

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5633 OF 2023
(Arising out of D. No. 32601/2018)

VINEETA SHARMA

Appellant(s)

VERSUS

RAKESH SHARMA & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO.5634 OF 2023
(Arising out of SLP (C) No.8281 of 2020)

O R D E R

Leave granted.

2. The captioned appeal is directed against the judgment and decree dated 15.05.2018 in R.F.A No.301 of 2017 passed by the High Court of Delhi at New Delhi.

3. In view of the conflict between two, Two Judge Bench decisions of this Court *vis. Prakash v. Phulavati* [(2016) 2 SCC 36] and *Danamma @ Suman Surpur v. Amar* [(2018) 3 SCC 343], the question was referred to a larger Bench and the reference was answered *vide* the decision in *Vineeta Sharma v. Rakesh Sharma & Ors.*[(2020) 9 SCC 1]. The operative part of the said decision reads thus:-

“137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. 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.

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

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary.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.

137.5. 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.

138. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

139. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in *Prakash v. Phulavati* [*Prakash v. Phulavati*, (2016) 2 SCC 36 and *Mangammal v. T.B. Raju* [*Mangammal v. T.B. Raju*, (2018) 15 SCC 662]. The opinion expressed in *Danamma v. Amar* [*Danamma v. Amar*, (2018) 3 SCC 343] is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits.

4. Thus, it is obvious that the law has now been settled in regard to the position obtained pursuant to the amendment to Section 6 of the Hindu Succession Act, 1956 by a three Judge Bench of this Court in the stated decision qua daughter born before or after the amendment in the coparcenary property. In the circumstances, learned counsel appearing for the parties sought for remanding the matter to the High Court for appropriate modification of the decree in tune with the exposition of law by this Court in

Vineeta Sharma's case (supra). But then, there can be no doubt with respect to the position that a decree shall agree with the judgment.

5. In the said circumstances, this appeal is disposed of, remanding the matter back to the High Court only for the purpose of reconsideration and appropriate disposal in tune with the law laid down by this Court in Vineeta Sharma's case (supra). Taking note of the fact that the R.F.A. No.301 is of the year 2017, we request the High Court of Delhi to do necessary exercise in that regard expeditiously, preferably within a period of six months.

6. The Civil Appeal is disposed of, as above.

7. I.A. No. 148139/2021-Application for impleadment is disposed of.

8. Pending application(s), if any, shall stand disposed of.

CIVIL APPEAL NO.5634 OF 2023 (arising out of SLP (C) No. 8281/2020

1. This Civil Appeal is disposed of in terms of the orders passed in Civil Appeal No.5633 of 2023 (arising out of SLP (C) @ D. No. 32601/2018).

2. We request the High Court of Chhattisgarh to dispose of the matter(s), taking into account the three Judge Bench decision referred (supra) and the observations in the order in the above mentioned Civil Appeal viz., C.A. No.5633 of 2023 expeditiously, preferably within a period of six months.

3. The Civil Appeal is disposed of, as above.

4. Pending application(s), if any, shall stand disposed of.

....., J.
(C.T. RAVIKUMAR)

....., J.
(SUDHANSHU DHULIA)

NEW DELHI;
5TH SEPTEMBER, 2023.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No. 32601/2018

(Arising out of impugned final judgment and order dated 15-05-2018 in RFA No. 301/2017 passed by the High Court of Delhi at New Delhi)

VINEETA SHARMA

Petitioner(s)

VERSUS

RAKESH SHARMA & ORS.

Respondent(s)

(IA No. 133079/2021 - APPLICATION FOR PERMISSION
IA No. 146812/2021 - APPLICATION FOR RECTIFICATION
IA No. 56305/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 148140/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 133072/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 173973/2018 - CLARIFICATION/DIRECTION
IA No. 139136/2018 - CONDONATION OF DELAY IN FILING
IA No. 148139/2021 - INTERVENTION/IMPLEADMENT
IA No. 174877/2022 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 8281/2020 (IV-C)
(FOR EXEMPTION FROM FILING O.T. ON IA 61810/2020
IA No. 61810/2020 - EXEMPTION FROM FILING O.T.)

Date : 05-09-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Ms. Rashmi Nandakumar, AOR
Mr. Kaustubh Shukla, AOR

Mr. Biswajit Bhattacharyya, Sr. Adv.
Mr. Sahil Tagotra, AOR
Ms. Abhivyakti Banerjee, Adv.

For Respondent(s) Mr. Subhasish Mohanty, AOR

Mr. Abhishek Gautam, AOR
Mr. Abhishek Gautam, Adv.
Mrs. Suruchi Mittal, Adv.
Mr. Keshari Kumar Tiwari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

CIVIL APPEAL NO. _____ OF 2023
(@D. No. 32601/2018)

WITH

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP (C) No.8281 of 2020)

Leave granted.

Civil Appeals are disposed of in terms of the Signed Order.

Pending application(s), if any, shall stand disposed of.

CIVIL APPEAL NO.5634 OF 2023 (arising out of SLP (C)
No. 8281/2020

Leave granted.

This Civil Appeal is disposed of in terms of the orders passed in Civil Appeal No.5633 of 2023 (arising out of SLP (C) @ D. No. 32601/2018) and Civil Appeal No.5634 of 2023 (Arising out of SLP (C) No.8281 of 2020).

Pending application(s), if any, shall stand disposed of.

(VIJAY KUMAR)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed Order is placed on the file)