

नेवासा येथील सी. दिवाणी ब्या.सी. ज्यु.डी.

चाची कोर्टी

फासलल डिफ्री

कार्मदार

कार्ज नं. 03

जांतराम काळकुळागयकवाड

2023

सा.वाले

खंडेराव काळकुळागयकवाड

मा कामी सा.वाले नं. ४ ते ७ तर्फे

नाम विसेंती कार्ज कि.

बैबर सजकुषाचे कार्जमधी सा.वाले नंबर

४ ते ७ वगळतादी सोबत कांत्यल

सहत्वाचे व आवश्यक कागदपत्र दाखल

करित आहे.

तरी, सदरचे कागदपत्र दाखल

करण्यात येऊन त्यास लिशाणीबैबर

देण्यात यावा व सा.वाले नं. ४ ते ७

कडून घ्याव्याचे कामी तातून्तयावे

म्ह सी. कोर्टी नाम विसेंती.

कार्ज नंबर व्हावा म्ह नाम

विसेंती.

नेवासा

ता- 23/12/2024

(Signature)

सा.वाले नं. ४ ते ७ तर्फे मंड

(सि.डी.जी. कार. काळकुळे)



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~~कायली डिप्टी सिजदार बाकी~~

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1] SUPREME COURT OF INDIA (S.B. SINHA
AND CYRIAC JOSEPH, J.J.)

S. SATNAM SINGH & ORS - Appellants
VERSUS

SURENDERKAUR & ANR - Respondents

Civil Appeal No-2008 of 2008 (Arising out
of SLP (C) No-959 of 2008) decided on 2-12-2008
(From Andhra Pradesh)

2] SUPREME COURT OF INDIA
(R.M. LODHA & JAGDISH SINGH KHERRA, J.J.)

GAHOURI KOTESHWARAMMA & ANR
VERSUS

CHAKIRI KANADI & ANR.

Civil Appeal No-8538 of 2011 (Arising out
of SLP (Civil) No-9386 of 2010) decided
on 12-10-2011

(P.T-0)

- भोगेप्रमाणे आकाराने नं ४ तैप लोके दाखळ
कागदपत्राची वळनिपादक सले.

जेवना

सा- उडाकपत्राय

जरी

आकाराने नं ४ तैप लोके आस
(सोड. प्री जी आर. कागद)

2009 STPL 2061 SC

[AIR 2009 SC 1089 = (2009) 2 SCC 562 = JT 2008 (13) SC 459 = 2009 AIR(SCW) 249]

**SUPREME COURT OF INDIA
(S.B. SINHA AND CYRIAC JOSEPH, JJ.)****S. SATNAM SINGH & ORS**

Appellants

*VERSUS***SURENDER KAUR & ANR**

Respondents

Civil Appeal No. 7008 of 2008 (*Arising out of SLP (C) No.959 of 2008*)-Decided on 2-12-2008
(From: Andhra Pradesh)**(A) Civil Procedure Code, 1908, Section 2(2) – Civil Procedure - Decree - Whether an order passed by a court is a decree or not ? - Tests enumerated.**

(Para 15)

(B) Civil Procedure Code, 1908, Sections 2(2),97,Order 20 Rule 18 Order 26 Rule 14 - Partition suit - Preliminary decree - Amendment of decree - By adding in the list of properties - Held that the court may not have suo motu power to amend a decree but the same would not mean that the court cannot rectify a mistake - If a property was subject matter of pleadings and the court did not frame an issue which it ought to have done, it can, at a later stage, when pointed out, may amend the decree - A court shall always be ready and willing to rectify the mistake it has committed.

(Paras 2,20 to 24)

Cases Referred :	Chronological Paras
1995 AIR SCW 3677 : AIR 1995 SC 2493 : 1995 All LJ 1787 (Rel. on)	18
AIR 1986 AP 267 (Ref.)	9, 11, 12
AIR 1967 SC 1470 (Ref.)	10, 18
AIR 1963 SC 992 (Ref.)	19
AIR 1960 SC 307 (Rel. on)	17

Advocate(s): P. S. Narsimha, Somiran Sharma and Aribam Guneshwar, Sharma, for Appellants;
G. V. R. Choudary and K. Shivraj Choudhury, for Respondents.**JUDGMENT****S.B. Sinha, J.**-Leave granted.

2. Whether a property can be added in the list of properties after a preliminary decree is passed in

a partition suit is the question involved herein.

3. The parties hereto are successors of one late Surender Singh and one late Harikishan Singh. They were brothers. First respondent is the widow of late Harikishan Singh and the second respondent is his son. The property which was the subject matter of the partition suit was a house premises bearing Municipal No.2-4-1099 situated at Nimbali Adda, Hyderabad admeasuring 671 sq. yards.

4. The suit was filed by late Harikhsian Singh against the first petitioner and his son Rajinder Singh. In the written statement, the said fact was admitted. The question which arose for consideration of the court, however, was as regards the share of the parties therein. Whereas according to the petitioner, the plaintiff had only 1/3rd share in the suit property, according to the plaintiff he had 1/2nd share therein.

5. In the written statement, it was, inter alia, contended :

"There has never been any such attempt by the plaintiff for partition of the property as alleged in the plaint. In fact, the plaintiff has failed to render true and proper account of the business of M/s. Bombay Cycle Company though he was specifically called upon to do so by the defendant - 2, individually as well through his counsel. The plaintiff has also never co-operated in managing the matters immediately after the death of Late Sunder Singh, the father of the plaintiff and defendant - 1. Having knocked away some of the securities and other amounts which were in the hands of the plaintiff after death of late Sunder Singh singularly the plaintiff has chosen to file the present suit for partition claiming 50% share in the residential house, which is mentioned as suit schedule property."

6. An application for amendment of the said written statement was filed, inter alia, stating :

"It is true that Sri Sunder Singh died on 26.4.1980 intestate leaving behind his widow, the plaintiff and the defendant - 1 herein. It is also true that widow of late Sri Sunder Singh, i.e., Smt. Karam Kaur also died on 14.9.1992. However, the allegation that she died intestate is incorrect and false. The plaintiff is very well aware that Smt. Karam Kaur executed a registered will on 1.9.1981 before the Sub-registrar, Chikkadpally bequeathing her 1/3rd share in the suit schedule property as well as her 50% rights as a partner in the business of M/s. Bombay Cycle Company to the defendant No.2, herein. In the circumstances the contrary allegations made in the plaint in this respect are denied as false and fabricated. It would, thus, be apparent that by any stretch of imagination the plaintiff cannot deny 50% rights in respect of the suit schedule property as after the death of Sunder Singh, widow of Sri Sunder Singh, Karam Kaur, plaintiff / and the defendant 1 herein had become entitled to 1/3rd share each. Smt. Karam Kaur having executed a registered will on 1.9.81, her 1/3rd share naturally goes to the defendant 2, herein. In the circumstances the plaintiff would not be entitled to anything more than 33.33% of the suit Schedule property if at all."

It was furthermore alleged :

"There has never been any such attempt by the plaintiff for partition of the property as alleged in the plaint. In fact, the plaintiff has failed to render true and proper account of the business of M/s. Bombay Cycle Company though he was specifically called upon to do so by the defendant - 2, individually as well as through his counsel. The plaintiff has also never co-operated in managing the matters immediately after the death of Late Sunder Singh, the father of the plaintiff and defendant - 1. Having knocked away some of the securities and other amounts which were in the hands of the plaintiff after death of late Sunder Singh singularly the plaintiff has chosen to file the present suit for partition claiming 50% share in the residential house, which is mentioned as suit schedule property. It would thus be apparent that there is absolutely no merits in the suit and the plaintiff would not be entitled for the share as claimed. The suit, therefore being absolutely devoid of merits deserves to be dismissed with costs."

7. A replication to the said written statement was also filed.

8. The learned Trial Judge framed issues which read as under :

"(i) Whether plaintiff is entitled for partition? If so, to what share?

(ii) To what relief? On 21.1.02, basing on the pleadings of defendant No.3, the following additional issues were settled :-

(iii) Whether defendant No.3 is the legal heir of defendant No.2? iv. Whether the Will deed claimed by defendant No.3 is true, valid and binding on the plaintiff?"

9. The suit was decreed declaring 1/3rd share in favour of the plaintiff as also the first defendant, stating :

"(i) The plaintiff is entitled to partition and separate possession of 1/3rd share only in the suit schedule property.

(ii) The first defendant is entitled to 1/3rd share in the suit schedule property.

(iii) Defendant No.3 being the legal heir of defendant No.2, who is not heard of since more than 7 years and thereby presumed to be dead in the eye of law. Defendant No.3 is entitled to his (D2) 1/3rd share in the suit schedule property."

10. An interlocutory application was filed by the appellant thereafter purported to be in terms of Order XX Rule 18 of the Code of Civil Procedure read with Section 152 of the Code of Civil Procedure with regard to the share of the parties in the said Bombay Cycle Company. The respondents objected thereto. By reason of an order dated 14th March, 2006, the said application was allowed, directing :

"Admittedly the petitioners have raised a plea in respect of Bombay Cycle Company in their written statement but there was no specific issue framed in the regard. The learned counsel appearing for the petitioners submit that in order to shorten the litigation instead of driving the parties to a separate action, the present dispute can be decided in the present

dispute itself. The petitioners in support of their contention relied on the decision of our Hon'ble High Court in Syed Ikramuddin v. Syed Mahamed Ali reported in AIR 1986 AP 267. Further there is a dispute with regard to the Bombay Cycle Co. business. Whether it is a joint family business and whether the petitioners are having any share in the property cannot be decided without making any enquiry in that direction. Therefore, I feel that the parties should be directed to adduce oral or documentary evidence in respect of their respective contentions so as to enable this Court to decide the point of controversy. It is also not out of place of mention here that the Hon'ble High Court also directed to dispose of the matter at the earliest possible time. Accordingly the parties are directed to lead oral and documentary evidence in support of their contentions. The respondent No.4 herein is not a party to the suit. No relief is passed against the respondent No.4 herein is not a party to the suit. No relief is passed against the respondent No.4 in this petition. Call on 16.3.2006."

11. A civil revision application filed there against by the respondents has been allowed by reason of the impugned judgment. The High Court referred to the decision of this Court in Phoolchand v. Gopal Lal [AIR 1967 SC 1470] to conclude :

"The Supreme Court was dealing with a case where the shares had to be reallocated on account of death of party and therefore the Court said such facts can be taken into consideration and appropriate orders could be passed which could be a fresh preliminary decree. But here we have a case where it is contended by the defendants that they had mentioned in their written statement the property which they now sought to include in the preliminary decree. Whole trial went on decree was passed in 2003, and this particular property was not mentioned in the decree as joint family property and after three years an application came to be filed that it should be added in the decree which, in our view, is not permissible. Therefore, we hold that the judgment of this Court in Syed Ikramuddin v. Syed Mahamed Ali does not lay down a good law and the question is answered that additional properties cannot be added for partition in the preliminary decree after the preliminary decree attained finality in terms of Section 97 of the Code."

12. Mr. P.S. Narasimha, learned counsel appearing on behalf of the appellant, would submit that as in this case the only dispute between the parties was with regard to the share in the suit property and, thus, it was obligatory on the part of the court to pronounce its decision on all the issues.

13. It was urged that a very well considered decision of the Andhra Pradesh High Court in Syed Ikramuddin v. Syed Mahamed Ali [AIR 1986 AP 267] has wrongly been overruled by reason of the impugned judgment.

14. Mr. G.V.R. Choudhary, learned counsel appearing on behalf of the respondent, on the other hand, would support the judgment contending that the courts even do not have any suo motu power to amend the decree as a preliminary decree once passed is final.

15. A 'decree' is defined in Section 2(2) of the Code of Civil Procedure to mean the formal expression of an adjudication which, so far as regards, the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the

suit. It may either be preliminary or final. It may partly be preliminary and partly be final. The court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading upto the passing of an order. The circumstances under which an order had been made would also be relevant. 15. For determining the question as to whether an order passed by a court is a decree or not, it must satisfy the following tests :

- "(i) There must be an adjudication;
- (ii) Such adjudication must have been given in a suit;
- (iii) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit;
- (iv) Such determination must be of a conclusive nature; and
- (v) There must be a formal expression of such adjudication."

17. Before advertng to the rival contentions of the parties, it must be kept in mind the principle that ordinarily a party should not be prejudiced by an act of court. It must also furthermore be borne in mind that in a partition suit where both the parties want partition, a defendant may also be held to be a plaintiff. Ordinarily, a suit for partial partition may not be entertained. When the parties have brought on records by way of pleadings and/or other material that apart from the property mentioned by the plaintiff in his plaint, there are other properties which could be a subject matter of a partition, the court would be entitled to pass a decree even in relation thereto.

18. In certain situations, for the purpose of complete adjudication of the disputes between the parties an appellate Court may also take into consideration subsequent events after passing of the preliminary decree. In Ct. A. Ct. Nachiappa Chettiar & Ors. V. Ct. A. Ct. Subramaniam Chettiar [(1960) 2 SCR 209], it was held :

"It would thus be seen that the respondent's share in the family properties was not in dispute nor was his share in the properties in Burma seriously challenged. The only plea raised in respect of the latter claim was that the court had no jurisdiction to deal with it. This state of the pleadings in a sense truly reflected the nature of the dispute between the parties. It is common ground that the family is a trading family and there could be no doubt that the assets of the family were partible between the members of the family. It was on these pleadings that the trial judge framed fifteen issues and set down the case for hearing."

19. While dealing with the application under Section 21 of the Arbitration Act, 1940 where one of the questions was as to whether an immoveable property situated in Burma could be a subject matter of reference, in Phoolchand & Anr. v. Gopal Lal [(1967) 3 SCR 153], it was held :

"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 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; 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."

20. The said principle was reiterated in *Mool Chand & Ors. v. Dy. Director, Consolidation & Ors.* [AIR 1995 SC 2493], stating :

"The definition of 'decree' contained in Section 2 (2) read with the provisions contained in Order 20, Rule 18(2) as also Order 26, Rule 14 of the Code indicate that a preliminary decree has first to be passed in a partition suit and thereafter a final decree is passed for actual separation of shares in accordance with the proceedings held under Order 26. There are, thus, two stages in a suit for partition. The first stage is reached when the preliminary decree is passed under which the rights of the parties in the property in question are determined and declared. The second stage is the stage when a final decree is passed which concludes the proceedings before the Court and the suit is treated to have come to an end for all practical purposes."

21. Mr. Chaudhary, however, has placed strong reliance in *Venkata Reddy & Ors. v. Pethi Reddy* [AIR 1963 SC 992], wherein it was held :

"A preliminary decree passed, whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. No doubt, in suits which contemplate the making of two decrees a preliminary decree and a final decree - the decree which would be executable would be the final decree. But the finality of a decree or a decision does not necessarily depend upon its being executable. The legislature in its wisdom has thought that suits of certain types should be decided in stages and though the suit in such cases can be regarded as fully and completely decided only after a final decree is made the decision of the court arrived at the earlier stage also has a finality attached to it. It would be relevant to refer to Section 97 of the Code of Civil Procedure which provides that where a party aggrieved by a preliminary decree does not appeal from it, he is precluded from disputing its

correctness in any appeal which may be preferred from the final decree. This provision thus clearly indicates that as to the matters thus clearly indicates that as to the matters covered by it, a preliminary decree is regarded as embodying the final decision of the court passing that decree."

22. Indisputably, Section 97 of the Code of Civil Procedure provides for an appeal against preliminary decree but the said provision, in our opinion, would not be a bar to file an application for amendment of a decree.

23. The court may not have a suo motu power to amend a decree but the same would not mean that the court cannot rectify a mistake. If a property was subject matter of pleadings and the court did not frame an issue which it ought to have done, it can, at a later stage, when pointed out, may amend the decree.

24. The power of amendment, in a case of this nature, as noticed hereinbefore, would not only be dependent upon the power of the court but also the principle that a court shall always be ready and willing to rectify the mistake it has committed.

25. The issues were not correctly framed. An additional written statement was permitted to be filed. A replication thereto also was allowed. It was in that situation, the question as to whether the business transaction of Bombay Cycle Company could be a subject matter of the suit for partition or not was required to be determined on its own merits.

26. The Trial Court felt that it had committed a mistake. In such a situation, the court, in our opinion, committed no infirmity in directing rectification of its mistake.

27. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. No costs.

Appeal allowed

2011 STPL 30254 SC

[JT 2011 (11) SC 483 = 2011(11) SCALE 467 = 2011 AIR(SCW) 6163 = AIR 2012 SC 169 = (2011) 12 SCR 968]

SUPREME COURT OF INDIA
(R.M. LODHA & JAGDISH SINGH KHEHAR, JJ.)**GANDURI KOTESHWARAMMA & ANR.**

Appellants

*VERSUS***CHAKIRI YANADI & ANR.**

Respondents

Civil Appeal No. 8538 of 2011 (*Arising out of SLP (Civil) No. 9586 of 2010*)-Decided on 12-10-2011.

(A) Hindu Succession Act, 1956, Section 6 (as amended by Amendment Act, 2005) – Coparcenary property - Devolution of interest – 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 the new Section 6 of the 1956 Act is not applicable are two, namely, (a) where the disposition or alienation including any partition has taken place before December 20,2004; and (b) where testamentary disposition of property has been made before December 20,2004.

(Para 15)

(B) Hindu Succession Act, 1956, Section 6 (as amended by Amendment Act, 2005) – Partition - Coparcenary property - Devolution of interest – 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.

(Para 15)

(C) Civil Procedure Code, 1908, Order 20 Rule 18 - Hindu Succession Act, 1956, Section 6 (as amended by Amendment Act, 2005) – Partition – Preliminary decree - Coparcenary property - Devolution of interest – Amendment of preliminary decree – Preliminary decree passed by the trial court on March 19,1999 and amended on September 27,2003 – Held that preliminary decree and amended decree cannot deprive the appellants of the benefits of 2005 Amendment Act since final decree for partition has not yet been passed – The High Court was in error in not properly appreciating the scope of Order 20 Rule 18 CPC - 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 extinguish 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 – Impugned judgment of the High Court liable to be set aside and order of the trial Court restored.

(Paras 15,16,20 and 22)

Cases Referred:

I. S. Sai Reddy v S Narayana Reddy and Others [1991 (3) SCC 647] (Para 18)

2. PhoolchandAnr. v. Gopal Lal AIR 1967 SC 1470] (Para 17)

JUDGMENT

R.M. Lodha, J.-Leave granted.

2. The question that arises in this appeal, by special leave, is: whether the benefits of Hindu Succession (Amendment) Act, 2005 are available to the appellants.
3. The appellants and the respondents are siblings being daughters and sons of Chakiri Venkata Swamy. The 1st respondent (plaintiff) filed a suit for partition in the court of Senior Civil Judge, Ongole impleading his father Chakiri Venkata Swamy (1st defendant), his brother Chakiri Anji Babu (2nd defendant) and his two sisters - the present appellants - as 3rd and 4th defendant respectively. In respect of schedule properties 'A', 'C' and 'D' - coparcenary property - the plaintiff claimed that he, 1st defendant and 2nd defendant have 1/3rd share each. As regards schedule property 'B'--as the property belonged to his mother--he claimed that all the parties have 1/5th equal share.
4. The 1st defendant died in 1993 during the pendency of the suit.
5. The trial court vide its judgment and preliminary decree dated March 19, 1999 declared that plaintiff was entitled to 1/3 rd share in the schedule 'A', 'C' and 'D' properties and further entitled to 1/4th share in the 1/3rd share left by the 1st defendant. As regards schedule property 'B' the plaintiff was declared to be entitled to 1/5th share. The controversy in the present appeal does not relate to schedule 'B' property and is confined to schedule 'A', 'C' and 'D' properties. The trial court ordered for separate enquiry as regards mesne profits.
6. The above preliminary decree was amended on September 27, 2003 declaring that plaintiff was entitled to equal share along with 2nd, 3rd and 4th defendant in 1/5th share left by the 1st defendant in schedule property 'B'.
7. In furtherance of the preliminary decree dated March 19, 1999 and the amended preliminary decree dated September 27, 2003, the plaintiff made two applications before the trial court (i) for passing the final decree in terms thereof; and (ii) for determination of mesne profits. The trial court appointed the Commissioner for division of the schedule property and in that regard directed him to submit his report. The Commissioner submitted his report.
8. In the course of consideration of the report submitted by the Commissioner and before passing of the final decree, the Hindu Succession (Amendment) Act, 2005 (for short, '2005 Amendment Act') came into force on September 9, 2005. By 2005 Amendment Act, Section 6 of the Hindu Succession Act, 1956 (for short '1956 Act') was substituted. Having regard to 2005 Amendment Act which we shall refer to appropriately at a later stage, the present appellants (3rd and 4th defendant) made an application for passing the preliminary decree in their favour for partition of schedule properties 'A', 'C' and 'D' into four equal shares; allot one share to each of them by metes and bounds and for delivery of possession.
9. The application made by 3rd and 4th defendant was contested by the plaintiff. Insofar as 2nd defendant is concerned he admitted that the 3rd and 4th defendant are entitled to share as claimed by them pursuant to 2005 Amendment Act but he also submitted that they were liable for the debts of the family.

10. The trial court, on hearing the parties, by its order dated June 15, 2009, allowed the application of the present appellants (3rd and 4th defendant) and held that they were entitled for re-allotment of shares in the preliminary decree, i.e., they are entitled to 1/4th share each and separate possession in schedule properties 'A', 'C' and 'D'.

11. The plaintiff (present respondent no. 1) challenged the order of the trial court in appeal before the Andhra Pradesh High Court. The Single Judge by his order dated August 26, 2009 allowed the appeal and set aside the order of the trial court.

12. 1956 Act is an Act to codify the law relating to intestate succession among Hindus. This Act has brought about important changes in the law of succession but without affecting the special rights of the members of a Mitakshara Coparcenary. The Parliament felt that non-inclusion of daughters in the Mitakshara Coparcenary property was causing discrimination to them and, accordingly, decided to bring in necessary changes in the law. The statement of objects and reasons of the 2005 Amendment Act, inter alia, reads as under:

".....The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property."

13. With the above object in mind, the Parliament substituted the existing Section 6 of the 1956 Act by a new provision vide 2005 Amendment Act. After substitution, the new Section 6 reads as follows :

"6. Devolution of interest in coparcenary property.—

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

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

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and

any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(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 in, 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, 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 coparcenary 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, 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, 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 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.

(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."

14. The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener 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 coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.

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. Vs. Gopal Lal [AIR 1967 SC 1470] wherein 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.... .."

18. This Court in the case of S. Sai Reddy vs. S. Narayana Reddy and Others [(1991) 3 SCC 647 11] had an occasion to consider the question identical to the question with which we are faced in the present appeal. That was a case where during the pendency of the proceedings in the suit for partition before the trial court and prior to the passing of final decree, the 1956 Act was amended by the State Legislature of Andhra Pradesh as a result of which unmarried daughters became entitled to a share in the joint family property. The unmarried daughters respondents 2 to 5 therein made application before the trial court claiming their share in the property after the State amendment in the 1956 Act. The trial court by its judgment and order dated August 24, 1989 rejected their application on the ground that the preliminary decree had already been passed and specific shares of the parties had been declared and, thus, it was not open to the unmarried daughters to claim share in the property by virtue of the State amendment in the 1956 Act. The unmarried daughters preferred revision against the order of the trial court before the High Court. The High Court set aside the order of the trial court and declared that in view of the newly added Section 29-A, the unmarried daughters were entitled to share in the joint family property. The High Court further directed the trial court to determine the shares of the unmarried daughters accordingly. The appellant therein challenged the order of the High Court before this Court. This Court considered the matter thus;

".....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 12 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. 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".

19. The above legal position is wholly and squarely applicable to the present case. It surprises us that the High Court was not apprised of the decisions of this Court in Phoolchand¹ and S. Sai Reddy². High Court considered the matter as follows:

"In the recent past, the Parliament amended Section 6 of the Hindu Succession Act (for short 'the Act'), according status of coparceners to the female members of the family also. Basing their claim on amended Section 6 of the Act, the respondents 1 and 2 i.e., defendants 3 and 4 filed I.A. No. 564 of 2007 under Order XX Rule 18 of C.P.C., a provision, which applies only to preparation of final decree. It hardly needs an emphasis that a final decree is always required to be in conformity with the preliminary decree. If any party wants alteration or change of preliminary decree, the only course open to him or her is to file an appeal or to seek other remedies vis-à-vis the preliminary decree. As long as the preliminary decree stands, the allotment of shares cannot be in a manner different from what is ordained in it."

20. The High Court was clearly in error in not properly appreciating the scope of Order XX Rule 18 of C.P.C. 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 Phoolchand¹, this Court has stated the legal position that C.P.C. 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.

23. The view of the High Court is against law and the decisions of this Court in Phoolchand¹ and S.Sai Reddy.

