1988 (vide I.A.No.2 of 2026). The prayer for modification is to allot ½ share to P2 in view of substituted Section 6 of the Hindu Succession Act, 2005 and the law laid down in ***Vineeta Sharma*** (supra) as also to work out the equities of the applicants from out of the share of properties to be so allotted to P2.

8. I.A.No.3 of 2026 has been filed with the same prayer for modification of the same preliminary decree to the same extent and on the same ground by the legal representatives of the deceased P2. They have also filed I.A.No.4 of 2026 for stay of the final decree proceedings.

9. The position therefore that emerges can be summarized as follows.

(i) The trial Court passed the preliminary decree dated 17.10.1989 granting 1/4th share (i.e., 1/2 of 1/2) to the 1st plaintiff (widow). No share was granted to 2nd plaintiff (daughter).

(ii) The Appellate Court (High Court) in AS No.118 of 1990 modified the trial Court's decree vide its decree dated 26.09.2003 and granted 1/3rd share each to 1st plaintiff (widow) and 2nd plaintiff (daughter) and Busappa son in the half share of Mareppa i.e., 1/6th share each, while dismissing A.S.No.2209 of 1989 filed by the defendants in the suit.

(iii) The preliminary decree passed in Appeal was affirmed by dismissal of SLP by the Hon'ble Apex Court and thereafter by the dismissal of Review Petition and the Curative petition

(iv) In the application seeking modification of preliminary decree filed before the learned trial Court, I.A.No.492 of 2021, in Final Decree proceedings vide I.A.No.959 of 2012, the preliminary decree was modified granting the daughter, 2nd plaintiff, half share by virtue of 2005 Amendment to Section 6 of the Hindu Succession Act. Her share was increased from 1/3rd to ½ (i.e., in 1/2 of Vale Mareppa) because in the meantime the 1st plaintiff (widow) died. So, the share of the 1st plaintiff i.e. 1/3rd was equally given to her daughter 2nd plaintiff and also to the deceased son Busappa. As per the modification made by the learned trial Court in the preliminary decree, the 2nd plaintiff got ½ share in the 1/2 share of Mareppa, and Busappa the son of Mareppa also got ½ in ½. The share of Busappa, was to be taken by his legal heirs as per law i.e., defendants.

(v) The preliminary decree as modified by the trial Court vide Order dated 14.12.2022 has been set aside in CRP No.2822 of 2022 by this Court (High Court) by Order dated 14.06.2023. The Order in CRP No.2822 of 2022 has been affirmed by the

Hon'ble Apex Court in SLP (c) No.16744 of 2023 vide Order dated 02.02.2026.

(vi) The applicants in I.A.No.492 of 2021 have filed the present I.A.No.1 of 2026 in AS No.118 of 1990 with the same prayer to modify the preliminary decree dated 26.09.2023 in AS.No.118 of 1990 in accordance with law, declared in ***Vineeta Sharma*** (supra) and allot ½ share to the 2nd plaintiff (who has been arrayed as 5th respondent in I.A.No.492 of 2021), in the plaint schedule properties and also to work out the equities of the applicants from out of the properties allotted to the share of the 2nd plaintiff (daughter).

(vii) I.A.No.3 of 2026 has also been filed with the same prayer for modification of the preliminary decree as passed in appeal, as aforesaid, by the legal heirs of the deceased 2nd plaintiff (daughter).

10. All the aforesaid applications for modification of the appellate Court's preliminary decree dated 26.09.2003 in A.S.No.118 of 1990 are being considered and decided by this Common Judgment.

II. <u>Submissions of the learned counsels</u>:

i) <u>For the applicants:</u>

11. Sri Virupaksha Dattatreya Gouda, learned counsel for the applicants in I.A.No.1 of 2026 filed by the subsequent purchasers from

the 2nd plaintiff i.e., Mandlem Veeramma, submitted that the preliminary decree as modified in Appeal AS No.118 of 1990 was passed prior to the amendment (substitution) of Section 6 of the Hindu Succession Act. After the amendment of Section 6 of Hindu Succession Act vide its (Amendment) Act, 2005, the daughter has also got equal share with the son in the coparcenary. In ***Vineeta Sharma*** (supra), the Hon'ble Apex Court has declared such a right. Further, it has been held that the provisions contained in the substituted Section 6 of the Hindu Succession Act 1956 confers status of coparcenary on the daughter born before or after the amendment in the same manner as son with the same rights and liabilities and those rights can be claimed by the daughter born earlier but with effect from 09.09.2005, which amendment, as provided in Section 6 (1) shall not invalidate any disposition or alienation, including any partition or testamentary disposition of property which had taken place before 20.12.2004. Further, since the coparcenery is by birth, it is not necessary that the father coparcener should be living as on 09.09.2005. Learned counsel submitted that the 2nd plaintiff, the vendor of the applicants was alive on 09.09.2005. The provisions of the substituted Section 6 were required to be given full effect and notwithstanding that a preliminary decree was passed prior to the amendment or substitution of Section 6 of the Hindu Succession Act 1956, but as the final decree had not been passed and partition had not

taken place by metes and bounds for which the proceedings were pending, the daughter 2nd plaintiff was entitled to equal share to that of a son and consequently, the preliminary decree as passed in the appeal was required to be modified in terms of Section 6 of Hindu Succession Act and in the light of the law declared by the Hon'ble Apex Court in the case of ***Vineeta Sharma*** (supra).

12. Learned counsel further submitted that in partition suit, so long as the partition is pending, the preliminary decree may be modified and fresh preliminary decree(s) can also be passed, depending upon the fluctuation of share of parties due to death or birth, having its impact on the shares of the parties to the suits already determined by a preliminary decree. He submitted that consequently, the preliminary decree passed in AS No.118 of 1990 though affirmed already by the Hon'ble Apex Court by dismissal of SLP, review petition and Curative petition, but in view of the subsequent change in law and the judgment in ***Vineeta Sharma*** (supra), the partition suit being pending at the stage of final decree, second preliminary decree can be passed modifying the first preliminary decree. He submitted that such modification is required under law for the reason that while preparing the final decree, the learned trial Court shall prepare the final decree in terms of the preliminary decree and so, if the preliminary decree is not modified in terms of ***Vineeta Sharma*** (supra), the learned trial Court shall not pass the final decree giving effect to that

judgment and the change in law, but would pass the final decree only in terms of the appellate Court's preliminary decree and then, in the absence of modification, the 2nd plaintiff, the daughter would be deprived of the statutory benefits conferred by the substituted Section 6 of the Hindu Succession Act.

13. The submission of the learned counsel for the applicants is that the application for modification in the preliminary decree is maintainable in this Court. The preliminary decree as passed by the Trial Court was modified by this Court in the present First Appeal and so any modification or the second preliminary decree, in view of the change in law or the declaration of law in ***Vineeta Sharma*** (supra) or in the changed circumstances effecting the share of the parties as determined by the modified appellate preliminary decree shall be maintainable only in this Court in the appeal. Learned counsel submitted that the application is maintainable and particularly when the application filed in trial Court for the same prayer was allowed but it was held not maintainable before the Trial Court by this Court in CRP No.2822 of 2022 and that judgment has been affirmed by the Hon'ble Apex Court.

14. Learned counsel for the applicants relied upon the following judgments:

1. ***Saila Bala Dassi v. Nirmala Sundari Dassi***[2]
2. ***S. Sudhakar v. Syed Kareem***[3]

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[2] AIR 1958 SC 394

3. ***Vineeta Sharma v. Rakesh Sharma*** (supra)

4. ***Phoolchand v. Gopal Lal***[4]

5. ***S. Sai Reddy v. S. Narayana Reddy***[5]

6. ***Malda Mahaboob Sab v. Allabaksh***[6]

7. ***Maddineni Koteswara Rao v. Maddineni Bhaskara Rao***[7]

8. ***Ganduri Koteshwaramma v. Chakiri Yanadi***[8]

9. ***Prema v. Nanje Gowda***[9]

10. ***Vineeta Sharma v. Rakesh Sharma***[10]

11. ***Kannan v. Narayani***[11]

ii) For Respondent No.1:

15. Sri Salar Aatif, learned counsel appearing for the 1st respondent, appearing through virtual mode, submitted that the application for modification of the preliminary decree as passed by this Court in AS.No.118 of 1990 is not maintainable. He submitted, firstly, that the subsequent purchasers from the 2nd plaintiff have no right to file the application in view of the change in law as the benefit has been conferred to the daughter and, secondly, ***Vineeta Sharma*** (supra) judgment is not applicable and is not attracted.

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[3] 2017 (2) ALD 1
[4] AIR 1967 SC 1470
[5] (1991) 3 SCC 647
[6] AIR 2000 AP 193
[7] (2009) 13 SCC 179
[8] (2011) 9 SCC 788
[9] (2011) 6 SCC 462
[10] 2023 SCC OnLine SC 2553
[11] AIR 1980 Ker 76

16. Elaborating his submission, Sri Salar Aatif, learned counsel, submitted that the Hindu Succession Act 1956 applies and is attracted when the death occurs after coming into force of the Hindu Succession Act 1956. In the present case, he submitted that Vale Mareppa died in the year 1942, so, the position was governed by Hindu Mitakshara law, since the death occurred before coming into force of the Hindu Succession Act. The daughter (P2) would not be entitled for the benefit conferred by substituted Section 6 of the Act. In his submission, when the Act 1956 does not apply as the death of Vale Mareppa occurred prior to coming into force of the Act 1956, any amendment in the Act 1956 i.e., Section 6 which also came into force with effect from 09.09.2005, cannot be applied to the case of daughter. He submitted that what is relevant is the date of death in the year 1942 on which date, the devolution/succession opened and when later on the partition takes place, it is the notional partition that is considered as on the date of death. He submitted that on the date of death of Vale Mareppa, the daughter had no right in the property as she was not the coparcener under the Hindu Mitakshara law at that time. He submitted that the applications deserve to be rejected as there is no occasion to claim the benefit of the judgment in ***Vineeta Sharma*** (supra).

17. However, during arguments, when a query was made to learned counsel for respondent No.1 as to whether such argument is now open to be raised at this stage of the applications for modification of the

preliminary decree, learned counsel submitted that as the preliminary decree by the appellate Court has attained finality after dismissal of SLP, Review and Curative petition, the same may not be open for him to be raised and so he confines to the preliminary decree as it stands, but no modification can be made as prayed by the applicants of I.A.Nos.1 & 3 of 2026 as per ***Vineeta Sharma*** (supra) on the substituted Section 6 of the Hindu Succession Act.

iii) For Respondent Nos.2 & 3:

18. Sri P. Rajasekhar, learned counsel for respondent Nos.2 & 3 submitted that the applicants in I.A.No.1 of 2026 are claiming to be the subsequent purchasers from the deceased 2nd plaintiff, but they have not brought on record, the copy of any such sale deed etc., evidencing transfer in their favour and in the absence of any such sale deed; their application deserves to be rejected. He submitted that the benefits of the substituted Section 6 in Hindu Succession Act can be claimed only by the daughter and not by the subsequent purchasers from the daughter (P2).

19. Sri P. Rajasekhar, learned counsel for the respondent Nos.2 & 3 further submitted that the application has been filed for delaying the proceedings of final decree. He submitted that in spite of the direction issued in CRP.No.2822 of 2022 by this Court, the final decree proceedings are still pending.

20. Learned counsels for the respondents relied upon the following judgments:

1. ***T. Ravi v. B. Chinna Narasimha***[12]
2. ***Sagire Nagendramma v. Mandlam Veeramma***[13]
3. ***Eramma v. Veerupana***[14]
4. ***Arshnoor Singh v. Harpal Kaur***[15]
5. ***Radhabai Balasaheb Shirke v. Keshav Ramchandra Jadhav***[16]

iv) <u>Reply Submissions of the applicants:</u>

21. In reply learned counsel for the applicants submitted that the applicants in I.A.No.1 of 2026 are the subsequent purchasers from P2. The respondents cannot dispute that fact even if the copy of the sale deeds have not been filed with the present application. The respondents or some of them have already filed separate proceedings for cancellation of those sale deeds. He submitted that the applicants are already party in the final decree proceedings. They had filed application for modification of the preliminary decree before the learned Trial Court which was allowed though that order was set aside in CRP.No.2822 of 2022 which was affirmed by the Hon'ble Apex Court, but, it cannot be said that the applicants of I.A.No.1 of 2026 have no right to maintain the application for

[12] (2017) 7 SCC 342
[13] Order dt.8.12.2006 in SLP(C)No.11792-11793/2004
[14] AIR 1966 SC 1879
[15] (2020) 14 SCC 436
[16] 2024 SCC OnLine Bom 3541

modification of the preliminary decree or for passing second preliminary decree in view of the changed circumstances.

v) For applicants in I.A.No.3 of 2026

22. Learned counsel for the applicants in I.A.No.3 of 2026 have adopted the arguments of the learned counsel for the applicants in I.A.No.1 of 2026.

III. Points for Determination:

23. The following points arise for our consideration and determination:

> "Whether the preliminary decree dated 26.09.2003 passed in A.S.No.118 of 1990 in the partition suit deserves to be modified or second preliminary decree deserves to be passed in view of Section 6 of the Hindu Succession Act as substituted by Amendment Act No.39 of 2005 and the law declared by the Hon'ble Apex Court in Vineeta Sharma (supra) or/and in view of the death of Nagamma (1st plaintiff)."

IV. Analysis on the point for consideration:

24. We have considered the aforesaid submissions of the learned counsels for the parties and perused the material on record.

25. To decide the point framed by us, we shall consider; whether in a suit for partition more than one preliminary decree can be passed; and if so, under what circumstances; the legal position with respect to the share of the daughter in a coparcenery property of the father, under substituted Section 6 of the Hindu Succession Act; the law as declared by the Hon'ble Apex Court in ***Vineeta***

Sharma (supra); whether those circumstances entitling any modification or change in the original preliminary appellate decree exist so as to pass fresh preliminary decree; and if so, which Court shall be competent to modify the decree? The maintainability of I.A.No.1 of 2026 filed by the subsequent purchasers from the daughter (2nd plaintiff) would also require consideration.

Right of daughter under Section 6 of the Hindu Succession Act:

26. Firstly, we shall consider substituted Section 6 of the Hindu Succession Act and the law as laid down in ***Vineeta Sharma*** (supra).

27. Section 6 of the Hindu Succession Act, 1956 before amendment vide Amendment Act No.39 of 2005 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 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 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 share in the interest referred to therein."

28. In the State of Andhra Pradesh, Section 29A of the Andhra Pradesh Amendment (Act.No.13 of 1986), provides as under:

"**29-A. Equal rights to daughter in coparcenary property**:- Notwithstanding anything contained in Sec.6 of this Act,-

(i) In a joint Hindu Family governed by Mitakshara law, the daughter of a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son.

(ii) At the partition in such a joint Hindu family the coparcenary property shall be so divided as to allot to a daughter the same share, as is allotable to a son;

Provided that the share which a pre-deceased son or a pre-deceases daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter;

Provided further that the share allotable to the predeceased child of a pre-deceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or of the pre-deceased daughter as the case may be;

(iii) Any property to which a female Hindu becomes entitled by virtue of the provisions of Cl.(i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other

law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(iv) Nothing in cl.(iii) shall apply to prior a daughter married to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

Explanation – In this section "Court" means the Court within the limits of whose jurisdiction the immoveable property is situate or the business is carried on, and includes any other Court which the State, Government may, by notification in the Andhra Pradesh Gazette, specify in this behalf."

29. In the State of Karnataka new Sections 6A to 6C were inserted in the Hindu Succession Act, 1956 (Central Act 30 of 1956), after Section 6, namely:-

"**6A. Equal rights to daughter in co-parcenary property**.—Notwithstanding anything contained in section 6 of this Act,—

(a) in a joint Hindu family governed by Mitakshara law, the daughter of a co-parcener shall by birth become a co-parcener in her own right in the same manner as the son and have the same rights in the co-parcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(b) at a partition in such Joint Hindu Family the co-parcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son:

Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter:

Provided further that the share allotable to the predeceased child of the predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the

child of such predeceased child of the predeceased son or of such predeceased daughter, as the case may be;

(c) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (a) shall be held by her with the incidents of co-parcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(d) nothing in clause (b) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990.

6B. Interest to devolve by survivorship on death.—When a female Hindu dies after the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, having at the time of her death an interest in a Mitakshara co-parcenary property, her interest in the property shall devolve by survivorship upon the surviving members of the co-parcenary and not in accordance with this Act:

Provided that if the deceased had left any child or child of a pre-deceased child, the interest of the deceased in the Mitakshara co-parcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation.—(1) For the purposes of this section the interest of female Hindu Mitakshara co-parcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

(2) Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased had separated himself or herself from the co-parcenary, or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

6C. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of Hindu Succession (Karnataka

Amendment) Act, 1990 an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others devolves under sections 6A or 6B upon two or more heirs and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under sub-section (1) shall, in the absence of any agreement between the parties, be determined by the court, on application, being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under, this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section 'Court' means the court within the limits of whose jurisdiction the immoveable property is situate or the business is carried on, and includes any other court which the State Government may by notification in the official Gazette specify in this behalf.]

[Vide Karnataka Act 23 of 1994, sec. 2].

30. Section 6 of the Hindu Succession Act, 1956 as substituted, after amendment vide Amendment Act No.39 of 2005 reads as under:

6. **Devolution of interest in coparcenary property**.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 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 the same manner as the son;

(b) have the same rights in the coparcenery property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenery 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.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenery property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-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.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005)had not been enacted.

Explanation.—For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).

(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.]

31. In ***Ganduri Koteshwaramma v. Chakiri Yanadi***[17], the Hon'ble Apex Court held that the right accrued to a daughter in the property of Joint Hindu family governed by the Mitakshara law, by virtue of 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to sub-section (1) of Section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely i) where the disposition or alienation including any partition has taken place before December 20, 2004; and ii) where testamentary disposition of property has been made before December 20, 2004, which is clear from Section 6(5) and for the purpose of new Section 6 'partition' means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a Court. The Hon'ble Apex Court held that for determining the non-applicability of the Section, what is relevant is to find out whether the partition has been effected before December 20, 2004 by deed of partition duly registered under the Registration Act, 1908 or by a decree of a Court.

32. In ***Vineeta Sharma*** (supra) the Hon'ble Apex Court held and recorded the conclusions as under:

> **"129.** Resultantly, we answer the reference as under:
> **(i)** The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter

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[17] Manu/SC/1216/2011

born before or after the amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

(iv) The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (*sic* effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

33. There is no dispute amongst the learned counsels on the legal position with respect to the right of the daughter in the coparcenary property of her father under substituted Section 6 of the Hindu

Succession Act to succeed like a son, subject to the conditions and limitations as specified in the statutory provisions. The dispute is about applicability of law and the maintainability of the application by subsequent purchaser and the modification of the appellate preliminary decree.

34. Learned counsel for the respondent Nos.1 & 2 submitted that the Hindu Succession Act, 1956 applies only when the death occurs after the Act came into force in 1956. He submitted that Vale Mareppa died in the year 1942 prior to the Act, 1956 coming into force. In the appeal finding was recorded that Vale Mareppa died prior to 1956. He submitted that the Act, 1956 itself not being applicable, substituted Section 6 as by Amendment Act No. 39 of 2005, shall not apply. He submitted that the amended provision itself is applicable from 09.09.2005. He relied in ***Arshnoor Singh*** (supra)***, Eramma*** (supra) and ***Radhabai Balasaheb Shirke*** (supra) for the non applicability of amended Section 6 to the daughter (P2) and for the contention that the law declared as in Vineeta Sharma (supra) shall not apply. So, applications for modification deserves rejection.

35. In ***Arshnoor Singh*** (supra), relevant fact is that Lal Singh passed away in 1951. His entire property was inherited by his only son Inder Singh. Inder singh had affected a partition of the entire property vide civil Courts decree dated 04.11.1964 amongst his three sons in equal shares.

The Hon'ble Apex Court held that, Inder Singh had inherited the entire property from his father Lal Singh upon his death as per the Hindu Mitakshara Law, and as per the mutation entry Lal Singh's death took place in 1951. The succession opened in 1951 prior to the commencement of Hindu Succession Act, 1956. Learned counsel for the respondent Nos.1 & 2 laid much emphasis that the Act, 1956 will not apply if the death took place prior to the commencement of the Hindu Succession Act. The succession would then be in accordance with the old Hindu Mitakshara law. He contended that in the present case Mareppa died in the year 1942, so the Mitakshara law would govern. The Hindu succession Act would not govern. The daughter (P2) is not entitled because of the non-applicability of the Act, 1956, P2 would also not be entitled under the substituted section 6 of the Act, 1956 nor by virtue of ***Vineeta Sharma*** (supra). The subsequent purchasers from the daughter (Plantiff No.2) or her legal heirs would also not be entitled and their applications would not be maintainable for modification of the preliminary decree. In ***Arshnoor Singh*** (supra), as mentioned above, Inder Singh was the only son of Lal Singh. So, on the death of Lal singh in 1951, succession opened and by operation of law under Hindu Mitakshara law, Inder Singh the only son inherited the entire property of Lal Singh. There was no question of partition amongst any co-sharer(s) in 1951. Here, partition has not taken place. So when it comes to partition after 1956, the

same is to be considered as per the law under the Succession Act, 1956 and since the proceedings for partition are still pending, Amended Section 6 of Hindu Succession Act has to be given effect to. ***Arshnoor Singh*** (supra) cannot be applied to the facts of the present case.

36. In ***Eramma*** (supra), the Hon'ble Apex Court held that Section 6 (unamended) applies only to co-parcenary property of the male hindu who died after the commencement of the Act, 1956. Paras 4 & 5 of ***Eramma*** (supra) reads asunder:-

> "4. There is nothing in the language of this section to suggest that it has retrospective operation. The words "The property of a male Hindu dying intestate" and the words "shall devolve" occurring in the section make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the Hindu Succession Act. Reference may be made, in this connection, to Section 6 of the Act which states :
>
> > "6. 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.
> >
> > * * * * *"
>
> 5. **It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies**

> **after the commencement of the Act**. It is manifest that the language of s. 8 must be construed in the context of s. 6 of the Act. We accordingly hold that the provisions of s. 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e., where succession opened before the Act, s. 8 of the Act will have no application."

37. In ***Eramma*** (supra) the Hon'ble Apex Court held that Section 8 of Hindu Succession Act must be construed in the context of Section 6 of the H.S.Act. It applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It was held that the provision of section 8 of the Hindu Succession Act are not retrospective in operation. So, where a male hindu dies before the Act, 1956 came into force (where succession opened before the Act, 1956) Section 8 of the Act, 1956 will have no application.

38. The judgment in ***Eramma*** (supra) is prior to the substituted Section 6, in the Act 1956 vide Amendment Act No.39 of 2005. Section 6 of the Act, 1956 has been amended. At the time the un-amended Section 6 was enforce, the position might have been as per **Eramma** (supra), but after the amended Section 6 the daughter has been given a status of coparcener, so the position in law, in our view after amendment would be as per the declaration in ***Vineeta Sharma*** (supra) which is specifically on the point of right of daughter in the coparcenary property of her father.

39. We may observe further that in ***Eramma*** (supra) the Hon'ble Apex Court held that "it is manifest that the language of Section 8 must be

construed in the context of Section 6 of the Act.”, So at present also, Section 8 of the Hindu Succession Act, 1956 must be construed in the context of the Amended Section 6 of the Act, 1956 as it stands today as substituted. Prior to the amendment, Section 6 used the expression ‘when a male hindu dies after the commencement of this Act’. The amended Section 6 does not use those expressions. So when it comes to the applicability of amended Section 6, we are of the view that the law as in ***Vineeta Sharma*** (supra) shall hold the field.

40. The contention of the learned counsel for respondent Nos.1 & 2 with respect to and based on the death of Mareppa in 1942, prior to Hindu Succession Act, 1956, deserves rejection for another reason. In A.S.118 of 1990 the appellate Court, vide preliminary decree dated 26.09.2003 granted $1/6^{th}$ share (i.e, $1/3^{rd}$ in ½ of Mareppa), to the daughter. That decree has been affirmed by the Hon’ble Apex Court. So, so far as the right of the daughter (P2) to get share in the suit property of her father (Mareppa) has attained finality. The daughter’s entitlement in the father’s property has already been determined even prior to the amendment of section 6 of the Hindu Succession Act, 1956. The preliminary decree to the entitlement of the daughter (P2) to have a share in father’s property cannot be reopened now, even if the contention of the learned counsel for respondent Nos. 2 & 3 be that the determination made previously in original appellate preliminary decree was not correct. Learned counsel

also submitted during arguments, as already mentioned (supra) that, such an issue cannot be reopened and he would go by the preliminary decree as originally passed by the appellate Court, but added that the benefit of Vineeta Sharma (supra) cannot be given so as to enhance the share of (P2) daughter from 1/6 to ¼ (i.e., ½ in ½). We cannot enter into the question of the legality of the appellate judgment/preliminary decree passed in this appeal, previously so as to deny the daughter any entitlement, on the submission of the learned counsel for the respondents. Once she has been held to be entitled under the appellate judgment of this Court, which has become final, the same cannot be reopend. The question to be determined is, in view of the amendment of Section 6 in 2005, and the judgement in the ***Vineeta Sharma*** (supra), as to what share the daughter (P2) is entitled in the changed legal position or/and due to the death of her mother (P1).

41. The submission of the learned counsel for respondent Nos.2 & 3 to the above effect, deserves rejection viewing from another angle. Taking the submission as correct based on ***Arshnoor Singh*** (supra) and ***Eramma*** (supra) that the daughter (P2) was not entitled to any share in the coparcenary of her father and this Court in appeal vide judgment/preliminary decree dated 26.09.2003 granted 1/6th share, which should not have been allowed. Taking further, no share could be granted in the preliminary decree at that time as Mareppa died in 1942, under the

Hindu Mitakshara Law. Then also the co-parcenary of Mareppa not having been partitioned even as on today, and the suit for partition being pending and in the meantime Section 6 having been amended granting the daughter same share as of son in the coparcenary of the father in view thereof and the law declared in ***Vineeta Sharma*** (supra), the daughter (P2) would certainly be now entitled to share with her brother (son of Mareppa) in equal shares. Such an amendment has to be given effect to.

42. The law laid down in ***Vineeta Sharma*** (supra) is that the daughter is entitled in the coparcenary property in equal shares with the son (her brother). The date of death of the father is not relevant. The daughter might have born prior to the amendment but the daughter must have been alive on 09.09.2005. The partition, disposition or alienation must not have taken place prior to 20th December, 2004. In ***Vineeta Sharma*** (supra) it was held that, notwithstanding a preliminary decree, the daughters are to be given their share in co-parcenary equal to that of a son in pending proceedings for final decree or in appeal.

43. In this case the daughter (P2) was alive on 09.09.2005. There was no partition of the property in the hands of Mareppa as coparcenary before 20th December, 2004. The suit for partition was filed in the year 1988. Only a preliminary decree was passed. No final decree has been passed. The proceedings for final decree are still pending. In our view all

the pre-conditions of substituted Section 6 are fulfilled. So, the daughter (P2) would be entitled to a share equal to that of a son in the co-parcenary of her father, notwithstanding the death of her father in 1942.

44. In ***Radhabai Balasaheb Shirke*** (supra) the Bombay High Court held that the daughter would not have any right either limited or absolute, by inheritance prior to coming into force of the Act 1956 in the property of the deceased father who died prior to 1956 leaving behind him in addition to such daughter his widow as well. Much emphasis was laid on this judgement of the Bombay High Court which referred to the judgments in ***Vineeta Sharma*** (supra) and ***Arshnoor Singh*** (supra).

45. In ***Radhabai Balasaheb Shirke*** (supra), the facts were that one Yeshwantrao had two wives, Laxmibai and Bhikubai. Yeshwantrao had two daughters from Laxmibai, and one daughter from Bhikubai. Laxmibai pre-deceased Yeshwantrao in 1930 and Sonubai, one of the daughters from Laxmibai expired in 1949. Yeshwantrao expired on 10.06.1952. Bhikubai expired on 08.07.1973 after executing a will in favour of her daughter Champubai on 14.08.1956. Radhabai, another daughter from Yeshwantrao and Laxmibai filed suit for declaration that she had half share in the properties left behind by her father and sought partition. The trial court dismissed the suit holding that the widow Bhikubai alone inherited the suit properties in view of the provisions of the Hindu Women's Right to Property Act, 1937 and she became the absolute

owner in 1956 in view of the provisions of the Hindu Succession Act 1956. The appeal preferred by Radhabai was dismissed giving rise to the second appeal. The Bombay High Court held considering ***Arshnoor Singh*** (supra) that a daughter was entitled to inherit only after the death of widow and not in the presence of the widow. The Bombay High Court answered the reference in the said case holding that the daughter would not have any right either limited or absolute by inheritance prior to coming into force the Act of 1956 in the property of the deceased father who died prior to 1956 leaving behind him in addition to such daughter his widow as well. The Bombay High Court also referred to the judgment of the Hon'ble Apex Court in ***Vineeta Sharma*** (supra) and held that ***Vineeta Sharma*** (supra) was of no assistance as therein the provisions of Section 6, post the 2005 Amendment was dealt with, whereby a daughter was treated equal coparcenary. The Bombay High Court also recorded that the amended provision giving equal right to a daughter would apply only to a situation where death occurs after the date of amendment and therefore, it was implied that if person died prior to 1956, ***Vineeta Sharma*** (supra) could not be of any assistance to ascertain the daughter's right since the issue of inheritance opened up on the death prior to 1956.

46. In ***Radhabai Balasaheb Shirke*** (supra) the question was considered in a reference made to the Larger Bench pending the second

appeal. In the present case, the preliminary decree passed by the appellate court holding the daughter entitled for 1/6th share has already attained finality after dismissal of the SLP, Review and Curative petition against the preliminary decree, so such question cannot be reopened on the strength of ***Radhabai Balasaheb Shirke*** (supra). We are of the view that even if the father died prior to 1956 Act the date of death of the father is not relevant to confer right on the daughter in the coparcenary of the father if the conditions under substituted Section 6 are satisfied. In our view ***Vineeta Sharma*** (supra) is fully applicable as the conditions under substituted Section 6 of Hindu Succession Act are fully satisfied, as already considered in paras 42 and 43 (supra) of this judgment.

47. Any view taken in ***Radhabai Balasaheb Shirke*** (supra), contrary to the view we have taken, with due respect, we are not in agreement, for the reasons recorded by us.

<u>There can be more than one preliminary decree in a suit for partition and the finality of such decree:</u>

48. In ***Phoolchand v. Gopal lal***[18] the Hon'ble Apex Court held that there can be more than one preliminary decree in a suit for partition if the circumstances justify the same, when after the preliminary decree an event transpires which necessitates a change in share. The Hon'ble Apex court held as under:

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[18] AIR 1967 SC 1470

6. The next contention is that there cannot be two preliminary decrees and therefore when the trial court varied the shares as indicated in the preliminary decree of August 1, 1942 there was no fresh preliminary decree passed by the trial court. It is not disputed that in a partition suit the court has jurisdiction to amend the shares suitably even if the preliminary decree has been passed if some member of the family to whom an allotment was made in the preliminary decree dies thereafter : (see Parshuram v. Hirabai MANU/MH/0115/1957 : AIR1957Bom59). So the trial court was justified in amending the shares on the deaths of Sohan Lal and Smt. Gulab Bai. The only question then is whether this amendment amounted to a fresh decree. The Allahabad High Court in Bharat Indo v. Yakub Hassan MANU/UP/0040/1913 : I.L.R. (1913) All. 159 the Oudh Chief Court in Kedernath v. Pattu Lal I.L.R. (1945) 20 Luck. 557, and the Punjab High Court in Joti Prashad v. Ganesh Lal MANU/PH/0037/1961 seem to take the view that there can be only one preliminary decree and one final decree thereafter. The Madras, Bombay and Calcutta High Courts seem to take the view that there can be more than one preliminary decree : (see Kasi v. V. Ramanathan Chettiar (1947) 2 Mad. L.J. 523 Raja Peary Mohan v. Manohar MANU/PR/0024/1921 :(1923) 27 Cal. W.N. 989, and Parshuram v. Hirabai.

7. **We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented.**

We have already said that it is not disputed that in partition suits the court can do so even after the preliminary decree is passed. It would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specification of shares in the preliminary decree varied before a final

decree is prepared. If this is done, there is a clear determination of the rights of parties to the suit on the question in dispute and we see no difficulty in holding that in such cases there is a decree deciding these disputed rights; if so, there is no reason why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court. **So far therefore a partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so**; and if there is a dispute in that behalf, the order of the court deciding that dispute and making variation in shares specified in the preliminary decree already passed is a decree in itself which would be liable to appeal. We should however like to point out that what **we are saying must be confined to partition suits**, for we are not concerned in the present appeal with other kinds of suits in which also preliminary and final decrees are passed. **There is no prohibition in the Code of Civil Procedure against passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Code of Civil Procedure does not contemplate such a possibility.** In any case if two views are possible - and obviously this is so because the High Courts have differed on the question - we could prefer the view taken by the High Courts which hold that a second preliminary decree can be passed, particularly in partition suits where parties have died after the preliminary decree and shares specified in preliminary decree have to be adjusted. We see no reason why in such a case if there is dispute, if should not be decided by the court which passed the preliminary decree, for it must not be forgotten that the suit is not over till the final decree is passed the court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties. Whether there can be more than one final decree does not arise in the present appeal and no that we express no opinion. **We therefore hold**

> **that in the circumstances of this case it was open to the court to draw up a fresh preliminary decree as to of the parties had died after the preliminary decree had before the final decree was passed.** Further as there was dispute between the surviving parties as to devolution of the shares of the parties who were dead and that dispute was decided by the trial court in the present case and thereafter the preliminary decree already passed was amended, the decision amounted to a decree and was liable to appeal. We therefore agree with the view taken by the High Court that in such circumstances a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf was that dispute is decided the decision amounts to a decree. We should however like **to make it clear that this can only be done so long as the final decree has not been passed**. We therefore reject this contention of the appellant."

49. In ***S. Sai Reddy v. S. Narayana Reddy***[19] in which AP state amendment in Hindu Succession Act by which section 29-A was inserted, was under consideration, the honourable apex court held as under in para's 10 & 11:

> "10. The question that falls for our consideration is **whether the preliminary decree has the effect of depriving respondents 2 to 5 of the benefits of the amendment**. The learned counsel placed reliance on clause (*iv*) of **Section 29-A** to support his contention that it does. Clause (*ii*) of the section provides that a daughter shall be allotted share like a son in the same manner treating her to be a son at the partition of the joint family property. However, the legislature was conscious that prior to the enforcement of the amending Act, partitions will already have taken place in some families and arrangements with

[19] (1991) 3 SCC 647

regard to the disposition of the properties would have been made and marriage expenses would have been incurred etc. The legislature, therefore, did not want to unsettle the settled positions. Hence, it enacted clause (*iv*) providing that clause (*ii*) would not apply to a daughter married prior to the partition or to a partition which had already been effected before the commencement of the amending Act. Thus if prior to the partition of family property a daughter had been married, she was disentitled to any share in the property. Similarly, if the partition had been effected before September 5, 1985 the date on which the amending Act came into force, the daughter even though unmarried was not given a share in the family property. **The crucial question, however, is as to when a partition can be said to have been effected for the purposes of the amended provision.** A partition of the joint Hindu family can be effected by various modes, viz., by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the court. **When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition.** For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. **In the instant case,** there is no dispute that **only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (*ii*) of Section 29-A of the Act became applicable**.

11. This intervening event which gave shares to respondents 2 to 5 had the effect of varying shares of the parties like any supervening development. Since the legislation is beneficial and placed on the

> statute book with the avowed object of benefitting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. Hence, **we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act.** Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment. Spurious family settlements, instruments of partitions not to speak of oral partitions will spring up and nullify the beneficial effect of the legislation depriving a vast section of women of its benefits."

50. In ***S. Sai Reddy*** (supra) it was held by the Hon'ble Apex Court that the partition of the joint Hindu family can be affected by various modes viz., by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the Court. In the suit for partition filed in a Court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree

which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. The Hon'ble Apex Court held that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the amendment in the Hindu Succession Act.

51. In ***Maddineni Koteswara Rao v. Maddineni Bhaskara Rao***[20] the Hon'ble Apex Court held that it is well settled that the suit for partition stands disposed of only with the passing of the final decree. It is equally settled that in a partition suit, the Court has the jurisdiction to amend the shares suitably, even if the preliminary decree has been passed, if some member of the family to whom an allotment was made in the preliminary decree dies thereafter. The share of the deceased would devolve upon other parties to a suit or even a third party, depending upon the nature of the succession or transfer, as the case may be. The validity of such succession, whether testate or intestate, or transfer, can certainly be considered at the stage of final decree proceedings.

52. In ***Maddineni Koteswara Rao*** (supra) the Hon'ble Apex Court further held that Section 97 of CPC makes it clear that if a party aggrieved by a preliminary decree passed after the commencement of the CPC does not appeal from such decree, he shall be precluded from disputing

[20] (2009) 13 SCC 179

its correctness in any appeal which may be preferred from the final decree. However to the said principle, as in that case the preliminary decree was in the partition suit and the death of the father of the parties occurred after passing of the preliminary decree, the Hon'ble Apex Court further held that Section 97 of the CPC would not come into play.

53. Para Nos.10 & 15 in ***Maddineni Koteswara Rao*** (supra) read as under:

> **10.** It is well settled that a suit for partition stands disposed of only with the passing of the final decree. It is equally settled that in a partition suit the court has the jurisdiction to amend the shares suitably even if the preliminary decree has been passed if some member of the family to whom an allotment was made in the preliminary decree dies thereafter. The share of the deceased would devolve upon other parties to a suit or even a third party, depending upon the nature of the succession or transfer, as the case may be. The validity of such succession, whether testate or intestate, or transfer, can certainly be considered at the stage of final decree proceedings. An inference to this effect can suitably be drawn from the decision of this Court in *Phoolchand* v. *Gopal Lal*. In that decision, it was observed as follows:
>
> > "There is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if the circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. …
> >
> > It would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specification of shares in the preliminary decree varied before a final decree is prepared. If this is done, there is a clear determination of the rights of [the] parties to the suit on the

question in dispute and we see no difficulty in holding that in such cases there is a decree deciding these disputed rights; if so, there is no reason why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court."

* * * * *

"**15.** A plain reading of this provision would make it clear that if a party aggrieved by a preliminary decree passed after the commencement of CPC does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree. This is not the position in this case. Here admittedly, a preliminary decree was passed declaring the share of the parties including the share in favour of the deceased father of the parties. That preliminary decree is final, but on the death of the father of the parties, the shares allotted to the deceased father of the parties would fall either to the parties in equal shares or if by will or by any form of transfer, such share has been given to one of the parties. Therefore, in that situation, the respondents could not have filed any appeal against the preliminary decree because (*1*) at this stage, the father was very much alive and only on the death of the father, the question of getting one more share that is the share of the father would come into play; and (*2*) the declaration made in the preliminary decree by the court was also accepted by the parties at that stage. Therefore, Section 97 CPC could not be an aid to the appellant and therefore, the submission of the learned counsel for the appellant in this Court cannot be accepted and therefore it is rejected."

54. In ***Ganduri Koteshwaramma*** (supra), the Hon'ble Apex Court answered as to whether the preliminary decree passed by the trial Court (prior to amendment 2005) deprived the appellants therein of the benefits of 2005 Amendment Act, although the final decree for partition had not been passed. It was held that the only stage reached in the suit for

partition was the determination of shares vide preliminary decree and receipt of the report of the commissioner. A preliminary decree, it was held that, determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, then there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situations. The Hon'ble Apex Court referred to its judgment in ***Phoolchand*** (supra) and also ***S.Sai Reddy*** (supra) and reiterated that the Code of Civil Procedure creates no impediment for even more than one preliminary decree, if after passing of the preliminary decree events have taken place necessitating the readjustment of shares as declared in the preliminary decree. The Court has always power to revise the preliminary decree or pass another preliminary decree if the situation in the changed circumstances so demand. A suit for partition continues after the passing of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree. The Apex Court held that it is not

correct statement of law that once a preliminary decree has been passed, it is not capable of modification. It was emphasised that the rights of the parties in partition suit should be settled once for all in that suit alone and no other proceedings.

55. It is apt to refer para Nos.15, 16, 17, 20 to 22 in ***Ganduri Koteshwaramma*** (supra) which read as under:

> 15. The right accrued to a daughter in the property of a joint Hindu family governed by the Mitakshara Law, by virtue of the 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to Sub-section (1) of Section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely, (i) where the disposition or alienation including any partition has taken place before December 20, 2004; and (ii) where testamentary disposition of property has been made before December 20, 2004. Sub-section (5) of Section 6 leaves no room for doubt as it provides that this Section shall not apply to the partition which has been effected before December 20, 2004. For the purposes of new Section 6 it is explained that `partition' means any partition made by execution of a deed of partition duly registered under the Registration Act 1908 or partition effected by a decree of a court. In light of a clear provision contained in the Explanation appended to Sub-section (5) of Section 6, for determining the non-applicability of the Section, what is relevant is to find out whether the partition has been effected before December 20, 2004 by deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. In the backdrop of the above legal position with reference to Section 6 brought in the 1956 Act by the 2005 Amendment Act, the question that we have to answer is as to whether the preliminary decree passed by the trial court on March 19, 1999 and amended on September 27, 2003 deprives the Appellants of the

benefits of 2005 Amendment Act although final decree for partition has not yet been passed.

16. The legal position is settled that partition of a Joint Hindu family can be effected by various modes, inter-alia, two of these modes are (one) by a registered instrument of a partition and (two) by a decree of the court. In the present case, admittedly, the partition has not been effected before December 20, 2004 either by a registered instrument of partition or by a decree of the court. The only stage that has reached in the suit for partition filed by the Respondent No. 1 is the determination of shares vide preliminary decree dated March 19, 1999 which came to be amended on September 27, 2003 and the receipt of the report of the Commissioner.

17. A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation.

We are fortified in our view by a 3-Judge Bench decision of this Court in the case of Phoolchand and Anr. v. Gopal Lal MANU/SC/0284/1967: AIR 1967 SC 1470 where in this Court stated as follows:

> We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented.... So far therefore as partition

> suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so;....

there is no prohibition in the Code of Civil Procedure against passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Code of Civil Procedure does not contemplate such a possibility... for it must not be forgotten that the suit is not over till the final decree is passed and the court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties....a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf and that dispute is decided the decision amounts to a decree....

* * * *

20. The High Court was clearly in error in not properly appreciating the scope of Order XX Rule 18 of Code of Civil Procedure In a suit for partition of immovable property, if such property is not assessed to the payment of revenue to the government, ordinarily passing of a preliminary decree declaring the share of the parties may be required. The court would thereafter proceed for preparation of final decree. In ***Phoolchand***, this Court has stated the legal position that Code of Civil Procedure creates no impediment for even more than one preliminary decree if after passing of the preliminary decree events have taken place necessitating the readjustment of shares as declared in the preliminary decree. The court has always power to revise the preliminary decree or pass another preliminary decree if the situation in the changed circumstances so demand. A suit for partition continues after the passing of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree. It is not correct statement of law that once a preliminary decree has been passed, it is

not capable of modification. It needs no emphasis that the rights of the parties in a partition suit should be settled once for all in that suit alone and no other proceedings.

21. Section 97 of C.P.C. that provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree does not create any hindrance or obstruction in the power of the court to modify, amend or alter the preliminary decree or pass another preliminary decree if the changed circumstances so require.

22. It is true that final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree."

56. In ***Prema v. Nanje Gowda***[21]***,*** the question was as to whether the appellant therein could seek enhancement of her share in the joint family property in the final decree proceedings in terms of Section 6 inserted in the Hindu Succession Act, 1956 by the Hindu Succession (Karnataka Amendment) Act, 1990, which received presidential assent on 28.07.1994 and was published in the Karnataka Gazette dated 30.07.1994. The appellant therein had filed applications under Sections 151, 152 & 153 of the CPC for amendment of the preliminary decree and for grant of a declaration that in terms of Section 6A as inserted in the State of Karnataka she should be entitled to 2/7th share in the suit property. The

[21] 2011 (6) SCC 462

application was dismissed by the Trial Court. The appellant's challenge was negatived by the High Court taking the view that the preliminary decree after the dismissal of the Second Appeal attained finality. The High Court had also held that the application for amendment in the preliminary decree could not be entertained in the final decree proceedings. The Hon'ble Apex Court held that the State of Karnataka amendment in Section 6A to 6C was for ensuring that unmarried daughters get equal share in the coparcenary property. Similar provisions were inserted in the Act by the legislatures of the State of Andhra Pradesh, Maharashtra and Tamil Nadu. Referring to the judgments of, inter-alia, ***Phoolchand*** (supra) and ***S. Sai Reddy*** (supra), the Hon'ble Apex Court reiterated that by virtue of the preliminary decree passed by the Trial Court which was confirmed by the lower appellate Court and the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. If in the interregnum any party to the partition suit dies, then his or her share is required to be allotted to the surviving parties and this can be done in the final decree proceedings. Likewise, if law governing the parties is amended before conclusion of the final decree proceedings, the party benefited by such amendment can make a request to the court to take cognizance of the amendment and give effect to the

same. If the rights of the parties to the suit change due to other reasons, the Court seized with the final decree proceedings is not only entitled but is duty bound to take notice of such change and pass appropriate order. In ***Prema*** (supra) on the date the amendment by the State Act of Karnataka came into force, the final decree proceedings were pending and consequently the application for modification to give effect to the statute was held maintainable holding further that the daughter had every right to seek enlargement of her share and there was no reason why the Court should hesitate in giving effect to an amendment made by the legislature.

57. Para Nos.13, 14 & 20 in ***Prema*** (supra) read as under:

> "13. In the present case, the preliminary decree was passed on 11-8-1992. The first appeal was dismissed on 20-3-1998 and the second appeal was dismissed on 1-10-1999 as barred by limitation. By the preliminary decree, shares of the parties were determined but the actual partition/division had not taken place. Therefore, the proceedings of the suit instituted by Respondent 1 cannot be treated to have become final so far as the actual partition of the joint family properties is concerned and in view of the law laid down in *Phoolchand* v. *Gopal Lal* [AIR 1967 SC 1470] and *S. Sai Reddy* v. *S. Narayana Reddy* [(1991) 3 SCC 647] , it was open to the appellant to claim enhancement of her share in the joint family properties because she had not married till the enforcement of Karnataka Act 23 of 1994. Section 6-A of Karnataka Act 23 of 1994 is identical to Section 29-A of the Andhra Pradesh Act. Therefore, there is no reason why ratio of the judgment in *S. Sai Reddy* v. *S. Narayana Reddy* [(1991) 3 SCC 647] should not be applied for deciding the appellant's claim for grant of share on a par with male members of the

joint family. In our considered view, the trial court and the learned Single Judge were clearly in error when they held that the appellant was not entitled to the benefit of Karnataka Act 23 of 1994 because she had not filed an application for enforcing the right accruing to her under Section 6-A during the pendency of the first and the second appeals or that she had not challenged the preliminary decree by joining Defendants 1, 4 and 5 in filing the second appeal.

14. We may add that by virtue of the preliminary decree passed by the trial court, which was confirmed by the lower appellate court and the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. If in the interregnum any party to the partition suit dies, then his/her share is required to be allotted to the surviving parties and this can be done in the final decree proceedings. Likewise, if law governing the parties is amended before the conclusion of the final decree proceedings, the party benefited by such amendment can make a request to the court to take cognizance of the amendment and give effect to the same. If the rights of the parties to the suit change due to other reasons, the court seized with the final decree proceedings is not only entitled but is duty-bound to take notice of such change and pass appropriate order. In this case, the Act was amended by the State Legislature and Sections 6-A to 6-C were inserted for achieving the goal of equality set out in the Preamble of the Constitution. In terms of Section 2 of Karnataka Act 23 of 1994, Section 6-A came into force on 30-7-1994 i.e. the date on which the amendment was published. As on that day, the final decree proceedings were pending. Therefore, the appellant had every right to seek enlargement of her share by pointing out that the discrimination practised against the unmarried daughter had been removed by the legislative intervention and there is no reason why the court should hesitate in giving effect to an amendment made by the

State Legislature in exercise of the power vested in it under Article 15(3) of the Constitution."

* * * * *

"20. In our view, neither of the aforesaid three judgments can be read as laying down a proposition of law that in a partition suit, preliminary decree cannot be varied in the final decree proceedings despite amendment of the law governing the parties by which the discrimination practiced against unmarried daughter was removed and the statute was brought in conformity with Articles 14 and 15 of the Constitution. We are further of the view that the ratio of *Phoolchand* v. *Gopal Lal* [AIR 1967 SC 1470] and *S. Sai Reddy* v. *S. Narayana Reddy* [(1991) 3 SCC 647] has direct bearing on this case and the trial court and the High Court committed serious error by dismissing the application filed by the appellant for grant of equal share in the suit property in terms of Section 6-A of Karnataka Act 23 of 1994."

<u>Bar of Section 97 CPC</u>

58. Section 97 CPC provide a under:

> **97. Appeal from final decree where no appeal from preliminary decree.—** Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

59. In ***Ganduri Koteshwaramma*** (supra) the Hon'ble Apex Court further held that **i)** though Section 97 of CPC provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred by the final decree but that does not create any hindrance or obstruction in the power of the Court to modify, amend or alter the preliminary decree or

pass another preliminary decree if the changed circumstances so require; and **ii)** that the final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the Court in the event of changed or supervening circumstances, even if no appeal has been preferred from such initial preliminary decree.

Maintainability of Application for modification in preliminary decree:

60. ***Vineeta Sharma v. Rakesh Sharma*** [22] was decided, after the reference was answered by the larger Bench in ***Vineeta Sharma*** {(2020) 9 SCC 1}. The Hon'ble Apex Court observed that a decree shall agree with the judgment in view of the changed law and so, the appeal was disposed of remanding the matter to the High Court(s) for the purpose of reconsideration and appropriate disposal in tune with the law laid down in ***Vineeta Sharma*** {(2020) 9 SCC 1}.

61. Learned counsel for the applicants submitted that the preliminary decree passed by this Court in A.S.No.118 of 1990 deserves to be modified in tune with the law as laid down in ***Vineeta Sharma*** (supra). He submitted that in ***Vineeta Sharma*** (supra), the matter was pending before the Hon'ble Apex Court so remand was made but in the present case since appeal was not pending before the Apex Court which had already been dismissed confirming the decree passed in A.S.No.118 of 1990 by

[22] 2023 SCC OnLine SC 2553

this Court, therefore, to bring the preliminary decree in tune with the law laid down in ***Vineeta Sharma*** (supra), the application for modification in the preliminary decree passed by it, is the only way and when the application for modification in the preliminary decree filed before the learned Trial Court, finally stands rejected, on the ground that the trial Court had no jurisdiction. So, the application is maintainable in the Appeal Suit.

62. The objection raised by the learned counsels for the respondents to the maintainability of I.A.No.1 of 2026 by the subsequent purchasers from the daughter P2, has got no force.

63. I.A.No.1 of 2026 is maintainable. The reason is **firstly** that, the same applicants (subsequent purchasers) are already party in the final decree proceedings. Their previous application for modification of preliminary decree filed before the learned Trial Court was allowed though the order was set aside in CRP on the ground that the Trial Court decree merged in the appellate Court decree, and so the Trial Court had no jurisdiction to modify the preliminary decree. The CRP was not allowed on the ground that those subsequent purchasers had no right to maintain the application.

64. **Secondly**, a suit for partition is pending till the final decree is passed. So pending the suit for partition if any transfer takes place may be after the preliminary decree, the subsequent purchaser has a right to

be impleaded and to contest or prosecute the pending proceedings. The subsequent purchaser, pending the suit, if wants to come on record, he has a right to apply to protect his interest created in the suit property.

65. In ***S.Sudhakar*** (supra) on consideration of Order XXII Rule 10 CPC and Section 2(11) CPC which defines legal representative, it was held that the purchaser of property pending suit can come on record as legal representative or to continue the *lis* on behalf of assignor. Paras 13 to 17 of S.Sudhakar (supra) read as under:

> "13. The admitted circumstances are as follows:
>
> The suit is one for partition and separate possession of plaintiffs 1/11th share in the suit schedule property. The deceased-plaintiff after filing the suit under registered sale deed dated 07.08.2001 alienated his undivided share of in the suit schedule property in favour of revision petitioners. The revision petitioners have been impleaded under Order XXII Rule 10 CPC.
>
> Order XXII Rule 10 CPC reads thus:
>
> Procedure in case of assignment before final order in suit-
>
> (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be 7 continued by or against the person to or upon whom such interest has come or devolved.
>
> (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."
>
> 14. Under Order XXII Rule 10 CPC, the procedure for bringing on record on assignment, creation or devolution to continue the suit by or against the person on whom the interest has come to vest or devolved. The application can be by the parties already on record or can be at the instance of assignee etc. The object of Rule 10 of Order XXII ought to be construed and appreciated in the light of Section 2(11) of CPC, for the object is to decide a lis in the presence of parties having interest or competent to represent the estate of deceased.

> 15. In a suit for partition, the position of plaintiffs and defendants is interchangeable and stands on a distinct footing. In a partition suit, a party can claim transposition from the category of defendant to the category of plaintiff and vice versa. Therefore, per se, transposition is not prohibited and, on the other hand, in a suit for partition, the transposition of a party from one rank to a different rank is easier for the frame of suit and the cause of action etc., are not substantially altered. Therefore, from the point of view of frame of suit, the transposition of a party in a suit for partition does not present difficulty.
>
> 16. Section 2(11) CPC defines legal representative as:
>
> (i) a person who in law represents the estate of a deceased person;
>
> (ii) includes in a person who intermeddles with the estate of deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.
>
> 17. The definition of legal representative is wide and at the same time succinctly encompasses variety of situations. Therefore, it is for the Court to examine and decide whether the status claimed by a person as legal representative of deceased party satisfies the definition or not. The definition of legal representative does not exclude a purchaser from the deceased party to represent the estate. The words used are legal representative means - one who can legally represent the estate of the deceased. In a given case, a purchaser of interest of deceased party to a lis can be recognized on the ground that he represents the estate of a deceased party. In the case on hand, having allowed revision petitioners to come on record, the objection to transpose them as plaintiffs is untenable. Therefore, the purchaser of property pending suit can by reference to Section 2(11), Order XXII Rule 10 can come on record as legal representative or to continue the lis on behalf of assignor."

66. **Thirdly**, the legal representatives of the deceased P2 have also filed I.A.No.3 of 2026 for the same prayer of modification in the preliminary decree on the same grounds, and there is no dispute raised with respect to the maintainability of I.A.No.3 of 2026 at the instance of the legal heirs of deceased P2. We are considering both the applications together. The same result would follow in I.A.No.1 of 2026 or/and I.A.No.3

of 2026. So, the objection raised is of no much relevance and we find no reason to reject I.A.No.1 of 2026 of the applicants/subsequent purchasers from P2 on the objection of its maintainability.

67. Learned counsel for the respondents placed reliance in ***T. Ravi v. B. Chinna Narasimha***[23] to contend that the application for modification is not maintainable for the reason that the matters which are concluded by preliminary decree cannot be re-agitated in an appeal against the final decree and so, applying the same principle it cannot be re-agitated by filing an application for modification. In ***T. Ravi*** (supra) the determination of shares as per the preliminary decree had attained finality and the shares of the parties had been crystallized in each and every member. So, the purchaser *pendent lite* was bound by the preliminary decree with respect to the shares so determined, and it was held that it could not be reopened and whatever equity could have been claimed in the final decree proceedings to the extent of the vendor's share had already been extended to those purchasers.

68. A perusal of the judgment in ***T. Ravi*** shows that the provision of Section 97 CPC was considered. Against the preliminary decree appeal was not filed. The preliminary decree attained finality. It was held that from the final decree, the point could not be re-agitated, in the appeal as the point of share of the vendor had been concluded by the preliminary decree. The principle of law as applied in the said case is applicable to

[23] (2017) 7 SCC 342

the facts of that case and also to the like cases, but not to the facts of the present case. In the case of ***T. Ravi*** (supra) the question of change in the share of the parties to the suit for partition due to the change in law or the death of a party resulting into the enhancement of the share of the parties, was not involved. The law is well settled as laid down in ***T. Ravi*** (supra) but there is also an exception, as laid down in the aforesaid cases, ***Ganduri Koteshwaramma*** (supra) that in the cases of the changed circumstances changing share of the parties since after passing of the preliminary decree on account of death, birth or change in law, even if the appeal was not filed against the original preliminary decree that would not be a bar to apply for modification or to take the challenge in the final decree proceedings or in appeal against the final decree, as Section 97 CPC does not contemplate such a situation. In the present case those situations are present. Firstly, the change in law under Section 6 of the Hindu Succession Act; the judgment in ***Vineeta Sharma*** (supra) and also the death of a party (1st plaintiff-mother) are pending the partition suit, after passing of the preliminary decree by the appellate Court and pending the final decree proceedings. Final decree has not yet been passed. The judgment in ***T. Ravi*** (supra) is therefore distinguishable and is not attracted to the present case. It cannot be said based on ***T. Ravi*** (supra) that the application for modification is not maintainable.

Amendment of decree to be made by Trial Court or the appellate Court:

69. In ***Maldar Mahaboob Sab v. Allabaksh***[24], the question for consideration was whether the trial Court has got jurisdiction to amend the decree passed by the first appellate Court exercising jurisdiction under Section 152 of the CPC and if so, under what circumstances?

70. In ***Maldar Mahaboob Sab*** (supra) the plaintiff's suit for partition and separate possession for 1/3rd share was dismissed. The appeal was allowed. A preliminary decree, granting a share to the plaintiff alone was passed. The final decree was passed as per preliminary decree. Subsequently, the defendants noticed that in the preliminary decree the appellate Court apportioned the share of the plaintiff alone, without any apportionment to the defendants. They filed application for amendment of the final decree in the appellate Court. The same was returned on the ground that it was only the Trial Court, which was competent to amend the final decree. The defendants filed the application before the Trial Court which was rejected on the ground that any amendment in the Trial Court decree would amount to the amendment in the appellate Court decree. In CRP this Court held that the decree passed by the Court of first instance merged with that of the decree passed by the first appellate court by way of reversal and it was only the decree of the first appellate

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[24] 2004(2) ALD 152

court that was to be executed. The provisions of Sections 152 & 153-A of CPC and the judgement of the Kerala high court in ***Kannan v. Narayani***[25] (Full Bench) were taken into considerations in holding that the trial Court had rightly dismissed the application as the decree of the trial Court had been reversed by the appellate Court and it was the appellate court alone that could exercise the jurisdiction, to amend the decree, under section 152 CPC.

71. In ***Kannan*** (supra) the full bench of the Kerala High court held that section 153-A implies that in cases of disposal of the appeals otherwise than under order 41 rule 11 the court of first instance would not have the power to amend the decree or order and had further held that except in cases to which section 153-A of CPC applies, where there has been an appeal the decree under appeal merges in the decree in appeal and it is only the appellate court that could correct or amend the decree under section 152 of CPC. The relevant part of the judgement in para 7 reads as under:

> "7. .... Apparently, the legislature did not think it necessary to make any provision in regard to the amendment in cases where appeals are disposed of not under Order XLI, Rule 11 but on the merits. Section 153-A eloquently Implies that in cases of disposal of appeals otherwise than under Order XLI, Rule 11 the Court of first instance would not have the power to amend its decree or order.
>
> In these circumstances we hold that except in cases to which Section 153-A of the Code of Civil Procedure applies, where there has been an

[25] AIR 1980 Ker 76

> appeal, the decree under appeal merges in the decree in appeal and it is only the appellate court that could correct or amend the decree under Section 152 of the Code. In this view the order of the court below is correct and calls for no interference. The Revision Petition is dismissed. Parties are directed to suffer costs."

72. In ***Maldar Mahaboob Sab*** (supra) and in ***Kannan*** (supra) the principle of merger of the trial court decree in the appellate Court's decree was applied. The introduction of section 153-A of CPC was given due weight. Section 153A CPC reads as under:

> **153A. Power to amend decree or order where appeal is summarily dismissed.—**Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

73. Section 153A conferred power on the trial Court to amend the decree passed by it where the trial Courts decree was confirmed by the appellate court by dismissal of the appeal under order 41 rule 11 CPC.

74. The view taken was that if the decree of the trial Court has been modified or reversed it will be the appellate Court alone empowered to amend the decree and not the Trial Court, and the appellate Court would be empowered under Section 152 CPC.

75. Section 152 of CPC reads as under:

> "**152. Amendment of judgments, decrees or orders**.—Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising

> therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

76. As per Section 152 CPC the ‘clerical’ or ‘arithmetical’ mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

77. We have our different views regarding application of Section 152 in different kinds of cases of amendment in decree. There may be different situations requiring the trial court decree to be modified. If there are some clerical or arithmetical mistakes then certainly Section 152 CPC would be attracted, which specifically provides for clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or mission to be corrected by the court either of its own motion or on the application of any of the parties.

78. But, in a situation, other than clerical or arithmetical mistakes as contemplated by Section 152 CPC, i.e., as in the present case, where the decree passed by the Trial Court has been modified by the appellate Court, and there is no clerical or arithmetical mistake, but the amendment or modification is required in view of the changed circumstances after the preliminary decree, viz., death of a P1, affecting the share of the P2 and son of P1 already determined or due to change in law, i.e., Section 6 of Hindu Succession Act as substituted vide Act No.10 of 2005. In our view

Section 152 CPC cannot be taken recourse to as those kinds of cases shall not be covered by Section 152 CPC.

79. In ***State of Punjab v. Darshan Singh***[26] the Hon'ble Apex Court held that Section 152 CPC provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. The Hon'ble Apex Court further held that the corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 CPC. The Hon'ble Apex Court further held that no new arguments or rearguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment.

80. Paragraphs No.12 and 13 of ***Darshan Singh*** (supra) are reproduced as under:

> "**12.** Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from

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[26] (2004) 1 SCC 328

any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal cannot and, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefore and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the Code even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in *Dwaraka Das* v. *State of M.P.* [(1999) 3 SCC 500] and *Jayalakshmi Coelho* v. *Oswald Joseph Coelho* [(2001) 4 SCC 181] .

> **13.** The basis of the provision under Section 152 of the Code is founded on the maxim "*actus curiae neminem gravabit*" i.e. an act of court shall prejudice no man. The maxim "is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law", said Cresswell, J. in *Freeman* v. *Tranah* [12 CB 406 : 138 ER 964] (ER p. 967). An unintentional mistake of the court which may prejudice the cause of any party must and alone could be rectified. In *Master Construction Co. (P) Ltd.* v. *State of Orissa* [AIR 1966 SC 1047 : (1966) 17 STC 360] it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court, liable to be corrected. To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the court which may say something or omit to say something which it did not intend to say or omit. No new arguments or rearguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case."

81. Then, it may be, by invoking the power under Section 151 CPC which saves the inherit powers of the Court in the ends of the justice.

82. Section 151 CPC reads as under:

> **151. Saving of inherent powers of Court**.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

83. Section 151 CPC it is settled in law can be invoked if there is no provision to the contrary. Even if there is no specific provision, the

inherent power, in the changed circumstances to modify or alter the decree, in the circumstances other than under Section 152 of CPC, can be invoked to amend the preliminary decree or to pass second preliminary decree. We do not find any specific provision in the CPC curtailing such power of the appellate Court. When the ends of justice require to amend the preliminary decree due to changed circumstances of fact or law in a partition suit the preliminary decree passed by the appellate Court can be altered or modified or second preliminary decree can be passed, invoking its inherent jurisdiction saved by Section 151 CPC.

84. In ***National Institute of Mental Health & Neuro Sciences v. C. Parameshwara***[27] the Hon'ble Apex Court referring to its previous judgment in ***Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal***[28] reiterated that the inherent jurisdiction of the court to make orders *ex debito justitiae* is undoubtedly affirmed by Section 151 CPC, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code, where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive. Paragraph No.12 of ***C. Parameshwara*** (supra) reads as under:

> "**12.** In the case of *Manohar Lal Chopra* v. *Rai Bahadur Rao Raja Seth Hiralal* [AIR 1962 SC 527 : 1962 Supp (1) SCR 450] it has been held that inherent jurisdiction of the court to make orders *ex debito*

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[27] (2005) 2 SCC 256

[28] AIR 1962 SC 527

justitiae is undoubtedly affirmed by Section 151 CPC, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive. In the present case, as stated above, Section 10 CPC has no application and consequently, it was not open to the High Court to bypass Section 10 CPC by invoking Section 151 CPC'.

85. In ***Ram Prakash Agarwal v. Gopi Krishan***[29] the Hon'ble Apex Court held that the power under Section 151 CPC is absolutely essential for securing the ends of justice and to overcome the failure of justice. The Court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited. The Hon'ble Apex Court further observed that the inherent powers may be exercised *ex debito justitiae* in those cases, where there is no express provision in CPC. However, the said powers cannot be exercised in contravention of, or in conflict with, or upon ignoring express and specific provisions of the law.

86. Paragraphs No.13 and 14 of ***Ram Prakash Agarwal*** (supra) read as under:

"**13.** Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a *pending suit* conducted in a manner that is consistent with justice and equity. The court can do justice between the *parties before it*. Similarly, inherent powers cannot be used to re-open settled matters. The inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. A

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[29] (2013) 11 SCC 296

provision barring the exercise of inherent power need not be express, it may even be implied. Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The Court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited.

14. The consolidation of suits has not been provided for under any of the provisions of the Code, unless there is a State amendment in this regard. Thus, the same can be done in exercise of the powers under Section 151 CPC, where a common question of fact and law arise therein, and the same must also not be a case of misjoinder of parties. The non-consolidation of two or more suits is likely to lead to a multiplicity of suits being filed, leaving the door open for conflicting decisions on the same issue, which may be common to the two or more suits that are sought to be consolidated. Non-consolidation may, therefore, prejudice a party, or result in the failure of justice. Inherent powers may be exercised ex debito justitiae in those cases, where there is no express provision in CPC. The said powers cannot be exercised in contravention of, or in conflict with, or upon ignoring express and specific provisions of the law. [See *B.V. Patankar* v. *C.G. Sastry* [AIR 1961 SC 272] , *Ram Chandra Singh* v. *Savitri Devi* [(2004) 12 SCC 713 : AIR 2004 SC 4096] , *Jet Ply Wood (P) Ltd.* v. *Madhukar Nowlakha* [(2006) 3 SCC 699 : AIR 2006 SC 1260] , *SBI* v. *Ranjan Chemicals Ltd.* [(2007) 1 SCC 97] , *State of Haryana* v. *Babu Singh* [(2008) 2 SCC 85 : (2008) 1 SCC (Civ) 468 : (2008) 1 SCC (L&S) 386] , *Durgesh Sharma* v. *Jayshree* [(2008) 9 SCC 648 : AIR 2009 SC 285] , *Nahar Industrial Enterprises Ltd.* v. *Hong Kong and Shanghai Banking Corpn.* [(2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481] and *Rajendra Prasad Gupta* v. *Prakash Chandra Mishra* [(2011) 2 SCC 705 : (2011) 1 SCC (Civ) 548 : AIR 2011 SC 1137] .]”

87. The inherent powers can be exercised or invoked as there is no express provision, in the CPC for modification or correction in the decree under the circumstances as in the present case. The exercise of inherent powers would not be in contravention or in conflict with any specific provision of law. Rather the modification in view of the changed law and change factual circumstances would secure giving effect to the changed circumstances, as per law in a suit for partition to clearly specify the correct share of the respective parties in view of the change, which it is the duty of the Court to do in a suit for partition for once and all.

88. The provision which specifically deal for correction of the decree is Section 152 CPC which does not contemplate the situation as in the present case. Consequently, there is no bar in invoking the provisions of Section 151 CPC in a situation not contemplated by Section 152 CPC.

89. Additionally, on the principle that there can be more than one preliminary decree in a suit for partition, in the changed circumstances, factual or legal, effecting the rights and share of the parties when no final decree has been passed, it can be so done in the exercise of the appellate powers itself, as the suit for partition is considered pending till the final decree is passed.

90. We are of the further view that in a partition suit if the proceedings are pending at the stage of preparation of the final decree, and since after passing of the preliminary decree, there are some changes factual or

legal, substitution of Section 6 of the Hindu Succession Act or/and the death of plaintiff No.1 (mother), effecting the change in the shares of the parties, such change can also be given effect to by the learned trial Court in the proceedings pending for preparation of final decree or even if the appeal is pending against the final decree in that appeal as well and any change or modification in the original preliminary decree would not be necessarily required. Such change in the position factual or the legal can be taken due care of by the trial Court or the appellate Court as the case may be, before which the final decree proceedings are pending either at the initial stage or at the appellate stage. We are of the said view for what has been held by the Hon'ble Apex Court in ***Vineeta Sharma*** (supra) of which the relevant part is as under:

> "129. (iv)…….Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son **in pending proceedings for final decree or in an appeal."**

Similarly, in ***Prema*** (supra) also the Hon'ble Apex Court held in paragraph-11 as under:

> "11…….. if after passing of preliminary decree in a partition suit but before passing of final decree, there has been enlargement or diminution of the shares of the parties or their right has been altered by statutory amendment, **the Court is duty bound to decide the matter and pass final decree keeping in view the change scenario………**"

Further, in paragraph-14 of ***Prema*** (supra) the Hon'ble Apex Court in clear words observed and held that as the partition suit is required to be

decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. If in the interregnum any party to the partition suit dies, then his/her share is required to be allotted to the surviving parties and this can be done in the final decree proceedings.

Paragraph-14 of ***Prema*** (supra) is reproduced as under:

> "**14.** We may add that by virtue of the preliminary decree passed by the trial court, which was confirmed by the lower appellate court and the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. **If in the interregnum any party to the partition suit dies, then his/her share is required to be allotted to the surviving parties and this can be done in the final decree proceedings**. Likewise, if law governing the parties is amended before the conclusion of the final decree proceedings, the party benefited by such amendment can make a request to the court to take cognizance of the amendment and give effect to the same. **If the rights of the parties to the suit change due to other reasons, the court seized with the final decree proceedings is not only entitled but is duty-bound to take notice of such change and pass appropriate order.** In this case, the Act was amended by the State Legislature and Sections 6-A to 6-C were inserted for achieving the goal of equality set out in the Preamble of the Constitution. In terms of Section 2 of Karnataka Act 23 of 1994, Section 6-A came into force on 30-7-1994 i.e. the date on which the amendment was published. As on that day, the final decree proceedings were pending. Therefore, the appellant had every right to seek enlargement of her share by pointing out that the discrimination practised against the unmarried daughter had been removed by the legislative intervention and there is no reason why the court should hesitate in giving effect to an amendment made by the State Legislature

in exercise of the power vested in it under Article 15(3) of the Constitution."

91. The trial Court shall have no jurisdiction to modify the preliminary decree in the changed circumstances where the trial court decree has been modified or reversed by the appellate Court. In cases, where the dismissal of the appeal is, not under Order 41 Rule 11 of CPC, but otherwise, that is not summary, the principle of merge of the trial court decree in the appellate court decree would apply. So the trial court would not be competent to make any modification in the decree passed by it as its decree has merged in the appellate court decree and it no longer remains the decree of the trial Court.

Application in the facts of present case; as to whether the preliminary decree requires modification or not.

92. In the present case Mandlem Veeramma @ Eramma daughter (P2) was granted 1/6th i.e., equal share to that of the son Busappa (P2's brother) 1/6th both children of Vale Mareppa, as also the widow Vale Nagamma was granted 1/6th under the preliminary decree dated 26.09.2003 passed by the appellate Court. All those three were granted 1/3 share each in ½ share of Vale Mareppa i.e., 1/6 each, in the total coparcenary property. So, what we find is that even if Section 6 as substituted was not there in the statute at the time the appellate decree was passed and also no judgment as in ***Vineeta Sharma*** (supra) the

daughter (P2) had already been given equal share to that of the son of Mareppa.

93. We are not entering into the aspect as to how the daughter (P2) was entitled and could be given 1/6th share along with son and widow of her father, at that time, as we cannot and should not reopen the original preliminary appellate decree to that effect and extent. What has been given to the daughter (P2) under the original appellate preliminary decree dated 26.09.2003, she cannot be deprived of the same due to change in law, i.e., substituted Section 6 of the Hindu Succession Act pending the suit for partition, after the original appellate preliminary decree but before passing of the final decree. In view of the declaration of law in ***Vineeta Sharma*** (supra) the daughter P2 would certainly be entitled to what has been given to her under the original appellate preliminary decree.

94. During the pendency of the partition suit Vale Nagamma the mother (P1) died. So, we are of the view that her 1/6th share (i.e., 1/3 of ½) granted in the original preliminary appellate decree dated 26.09.2003 shall go to her legal heirs as per the Hindu Succession Act, 1956.

95. Section 15 of the Hindu Succession Act, 1956 provides as under in the case of death of a female:

> **"15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—**
> **(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;**

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased(including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shalldevolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

96. Under Section 15(1) (a) of the Hindu Succession Act, the share of P1 mother i.e., 1/6th , shall go equally to the daughter (P2) and to the children of predeceased son Busappa (son of P1). So, in this way both P2 (daughter) and Busappa (son) would be entitled to ½ share each in the coparcenary suit property of their father Vale Mareppa.

97. The preliminary decree dated 26.09.2003 is required to be modified to the extent of declaring and allotting ½ share in the ½ share of the father, to Busappa and to the same extent of ½ share in the ½ share of the father, to the daughter (P2).

98. The original appellate preliminary decree dated 26.09.2003 shall be modified to that extent only. The rest, remaining the same. The second preliminary decree deserves to be drawn up accordingly.

VIII. Conclusions:

99. We sum up our conclusions as follows:

i) There can be more than one preliminary decree in a partition suit under the circumstances e.g. **a)** death or birth effecting the shares of the parties or/and **b)** the change in the legal position such as substituted Section 6 of the Hindu Succession Act substituted by Act No.39 of 2005 granting equal share to the daughter in the coparcenary of the father, subject to the fulfillment of the conditions imposed by the substituted Section 6 itself.

ii) The final decree is to be passed in consonance with the preliminary decree. If the preliminary decree requires to be modified in view of the changed circumstances, factual or legal, an application for modification of or for fresh second preliminary decree shall be maintainable so long as the final decree proceedings are pending but not afterwards.

iii) A preliminary decree which has not been challenged under Section 97 CPC attains finality, which shall ordinarily preclude from disputing its correctness in any appeal which may be preferred from the final decree.

iv) However, that finality attached to the preliminary decree shall not affect passing of the second preliminary decree due to change in law

or death or birth of a person affecting the shares of the parties under the original preliminary decree. Such a contingency is not contemplated by Section 97 CPC. So, in the specified changed circumstances of fact or of law as aforesaid, the preliminary decree is open for correction and modification even if the appeal was not preferred. Section 97 CPC will not bar such modification or correction in such circumstances.

v) If no appeal has been filed against the preliminary decree of the Trial Court; or the appeal has been filed but dismissed under Order 41 Rule 11 CPC, the Trial Court shall have the power and jurisdiction to pass second preliminary decree or to make modifications in the preliminary decree passed by it.

vi) If in appeal the Trial Courts decree has been affirmed by dismissal of the appeal on merits, but not under Order 41 Rule 11 CPC i.e., summary dismissal, or where the appellate Court allows the appeal and modifies the Trial Court's preliminary decree, any modification in the circumstances necessitating such modification, can be made only by the appellate Court, on the doctrine of merger of the Trial Court's decree in the appellate Court's decree.

vii) Under Section 152 CPC only clerical or arithmetical mistakes can be corrected. Any correction or change in the preliminary

decree, under any circumstance, other than clerical or arithmetical mistake, may be because of the change in the factual or legal position effecting the share of the parties which keeps on fluctuating till the partition suit is decided finally, cannot be made under Section 152 CPC.

viii) In such a situation as in clause (vii) supra the inherent powers of the Court saved by Section 151 CPC can be invoked, subject to the scope and limitations on exercise of power under Section 151 CPC.

(ix) In a partition suit if any change factual or legal takes place the change in the shares of the parties already determined in the preliminary decree, and the final decree proceedings being pending, such change can be taken due care of and given effect by the trial Court where the final decree proceedings are pending or even by the appellate Court in case the appeal is pending against the final decree.

x) Under the original appellate preliminary decree, the daughter (P2) was given 1/6 share equal to son Busappa even though substituted Section 6 of Hindu Succession Act was not there at that time but what has been given to (P2) cannot be taken away now, in view of the substituted Section 6 of Hindu Succession Act and the

law declared in ***Vineeta Sharma*** (supra) under which a daughter is entitled in the coparcenary of her father equal to a son.

xi) Mandlem Veeramma @ Eramma daughter (P2) was alive on 09.09.2025. There was no partition of the coparcenary property of her father before 20.12.2004. The final decree proceedings are still pending.

xii) Vale Nagamma the mother (P1) has died. Her 1/6th share as determined in the original preliminary decree shall equally be succeeded by Mandlem Veeramma @ Eramma (daughter) (P2) and Busappa (son) under Section 15(1)(a) of the Hindu Succession Act. So both, daughter (P2) and son shall have ½ share each in ½ of their father.

xiii) The preliminary decree dated 26.09.2003 is required to be modified to the extent of declaring and allotting ½ share to Busappa (son) and ½ share to Mandlem Veeramma @ Eramma (daughter) in the ½ share of their father Vale Mareppa, in his coparcenary i.e., 1/4th each.

xiv) The original appellate preliminary decree dated 26.09.2003 shall be modified to the extent as in clause (xiii) supra, only. The rest

remaining the same. The second preliminary decree shall be drawn accordingly.

100. We clarify that notwithstanding the change in the share of the daughter (P2) from 1/6 (i.e., 1/3rd in ½ of the father) to ¼ (i.e., ½ in ½ of the father), the subsequent purchasers, the applicants in I.A.No.1 of 2026 shall not be entitled for that enhanced share or any part thereof in excess of what has been transferred to them by P2 and only in terms of their sale deed(s) (deed of conveyance) and subject to its proof. They shall however be entitled, for the equity to be adjusted in the final decree proceedings in accordance with law.

IX. <u>Result:</u>

101. I.A.Nos.1 & 3 of 2026 are allowed in the following terms:

a) The preliminary decree dated 26.09.2003 shall be modified to the extent of declaring and allotting ½ share to Busappa (son) in the ½ share of the father Vale Mareppa (i.e., 1/4) and to the extent of another ½ share to Mandlem Veeramma @ Eramma (daughter) in the ½ share of the father Vale Mareppa (i.e., 1/4) in the coparcenary suit property.

b) The original appellate preliminary decree dated 26.09.2003 shall be modified to the extent as in (a) (supra) only. The rest remaining the same. The modified/second preliminary decree shall be drawn accordingly.

102. The learned Trial Court shall proceed as per the modified preliminary decree in terms of this judgment, and shall expeditiously decide the final decree proceedings, say, within 6 months from the date a certified copy of this judgment and the decree is placed before the Learned Trial Court.

103. There is no need to pass orders in I.A.Nos.2 & 4 of 2026 which are for stay of the final decree proceedings which IA(s) shall stand closed.

No orders as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

BALAJI MEDAMALLI, J

Date: .05.2026
Dsr/AG
Note:
LR copy to be marked
B/o
Dsr/AG

HIGH COURT OF ANDHRA PRADESH

* * * *

I.A. Nos. 1, 2, 3 & 4 of 2026
in
A.S. No. 118 of 1990

I.A.Nos.1 & 2 of 2026

Between:

Y.Rukinamma and 2 others

.....PETITIONERS

AND

Smt. Sagire Nagendramma and 15 others

.....RESPONDENTS

I.A.Nos.3 & 4 of 2026

Between:

M.Indira and another

.....PETITIONERS

AND

Smt. Sagire Nagendramma and 16 others

.....RESPONDENTS

DATE OF JUDGMENT RESERVED : 13.03.2026
DATE OF JUDGMENT PRONOUNCED : 05.05.2026
DATE OF JUDGMENT UPLOADED : 05.05.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

____

RAVI NATH TILHARI, J

____

BALAJI MEDAMALLI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

+ I.A. Nos. 1, 2, 3 & 4 of 2026
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% .05.2026

I.A.Nos.1 & 2 of 2026
Between:
Y.Rukinamma and 2 others
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I.A.Nos.3 & 4 of 2026
Between:
M.Indira and another
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AND
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.....RESPONDENTS

! Counsel for the Petitioners : Sri Virupaksha Dattatreya Gouda in I.A.Nos.1 & 2 of 2026 and Sri T.Nikhilesh in I.A.Nos.3 & 4 of 2026

Counsel for the Respondent No.1 : Sri Salar Aatif

Counsel for respondent Nos.2 & 3 : Sri P. Rajasekhar

< Gist :

> Head Note:

? Cases Referred:

1. (2020) 9 SCC 1
2. AIR 1958 SC 394
3. 2017 (2) ALD 1
4. AIR 1967 SC 1470
5. (1991) 3 SCC 647
6. AIR 2000 AP 193

7. (2009) 13 SCC 179
8. (2011) 9 SCC 788
9. (2011) 6 SCC 462
10. 2023 SCC OnLine SC 2553
11. AIR 1980 Ker 76
12. (2017) 7 SCC 342
13. Order dt.8.12.2006 in SLP(C)No.11792-11793/2004
14. AIR 1966 SC 1879
15. (2020) 14 SCC 436
16. 2024 SCC OnLine Bom 3541
17. Manu/SC/1216/2011
18. AIR 1967 SC 1470
19. (1991) 3 SCC 647
20. (2009) 13 SCC 179
21. 2011 (6) SCC 462
22. 2023 SCC OnLine SC 2553
23. (2017) 7 SCC 342
24. 2004 (2) ALD 152
25. AIR 1980 Ker 76
26. (2004) 1 SCC 328
27. (2005) 2 SCC 256
28. AIR 1962 SC 527
29. (2013) 11 SCC 296

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

I.A. Nos. 1, 2, 3 & 4 of 2026
in
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