

Paneerselvam and Others Vs. Mohana and Another

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Court : Chennai

Decided On : Oct-09-2012

Judge : G. Rajasuria

Appeal No. : A.S. No. 836 of 2009 & M.P. No. 1 of 2009

Appellant : Paneerselvam and Others

Respondent : Mohana and Another

Advocate for Pet/Ap. : For the Appellants: V.R. Rajasekaran, Advocate. For the Respondents: R1, Mrs. Hema Sampath, Senior counsel for Mrs. R. Meenal, R2, T.D. Vasu, Advocates.

Judgement :

(Appeal filed as against the judgment and decree dated 20.10.2008 passed by the learned Additional District Judge, Fast Track Court No.I, Salem in O.S.No.152 of 2005.)

This appeal is focussed at the instance of the defendants as against the judgment and decree dated 20.10.2008 passed by the learned Additional District Judge, Fast Track Court No.I, Salem in O.S.No.152 of 2005.

2. The parties, for convenience sake, are referred to here under according to their litigative status and ranking before the trial Court.

3. Compendiously and concisely, the germane facts absolutely necessary for the disposal of this appeal would run thus:

a] The first respondent-Mohana/plaintiff filed the suit for partition seeking the following reliefs:

To pass a decree in favour of the plaintiff

(i) permit the plaintiff to file the suit as indigent person.

(ii) set aside the partition deed dated 18.03.2002 as having been obtained by misrepresentation and fraud and not binding on the plaintiff's share in the suit properties.

(iii) directing the division of suit B sch.properties into 3 equal shares and allotting one such separated share to the plaintiff and directing the defendants to place the plaintiff in possession of the share so allotted.

(iv) for costs.

(extracted as such)

b) The defendants 1 to 6 filed the written statement resisting the suit.

c) D7 did not file any written statement.

c) The trial court framed the relevant issues.

d] Up went the trial, wherein the plaintiff examined herself as PW1 and marked Ex.A1. On the defendants' side, the first defendant examined himself as D.W.1 along with DW2 and marked Exs.B1 to B14.

e] Ultimately, the trial court decreed the suit and passed the preliminary decree allotting 1/3 rd share to the plaintiff in the suit properties.

4. Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the defendants 1 to 6/appellants have preferred this appeal on various grounds.

5. The relationship among the parties is an admitted one. One Palanivelu had one son and two daughters, viz., D1-Panneerselvam, D7-Rajalakshmi and the plaintiff-Mohana. D6-Dhanalakshmi is the wife of D1; D2- is the son of D1; D3-is the wife of deceased Senthilkumar, the son of Panneerselvam; D4 and D5 are the minor children of D3.

6.(a) According to the plaintiff, the suit properties were purchased by the deceased Palanivel vide the five sale deeds, viz., Ex.B6 dated 4.2.1955; Ex.B7 dated 11.04.1956; Ex.B8 dated 02.03.1960; Ex.B9 dated 10.12.1967 and Ex.B10 dated 20.02.1974 from out of the sale proceeds, which he obtained by selling the ancestral property, which he got in a partition between himself and his co-sharers, and also from out of his own income. Palanivelu died during the year 1976. The plaintiff also would proceed to narrate that Ex.A1, the partition deed dated 18.03.2002 as contained in Ex.A1 [the certified copy of the partition deed] emerged among the following persons, viz.,

1. Panneerselvam (D1)
2. Senthilkumar (son of D1-Panneerselvam)
3. Gopi (- do-)
4. Rajalakshmi (sister of D1)
5. Mohana (-do -)

However, the plaintiff would contend that the signature of the plaintiff was obtained in the partition deed by misrepresenting to her, as though it was a power deed. D1 and the co-sharers including the plaintiff from out of the joint family funds constructed a sago factory during the year 1987 and they availed loan for raising such construction. The deceased Senthilkumar, who was also managing the joint properties wanted the power deed to be executed by the plaintiff in his favour so as to enable him to mortgage the "B" scheduled property in favour of the Bank in order to run the said sago factory business. Believing his, representation during March 2002, the plaintiff signed the said partition deed as contained in Ex.A1, as though it was a power deed. Subsequently, she came to know about such

fraudulent act and filed the suit.

(b) D1 filed the written statement, denying and refuting the averments/allegations in the plaint by setting out precisely the following facts:

According to the defendants the plaintiff and D7 relinquished their right over the properties in view of they having been given in marriage with adequate Seervarisai. The contention of the plaintiff that all the suit properties except the B scheduled properties happened to be the self-acquired properties of Palanivelu was wrong and false. The two daughters of Palanivelu were given in marriage by Palanivelu himself on a grand scale spending huge sum and also giving them good amount of jewels. In the schedule appended to the written statement various items were claimed to have been given to the plaintiff during her marriage by Palanivelu.

1. Necklace - 12 sovereigns
2. Dollar chain - 13 sovereigns
3. Ordinary chain - 8 sovereigns
4. Watch chain (plaintiff) - 3 sovereigns
5. 6 Bangles - 7 sovereigns
6. 2 Rings - 1 sovereigns
7. Thodu and Thongattan - 2 sovereigns
8. Bridegroom ring - 1 sovereigns
9. Watch chain - 5 sovereigns
10. Jewels to plaintiff's son - 10 sovereigns
11. Share of mother's jewels - 10 sovereigns
12. Cash in box - Rs.5,000/-

13. Gift at the time of mother in law's death - Rs.10,000/-

14. Gift at the time of father in law's death - Rs.15,000/-

15. Manjal neeratam expenses- Rs.15,000/-

16. Gift at the time of plaintiff's daughter marriage Rs.10,000/-

17. Eluthigam expenses Rs.54,000/-

The contention of the plaintiff that she signed the partition deed without knowing it as a partition but only as a power of attorney, is far from the truth and only as an after thought she did choose to challenge the same. There were debts to the tune of Rs.20 lakhs incurred by the family even at the time of partition. The sago factory as described in the B schedule of the plaint is having nothing to do with the property of Palanivelu and hence it is beyond doubt that the said factory cannot be the subject matter of partition. For starting the said factory and for running it the self-acquired funds of D1 also was ploughed in and in such a case, the suit for partition would not lie at all at the instance of the plaintiff.

Accordingly, the defendants' would pray for the dismissal of the suit.

7. Heard both sides.

8. The learned counsel for the appellants/defendants would advance his arguments, which could pithily and precisely be set out thus:

- The plaintiff- Mohana studied upto PUC and she was in the know of things at the time of signing the partition deed, which is a registered one.

- The plaintiff's contention that she signed the partition deed believing it as a power of attorney, is too big a pill to swallow. If such sort of pleas are entertained, then the sanctity attached to a registered document would be set at nought.

- Illustration (e) to Section 114 of the Indian Evidence Act would also attach importance to registered document. There is presumption also about its genuineness.

- The plaintiff has not produced any evidence to show that she was defrauded or misrepresented to sign Ex.A1.
- DW2 Rajendran one of the attesting witnesses to Ex.A1 was examined to establish and demonstrate the genuineness of Ex.A1; whereas the evidence of PW1, the plaintiff remains only her *ipsidixit* and no importance can be attached to it.
- Exs.B1 to B14 would clearly show-up and point up that the suit properties were dealt with by D1. Ex.B4, the sale deed dated 27.02.1952 would highlight the fact that Palanivelu sold the property on his behalf and on behalf of his minor son Panneerselvam in favour of one Perumal Gounder alienating the property, which he got as per Ex.B3, the partition deed dated 25.02.1943, which emerged between Ilayappa Gounder, Perumal Gounder and Palanivel Gounder.
- The recitals in Ex.A1 would unambiguously and unequivocally highlight the point that voluntarily the plaintiff as well as D7 relinquished their right over the suit property and in such a case, she cannot veer round and take an about turn so as to get Ex.A1 set aside.
- The court below erroneously analysed the oral and documentary evidence and thereby simply decreed the suit allotting 1/3 rd share in favour of the plaintiff.
- Misreading the evidence of DW1 the court held that the sago factory was established in the suit property utilising the income of Palanivelu. DW1 barely stated that Palanivelu took on lease one Manju Sago factory and he did not admit that Velmurugan Sago factory situated in the suit property, was owned by Palanivelu.
- The trial court wrongly mulcted D1 to D6 with liability.
- The fraud and misrepresentation pleaded by the plaintiff ought to have been proved by her; but she did not discharge her onus of proof; but the trial court erroneously held as though her case was established.

Accordingly, he would pray for the setting aside the judgment and decree of the trial court and for dismissing the suit.

9. Per contra, in a bid to torpedo and extirpate the arguments as put forth on the side of the appellants/defendants 1 to 6, the learned senior counsel for the plaintiff/R1 would pyramid her argument, which could succinctly and precisely be set out thus:

- The trial court taking into account both the oral and documentary evidence, correctly arrived at the conclusion that the suit properties are joint properties; that after the death of Palanivelu during the year 1976, plaintiff, being one of the legal heirs of Palanivelu, was entitled to 1/3 rd share, as Palanivelu died leaving behind his three children including the plaintiff and already the wife of Palanivelu died during the year 1989.

- The reason found recited in Ex.A1 as though the daughters of Palanivelu were given in marriage with Seervarisai, was sufficient consideration for their relinquishment, suffers from illegality and such a reason can never be cited as adequate consideration for relinquishment of a lady's share in the property over which, they are having legal right.

- The trial court considering the overall circumstances correctly decided the case, warranting no interference in appeal.

Accordingly, she would pray for the dismissal of the appeal confirming the judgment and decree of the trial court.

10. The points for consideration are as under:

1. Whether there existed a co-parcenary between Palanivelu and Panneerselvam in the wake of the evidence as stood expatiated in Exs.B3, B4, B6 to B10 and if so, whether the sago factory constructed on the suit property should be treated as the co-parcenary property or not?

2. Whether the suit properties are the self-acquired properties of Palanivelu?

3. Whether Ex.A1 is vitiated in view of fraud and misrepresentation as alleged by the plaintiff and whether the trial court correctly appreciated the oral and documentary evidence in holding that Ex.A1 was vitiated. If so, whether the plaintiff is entitled to the suit property and what should be her share and in what capacity, she should be held to be the sharer?

4. What is the effect of the Hindu Succession (Amendment) Act 2005, so far this case is concerned?

4. Whether there is any perversity or illegality in the judgment and decree of the trial court?

11. All these points are taken together for discussion as they are inter-linked and inter-woven, inter-connected and entwined with each other.

12(i) The relationship among the parties is an admitted one. Unarguably and unassailably, as revealed by Ex.B3, the partition deed, Palanivelu obtained certain properties in the partition, which emerged between himself and his brothers and he sold those properties as per Ex.B4. It is the contention of DW1 himself that from out of the sale proceeds under Ex.B4, certain properties were purchased by his father Palanivelu; wherefore its legal consequence and significance should necessarily be seen.

12(ii) Ex.B5 is the sale deed executed by the said Palanivelu and his brothers in favour of a third party alienating their ancestral property and all those documents show that there was joint family nucleus among them.

12(iii) The recital in Ex.B4 would unambiguously and unequivocally highlight that Palanivelu executed the sale deed on his behalf and on behalf of his then minor son-D1 Panneerselvam in favour of a third party alienating the properties, which he got under Ex.B3 and whatever sale proceeds he obtained should be construed only as the joint fund of both. It is therefore crystal clear that even as on the date of emergence of Ex.B4 dated 27.02.1952 and even before that, so to say, from the birth of D1, there existed co-parcenership between Palanivelu and Panneerselvam and subsequently, whatever property purchased by Palanivelu,

the Kartha of such co-parcenary, should as a sequela be construed as the co-parcenery property of both Palanivelu and Panneerselvam. The said Palanivelu died only during the year 1976. There is no gainsaying of the fact that the said Palanivelu also took on lease one Manju sago factory, which is a different factory from Velmurugan Sago factory, which is situated in the suit property and earned income. As such, a clear co-parcenary could be discerned and seen in the facts and circumstances of this case. Wherefore, the plaintiff is not correct in simply pleading as though all the properties were the self-acquired properties of Palanivelu. In fact, they should be construed as the co-parcenery properties of Palanivelu and Panneerselvam. When such is the finding based on the documentary as well as the oral evidence, the law relating to co-parcenery property as well as inheritance should necessarily be seen and applied in the factual matrix of this case, appropriately, after giving a finding relating to the validity or otherwise of Ex.A1, the partition deed. Ex.A1 would contain the following recitals.

Tamil

(emphasis supplied)

Indubitably and indisputably, the contesting defendants pulling no punches would admit that at the time of partition no specific share was given to the plaintiff or D7, so to say, the daughters of Palanivelu and they were excluded from sharing the suit properties as per Ex.A1 on the sole ground that they were co-parceners but on the ground that they were given with adequate Seervarisai at and around the time of marriage.

13. At this juncture, it is worthwhile to observe that undeniably and incontrovertibly, Palanivelu himself during his life time conducted the marriages of both his daughters. I recollect and call up Section 3 of the Hindu Adoptions and Maintenance Act, 1956.

"3. Definitions - In this Act, unless the content otherwise requires -

a)

b)

(i)

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage,

....."

(emphasis supplied)

asper which, it is the bounden duty of the Hindu father to give his daughter in marriage by providing her with proper necessities in commensurate with his status.

14. As such, I am at a loss to understand and also there is no knowing of the fact, as to how D1, being the son of Panneerselvam and brother of the plaintiff, could venture to assert and claim that because the plaintiff was given in marriage with Seervarisai, she should be satisfied with that and that she was not entitled to any share in the suit properties.

15. My mind is reminiscent and redolent of the following maxim:

Non videntur qui errant consentire - They who err are not considered as consenting.

Accordingly, if viewed, it is crystal clear that if consensus is found to be lacking in the document, then it should be held to have got vitiated.

16. No doubt, in this case, the plaintiff specifically pleaded fraud and misrepresentation. She examined herself as P.W1. Indisputably Ex.A1 was not attested by the husband of the plaintiff. Simply because, she being a lady, having educational qualification signed the deed; she is not precluded from contending that she believed her brother's deceased son Senthilkumar and signed the partition deed as though it was a power of attorney; even though she earlier signed one other Power of attorney in connection with the running of Velmurugan Sago factory. The trial court believing the version of PW1 held that her plea is well-

founded. The trial court, being the court, which had the opportunity of witnessing the demeanour of the witnesses held so. Trite is the proposition that the appellate court should hesitate to interfere with factual findings of trial court, unless there is perversity or illegality is involved in such finding.

17. I would like to concentrate much on the recitals in Ex.A1 itself. There is nothing to indicate that subsequent to the marriage, in view of any sizeable consideration, parted with by D1 in her favour, she released or relinquished her share.

18. In this connection, the learned counsel for the appellants/defendants by citing the Division Bench judgment of the Karnataka High Court reported in **AIR 2005 Karnataka 426 [Ranganayakamma vs. K.S.Prakash]** would submit that once the parties sign the document, it has to be taken that the parties signed after knowing the contents.

19. At this juncture, the evidence of DW2-Rajendran should be considered. Attesting witness is only for the purpose of proving the signature and not the contents of the documents. In this connection, I would like to refer to the Division Bench judgment of this court reported in (2003) 1 MLJ 769 [K.A.Selvanachi and another vs. Dr.S.R.Sekar and another]. Certain excerpts from it would run thus:

"7. Attestation of a document does not, in our view, entitle any of the parties thereto or any one claiming under them to regard such attestation, per se, as acceptance on the part of the attesor that the contents of the document are true and that such attestor had knowledge of the same unless there is evidence before the court either intrinsic in the document itself or extrinsic to show that the attestor had knowledge of the contents and had accepted the same as correct.

8.Attestation therefore, does not imply that the attestor had knowledge of the contents of the document or that the attestor accepts the correctness of whatever is stated therein."

As such, PW1 herself admits her signature in Ex.A1, the partition deed. In such a case, it has to be seen as to how far the evidence of DW2-Rajendran can be given importance.

20. However, this case is concerned, Rajendran-DW2 would go a step further beyond his capacity as attesting witness and speak about the alleged fact of the plaintiff having read the contents of the partition deed before signing it. Whereas PW1-the plaintiff who was admittedly not assisted by any male member at the time of signing Ex.A1, would state that she believed her brother's deceased son Senthilkumar's version (deceased son of D1-Panneerselvam). The deposition of PW1 would unambiguously and unequivocally point up and show up that only 15 sovereigns of gold jewels were given by her father at the time of her marriage and not 54 sovereigns as stated by D1 in his written statement. There is no proof to show that 54 sovereigns of gold jewels were given by Palanivelu to her.

21. DW2 in his chief examination affidavit would state thus:

Tamil

(emphasis supplied)

However, such a sentence in the chief examination affidavit of the witness on the defendant's side would smack his partisan attitude. The witness, who is not a party and claims to be disinterested in the dispute, should not have voluntarily in the chief examination, stated so. He had gone over board and over reached himself in deposing as such. The very sentence in the chief examination affidavit of DW2 Rajendran one of the attesting witness to Ex.A1 would speak volume about his partisan attitude in supporting blindly the case of the defendants. In the case of defendant figuring as witness, he could contradict the case of the plaintiff. But a witness appearing on behalf of the defendants, is having no business to voluntarily contradict the case of the plaintiff. Answering the cross examination by such witness is entirely different. By uttering out the aforesaid statement in support of the defendants' case, he got his evidence minimised to the maxim.

22. During cross examination, DW2 would admit that at the time of PW1 signing Ex.A1, her husband was not present. DW2 also during cross examination would specifically state that PW1 signed in English and that he did not remember as in what language others have signed it and that once again projects him in poor light.

23. As such the stand of PW1 found favour with the trial court for the reasons to be recorded by her and I do not think that there is any perversity or illegality in such a finding given by the trial court.

24. The male members, who participated in the execution of the partition deed, should have taken care to get the signature of the husband of the plaintiff also for authenticity sake, but they had not chosen to do so for reasons best known to themselves. In such a case, the finding of the trial court in placing reliance on the deposition of PW1 cannot be labelled or dubbed as something untenable. Once Ex.A1 is held to be an invalid document, then as a sequela, it should be held that there was no partition.

25. The trial court after thoroughly analysing the entire oral evidence believed the deposition of PW1 that PW1 believing the misrepresentation of his brother's son Senthil Kumar, signed the partition deed as though it was a power deed and such a finding warrants no interference.

26. The lower court also correctly referred to the deposition of DW1 and extracted the relevant portion of his deposition and highlighted that the male members in the partition deed, got the signature of PW1 only by way of abundant caution even after knowing that PW1 was having no share. Such a stand by the defendants is totally antithetical to the law as highlighted by me supra and I need not once again reiterate the same. As such, Ex.A1 emerged even as per DW1 out of misconception and misunderstanding of law relating to the respective rights of the parties concerning the suit property.

27. On the defendants' side, it was argued even before the lower court as well as before this court that admittedly there was a power deed executed by PW1 before the emergence of Ex.A1, the partition deed; there was no probability of PW1 assuming for the second time, as though she was signing a power of attorney. Such an argument false foul of the common or garden principle that for different purposes different power of attorneys could emerge and in day to day life we come across in the legal field such sort of various power of attorneys emerging at the instance of one and the same person. Hence the probability, which was put forth on the side of the defendants fails to carry conviction with this court and it does not

hold water.

28. The very fact that the male members of the co-parcenary started, after the death of Palanivelu, the Velmurugan Sago factory as described in the B scheduled, would automatically enable the plaintiff to lay claim over it because, the undivided co-parcenary properties were unassailably and unarguably income generating properties and further more, the participation of PW1 in executing the power deed admittedly in favour of Senthilkumar earlier, would also demonstrate and accentuate that she was having interest in the sago factory and the defendants now cannot try to segregate the B scheduled property from the purview of partition.

29. The next phase of analysis is as to what law should be applied for partition. As held supra, the suit properties are the co-parcenary properties and if the law which existed as on the date of death of Palanivelu, is applied, then notionally, the properties should be divided into two parts and one should be allotted to D1- Panneerselvam and another should have been allotted to the widow as well as the children of Palanivelu, so to say, the half share of Palanivelu, should be allotted to the widow, the son and two daughters at the rate of th share each out of the half share. Consequent upon the death of the widow of Palanivelu during the year 1989, virtually her share also would revert back to her children, viz., his son and two daughters. As such, the son and the two daughters of Palanivelu would be entitled to 1/3 rd share each in the half share of Palanivelu; but this court has to consider the application of Hindu Succession Act, 1956 as amended by 2005 Act.

30. In this connection, I would like to refer to the decision of the Hon'ble Apex Court reported in **2011 (9) SCC 788 [Ganduri Koteshwaramma and another vs. Chakiri Yanadi and another]** and certain excerpts from it would run thus:

"11. The new Section 6 provides for parity of rights in the co-parcenary property among male and female members of a joint Hindu family on and from 9.9.2005. The legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a co-parcener becomes a co-parcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the co-parcener shall have same

rights and liabilities in the co-parcenary property as she would have been a son in unambiguous and unequivocal. Thus on and from 9.9.2005, the daughter is entitled to a share in the ancestral property and is a co-parcener as if she had been a son.

12. 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 20.12.2004; and (ii) where testamentary disposition of property has been made before 20.12.2004. 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 20.12.2004. 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 20.12.2004 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 19.03.1999 and amended on 27.09.2003 deprives the appellants of the benefits of the 2005 Amendment Act although final decree for partition has not yet been passed.

13. 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 20.12.2004 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 Respondent 1 is the determination of shares vide preliminary decree dated 19.3.1999 which came to be amended on

27.09.2003 and the receipt of the report of the Commissioner.

14. 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 re-determining the rights and interests of the parties having regard to the changed situation,"

A mere running of the eye over the aforesaid excerpts including the whole judgment would unambiguously and unequivocally highlight the fact that, in a pending partition suit, if final decree has not been passed then certainly, the Amendment Act 2005 amending the Hindu Succession Act, 1956 would be applicable.

31. My discussion supra would highlight that the partition deed Ex.A1 is found vitiated and as such, it is deemed to be not in existence at all. In such a case, there is no embargo for applying the Hindu succession Act, 1956 as amended by 2005 Act.

32. Accordingly, if viewed, it is crystal clear that the two daughters of Palanivelu happened to be the deemed co-parceners. In such a case, consequent upon the death of Palanivelu, it is to be taken that there were as many as three co-parceners, viz., his son Panneerselvam, daughters-Mohana and Rajalakshmi. Notionally, if partition is effected, there should have been four shares including the share of Palanivelu; and that th share of Palanivelu as per the judgment of the Hon'ble Apex Court reported in **AIR 1987 SC 558 [Yudhishter vs. Ashok Kumar]**, should be divided into four shares and one such share should be allotted notionally to the widow of Palanivelu and th share each should be allotted in favour of his son and two daughters invoking Section 8 r/w the Schedule under Class I heirs of the Hindu Succession Act.

33. Now then, it is an admitted factual point that the said widow without executing any Will or settlement died during the year 1989. In such a case, in the entire properties, the son and two daughters are deemed to be having 1/3 rd share each. The trial court even though in the preliminary decree arrived at the conclusion that each of the three children of the deceased Palanivelu is entitled to 1/3 rd share, yet the ratiocination adhered to in passing such a preliminary decree, was not correct; but the ultimate conclusion in passing the preliminary decree is to be upheld.

34. As such, the aforesaid points are decided in favour of the plaintiff and as against the defendants.

35.Point No.1 is decided to the effect that there existed a co-parcenary between Palanivelu and Panneerselvam in the wake of the evidence as found expatiated in Exs.B3, B4, B6 to B10 and that the sago factory constructed in the suit property should be treated as the co-parcenary property.

Point No.2 is decided to the effectthat the suit properties are the self-acquired properties of Palanivelu.

Point No.3 is decided to the effectthat the partition as contained in Ex.A1 stood vitiated in view of fraud, misrepresentation as alleged by the plaintiff and the trial court correctly appreciated the oral and documentary evidence in holding that Ex.A1 was vitiated. The plaintiff is entitled to the suit property both in the capacity of the co-parcener and legal heir, to an extent of 1/3rd share.

Point No.4 is decided to the effect that there is no perversity or illegality in the judgment and decree of the trial court in arriving at the ultimate conclusion.

36. In the result, the judgment and decree of the ultimate preliminary decree passed by the trial court is confirmed and the appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.