Nagendra Prasad

Vs

Kempananjamma

Civil Appeal No. 2399 of 1966

(R. S. Bachawat, J. M. Shelat, V. Bhargava JJ)

07.08.1967

JUDGMENT

BHARGAVA, J. –

We have has the benefit of reading the judgment proposed to be delivered by our brother Shelat, J,. but regret that we are unable to agree with him. The facts of this case have already been given in his judgment and need not be reproduced.

As held by him, it is correct that until the Hindu Law Women's Rights Act, 1933 (Mysore Act X of 1933) (hereinafter referred to as "the Act") was passed, no female in Mysore had a right to share in joint Hindu family property under the Mitakshara Law as applied in that area. The right of Hindu woman in a joint Hindu family was confined to maintenance, residence and marriage expenses. The Act for the first time enlarged her rights. The Mysore High Court in Venkatachaliah v. Ramalingiah (49 My. H.C.R. 456) stated this principle and, in our opinion, correctly. It was also correctly held by that Court that the object of section 8 of the Act is to confer larger rights on females by giving them a share in the joint family property.

It is, however, to be noticed that s. 8, in conferring rights on females, envisages two different circumstances in which that right is to accrue to them. The first circumstance is when is a partition of the joint family property between any co-parceners, and the other is when, though there is no partition, the entire joint Hindu family property passes to a single male owner. It is in both these cases that the Act envisages that the property may lose its character of co- parcenary property, because the co-parcenary body may cease to exist on partition or on survival of a single male member of the family. It seems that the purpose of s. 8 was to safeguard the interests of females in such contingencies where the co-parcenary property is to disappear either by partition or by survival of a sole male member. The legislature seems to have felt that, in such circumstances, it was not safe to leave the females entitled to maintenance, etc., at the mercy of the individuals who may receive property on partition or at the mercy of the individual in whom absolute rights in the property might vest as a result of sole survivorship. For the first contingency, when there is a partition, provision was made in clauses (a), (b) & (c) of sub-section (1) of s. 8 under which a right was granted to the females to ask for separation of their shares if the male members decided to have a partition. Unless the male members themselves sought a partition, it was not considered necessary to grant any right to the females themselves to ask for partition, because the property could not lose its character as co-parcenary property until the male members of the family sought partition. The right of the females under clauses (a), (b) & (c) of section 8(1), therefore, only arises at a partition between the male co-parceners forming the joint Hindu family.

For the second contingency, when the co-parcenary property passes to a sole survivor. Provision has been made in clause (d) of s. 8(1). This clause, in protecting the rights of females, had necessarily to give to the females the right to the share in the co-parcenary property even if there be to partition at all, because, on the passing of the property to a sole survivor, there could not possibly be any partition sought by the male members of the co-parcenary body. This right conferred by clause (d) clause (d) is not, therefore, in any way dependent on any partition being sought, or on any right accruing to the females earlier under clauses (a), (b) and (c). The latter three clauses relate to the right arising and being exercised simultaneously at the time of a partition between the male members of the co-parcenary body, while the right under cl. (d) has been given for those cases when there can be no partition at all. The right conferred by clause (d) is, therefore, an independent right and not connected with the rights granted to the females under clauses (a), (b) & (c). In these circumstances, it appears to us that, when determining the scope of the right under clause (d), there is no need to envisage an assumed partition and there is no justification for holding that clause (d) must be interpreted on the basis of an assumed partition between the sole surviving member of the family and the co-parcener who immediately pre-deceased as a result of whose death the property passed to the sole survivor.

The reference to clauses (a), (b) & (c) clause (d) seems to have created an impression that such a partition must be assumed in order to determine the rights of the females accruing to them under clause (d). It is true that the language in which cl. (d) is expressed is a little ambiguous, but it seems to us that the reference to clauses (a), (b) and (c) in clause (d) is for the sole purpose of determining all the females who are to get benefit under that clause. The females who are to get benefit are all those to whom a right to a share in the joint family property would have accrued if there had been a partition either under clause (a), or clause (b) or clause (c).

The scheme of section 8(1), thus, is that if there is a partition as envisaged in clause (a), the females mentioned in that clause only get a right to the share in the property. If there is a partition between male members mentioned in clause (b), then the right to the share accrues to the females mentioned in that clause. Clause (c) is wider, because it does not specifically enumerate the females who are to get a share. Clause (c) only lays down that clauses (a) and (b) are to apply mutatis mutandis to a partition among other co-parceners in a joint family. This language itself means that, even though under clause (c) a partition will be between members of a joint family who are not related to each other in the manner given in clauses (a) and (b), yet the females who are to receive a share are to be ascertained with reference with reference to clauses (a) & (b). Under clause (a), a partition envisaged is between a person and his sons, and the females who are to receive a share are his mother, his unmarried daughters and the widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issue. The question arises how the females entitled to a share in clause (c) are to be ascertained with reference to this clause when the partition is not between a person and his son or sons. Clause (c) clearly applies only to a case where the partition is between members of the family not related in the manner laid down in clause (a), and yet the ascertainment of the females who are to receive a share at that partition is to be by reference to clause (a). The same applies when the partition under clause (c) is between persons not related in the manner envisaged in clause (b) and yet the females mentioned in clause (b) are to be ascertained for the purpose of being granted the share mentioned in clause (c). An example may be taken. Supposing there is a partition between a person and his brother's son. In such a case, clause (c) lays down that the females entitled to a share are to be ascertained by reference to clauses (a) and (b). The result is that, in such a case, by applying clause (a), the females entitled would be the mother, the unmarried daughters, the widows and unmarried daughters of predeceased undivided sons and brothers of both the uncle as well as the nephew. Similarly, in ascertaining the females by reference

to clause (b) in such a partition, the females included will be the mothers, the unmarried sisters, the widows and unmarried daughters of the predeceased undivided brothers of both the uncle and the nephew.

This example makes it clear that the scope of ascertainment of the females who are to receive a share under clause (d) must be very wide, because cl. (d) mentions that when the joint family property passes to a single co-parcener by survivorship, the right to shares is vested in all the clauses of females enumerated in all the three clauses (a), (b) and (c). That being the position, we do not think that clause (d) can be interpreted narrowly as giving a right to only those females who happen to be related to one or the other of the last two male co-parceners in the manner laid down in clauses (a) and (b). In fact, the language of clause (d) has to be interpreted as laying down that right to shares will vest in all females of the joint Hindu family who would have possibly received the right to a share if at any earlier time had been partition in the family in any of the three manners laid down in clauses (a), (b) and (c). This intention can only be given effect to on the basis that clause (d) does not restrict itself to finding out females on the basis of an assumed partition between the last two male co-parceners. It is significant that clause (d) gives a right independently of a partition and we do not see why its scope should be restricted by assuming a partition. The reference to the earlier clauses in this clause must be held to be restricted to the sole purpose of ascertainment of the females falling under clauses (a), (b) and (c), and once they are ascertained, it has to be held that each one of them becomes entitled to a share under this clause. The object of clause (d) is to give to all females entitled to maintenance from the co-parcenary property a right to claim a share in the joint family property instead of a right to maintenance, and that is why reference is made in it to all the females enumerated in clauses (a), (b) and (c). Clauses (a) and (b) refer to four classes of females, viz., the mother, the widow, the unmarried daughter and the unmarried sister. All these four clauses of females are within clause (d). The actual share which a female becomes entitled to under clauses (a), (b), (c) or (d) has to be ascertained with reference to sub-section (2) of section 8. Further, in ascertaining the females to whom rights accrue to shares in the joint family property either on partition under clauses (a), (b) or (c), or on passing of the property to a sole survivor under clause (d), effect has to be given to sub-section (3) of s. 8 in which the scope of the words "widow", "mother", and "son" is enlarged and which, in addition, lays down that the provisions of this whole section relating to the mother are to apply mutatis mutandis to the paternal grandmother and great grandmother. Consequently, when the classes of females entitled to shares under clause (d) are to be ascertained and it is to be found out whether a mother mentioned in clause (a) or clause (b) is entitled to a share, the persons included in the expression "mother" would be a "step-mother" and, further, the provision conferring the right on the mother would also confer the right on paternal grandmother and great grandmother, because clauses (a) and (b), which relate to a mother, are to be applicable mutatis mutandis to paternal grandmother and great grandmother also. It is clear that, on this interpretation of clause (d) read with clauses (a), (b) and (c) and sub-section (3) of s. 8, the decision given in the present case by the High Court is correct and the respondent is person entitled to share as held by that Court. As the widow of Mendappa, a co-parcener, she was clearly entitled to a one-fourth share.

In Dakshinamurthy v. Subbamma (45 My. H.C.R. 102), the widow of one Sreekantachari sued her, husband's brother for partition and possession of a quarter share of property formerly belonging to the joint family of her husband and his brother. Reilly, C.J., and Venkataranga Iyengar, J., held that the plaintiff was clearly one of the women to women clause (d) of sub-s. (1) s. 8 applied. This ruling has always been followed in Mysore and is in accord with the view expressed by us above. Referring to the last case, Venkataramana Rao, C.J., observed in Pogaku Venkatachaliah v. Pogaku Ramalingiah (49 My. H.C.R. 456).

> "But whatever may be said of the rights of the female member under clause (a), her rights under clause (d) are different. The right of a female member to share the property is not limited as under clause (a) to arise only on a partition of the joint family property, but her right as pointed out in Dakshinamurthy v. Subbamma arises from the moment when the property passes to a single co-parcener."

In Kolla Narasimha setty v. Nanjamma (45 My. H.C.R. 460, at p. 474) Reilly, C.J. pointed out with reference to sub-s. (1)(a) of s. 8 :

> "The purpose of the sub-section appears to me to be to give women of the family who otherwise would have a right to maintenance against the whole family right to claim a share in such a partition instead of having to be content with a right to maintenance."

In Venkatagowda v. Sivanna ([1960] My. L.J. 85), the facts were that R had a son K by the widow G. K died leaving his widow L and his son M. Thereafter, R died leaving M as the sole surviving co-parcener. Clearly, G as the widow of R was entitled to a one-fourth share. The Mysore High Court also came to that conclusion, thought we must say that we do not agree with all the observations made in the judgment. The Court in that case was in error in postulating a partition taking place between M and R treating the latter as alive.

As a result of our decision above, the appeal fails and is dismissed with costs.

SHELAT, J. –

One Mendappa dies on October 29, 1951 leaving him surviving his first wife Devamma, the third defendant, Kempananjamma the plaintiff, a grandson Nagendra the first defendant and Dakshaiyaniamma the widow of his predeceased son Guruswami, the second defendant. The case of the said Kempananjamma was that on Mendappa's death the family property passed to the first defendant, he being the sole surviving co-parcener, subject to her rights and those of defendants 2 and 3. The case if defendants 1 and 2, on the other hand, was that the plaintiff as the step grandmother of the first defendant was not one of the female relatives entitled to any share in the property which vested on the death of Mendappa in the 1st defendant as the sole surviving coparcener. The Trial Court decreed the suit holding that the plaintiff was entitled to 1/8th share. In an appeal to the High Court by Nagendra the parties agreed that the view of the former High Court of Mysore, that section 8(1) for the first time created a right to a share in favour of certain females in the circumstances set out therein, that under cls. (a), (b) and (c) the right to such share can be exercise only in the event of a partition and that unlike cls. (a), (b) and (c), (d) gave the female relatives covered by that clause a right to claim a partition when the joint family property passed on to the sole surviving coparcener, was correct. The High Court stated that cl. (d) contained two import expressions : (i) "subject to the right to shares" and (ii) "of the classes of females enumerated in the above sub-sections," i.e., the classes of females enumerated in cls. (a), (b) and (c); that therefore the females in cl. (d) did not constitute a separate class independently of cls. (a), (b) and (c). In the High Court's view cl. (d) takes in not only the female relatives of the penultimate and the sole surviving coparcener but also of all those who predeceased them and that for ascertaining the females entitled to a share, one must assume that there was a partition under cls. (a), (b) and (c). Accordingly, it held that the widow of the grandfather of the sole surviving coparcener being the widow of a deceased coparcener fell under cl. (d). But since Mendappa left Nagendra, a male issue, who would be his son under the definition of a son in sub-section 3, the plaintiff would not be

entitled to a share as the widow of the said Mendappa. She would however, be entitled to a right to a share as the step-grandmother as sub-section 3 defines a son as including a grandson and a mother as including a paternal grandmother. Since a mother includes a step mother the plaintiff was the mother of Guruswamy and the parental grandmother of Nagendra and therefore his mother under sub-section 3 and was as such entitled to a right to a share under cl. (d). This appeal by certificate is directed against this interpretation of cl. (d).

Before the Mysore Act X of 1993 was passed no female had a right to a share in the joint family property under the Mitakshara Law as applied to Mysore, her right being confined only to maintenance, residence or marriage expenses. The Act for the first time enlarged these rights and provided for a share at a partition between coparceners. The Act, however, does not entitle the female relatives to a share unless a partition takes place between coparceners. Further, the females entitled to a share are only those enumerated in section 8(1). The Act gives them no right to demand partition if the coparceners choose to remain joint. (See Mayne's Hindu Law, 11th Ed. p. 531, Mulla's Hindu Law, 13th Ed. p. 98 and Venkatapathiah v. Saraswathanma) (16 My. HC. Reports 273, 277). Therefore the right of these female relatives is not a vested but a contingent right, depending upon their falling under one or the other clauses of the sub-section both as to persons and circumstances obtaining at the time of the partition of the passing of the property under cl. (d) to the sole surviving coparcener.

Section 8(1) reads as follow :-

> "8. (1)(a) At a partition of joint family property between a person and his son or sons, his mother, his unmarried daughter and the widows and unmarried daughter of his predeceased undivided sons and brothers who have left no male issue shall be entitled to share with them.
>
> (b) At a partition of joint family property among brother, their mother, their unmarried sisters and the widows and unmarried daughter of their predeceased undivided brother who have left no male issue shall be entitled to share them;
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> (c) sub-sections (a) and (d) shall also apply mutatis mutandis to a partition among other coparceners in a joint family.
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> (d) Where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the right to share of the classes of females enumerated in the above sub-section."

Sub-section 2 fixes the shares of the aforesaid female relatives. Sub-section 3 inter alia defines the term "mother" as including where there are both a mother and a step-mother, all of them jointly and the term "son" as including a stepson, a grandson and a great grandson. It also provides that the provisions of this section relating to the mother shall be applicable, mutatis mutandis, to the paternal grandmother and great grandmother.

> Clause (a) applies on a partition between a person and his son or sons and the females entitled to a share thereunder are (a) the mother of that person, (b) his unmarried daughter, (c) the widow of this predeceased undivided sons who have left no male issue, (d) the unmarried daughter of his predeceased sons who have left no male issue and (e) the widows and unmarried daughters of his predeceased undivided

brothers who have left no male issue. In Narasimha Setty v. Nagamma (18 May L.J. 461) the Mysore High Court interpreted the expression "who have left no male issue" in cl. (a) as applicable to the time when the partition takes place. Then widow of a predeceased undivided son therefore has a share at a partition even if she had a son by her husband if such son has not survived at the time of the partition. Under sub-section 3 a son includes a stepson, grandson and great grandson, but a mother though including a step-mother does not include a grandmother or a great grandmother. Therefore, if there is both a mother and a paternal grandmother the letter will not have a share. But if the mother is not alive, then, by virtue of sub-section 3 the paternal grandmother of that person, that is the father, gets a share. Thus, all the female relatives in a family do not get shares. A simple illustration will clarify this position. A has two sons B and C and a predeceased son D. At a partition between A, B and C the wives and daughters of B and C do not get any share; so also the widow or widows and the unmarried daughter of D do not get any share if he left a male issue. The wife of a coparcener participating in a partition has also no share. Strangely, though the unmarred daughters of A get shares, though he has a son, the unmarried daughters of B and C do not get any share.

Clause (b) contemplates a partition between brother. The female relatives who have a right to a share at such partition are (a) their mother, (b) their unmarried sisters and (c) the widows and unmarried daughters of predeceased undivided brothers who have left no male issue. No other female is entitled to a share. Continuing the previous illustration if A dies and a partition takes place between his sons, B and C, the case would fall under clause (b). Under clause (a) the wife of A had no share but now that A is died his widow has a share not as his widow but as the mother of B and C. The unmarried daughters of A who had a share under clause (a) now have a share but in a different capacity, as the unmarried sisters of B and C. Similarly, the widow and unmarried daughter of D, who had shares as the widow and unmarried daughters of a predeceased son would have shares as the widow and unmarried daughters of the predeceased brother of B and C. It will be seen that the widows and unmarried daughter of the predeceased brothers of A would have no share though they would have had shares under clause (a) if A was alive and the partition was between him and his sons, B and C. Thus, with the change in circumstances, certain female lose their right to shares while certain other though having a right to shares take in different capacity.

Clause (c) applies where there is a partition between coparceners other than those under cls. (a) and (b). For instance, it applies to a partition between an uncle and nephew or between cousins. In such a case the clause enjoins application mutatis mutandis of the principles of cls. (a) and (b). The following illustration clarifies the meaning of cl. (c). A and B and C are brothers. A and B has each a son, X and Y, but C has no son. C dies leaving a widow, Z. A and B die. There is a operation between X and Y. The provision of cl. (a) will not apply as they relate to the female relatives of the father in a partition between him and his son or sons. Therefore, the females enumerated in clause (a) will not have a right to shares. In Nagendradasa v. Ramakrishnan (19 My. L.J. 277) the Mysor High Court treated the mother of the coparcener concerned in the partition as entitled to a share excepted when she was the widowed daughter-in-law of the coparcener taking part in the partition. On this basis the mothers of X and Y would be entitled to shares but even on this interaction,

Z, the widow of C will not have a share, she being neither the mother of the partitioning coparceners, X or Y, nor the widow of a predeceased brother of X and Y. But if B were alive and the partition was between him, his son Y and nephew X, the widow of C would take a share under the principle of cl. (b), as the widow of a predeceased brother provided C has not left a male issue. If A has left a widow D she takes a share not as A's widow but as the mother or X. If the mother of A and B were alive, she would takes a share as the mother of B. The widow of C, the predeceased brother of B would be entitled under cl. (b) to a share as the widow of a predeceased undivided brother who left no male issue. Only certain females thus have a right to a share at a partition depending upon which of the clauses (a) or (b) or (c) applies and the situation obtaining at the time of such partition. A female entitled to a share under clause (a) might lose that right if the situation changes from (a) to (b) or (c). By reason of section 2(2), however, this would not mean that a female who had a right e.g., of maintenance or of marriage expanses or of residence, is deprived of that right. That sub-section expressly reserves such a right. What section 8(1) does is to enlarge such a right into a right to a share for certain female relatives to whom one or the other clause applies.

Clause (d) applies to a case when the family property passes by survivorship to a sole surviving coparcener. In such a case there can be no partition, as is the case under clause (a) or (b) or (c). Indeed the property becomes incapable of partition and but for clause (d) no female relative would have any right to a share. To save such a result clause (d) provides that the rights of the female relatives should not be lost only by reason of the property passing to sole surviving coparcener. Sub-section 5, furthermore, gives such female relatives as fall under sub-section 1 a right to have their shares separated and thus makes them co-shares subject to whose rights the sole surviving coparcener takes the property. Therefore, whereas under clauses (a), (b) and (c) the rights fluctuate according to the position of the female relatives in the family when the partition takes place there is no such uncertainty in the case falling under cl. (d) as the sole surviving coparceners takes the property subject to the right to shares of female relatives falling under the provisions of clause (a) or (b) or (c). Such is the scheme of s. 8(1)

Certain decisions of the Mysore High Court under section 8(1) may at this stage be noticed. In Dakshnaimurthy v. Subbamma (45 My. H.C. Reports 102) the widow of S sued her husband's brother for partition and possession of her share. The claim was on the footing that her husband and the defendant were the only coparceners of the joint family and that on S's death the defendant become the sole surviving coparcener. S left no male issue. The High Court held that cl. (d) applied, and that under sub-section 5 the widow had the right to sue for partition the moment S. died and the property passed to the defendant by survivorship as the sole surviving co-parcener. This decision can only be justified on the ground that for purposed of ascertaining the females entitled to a right to a share one must assume as if there was a partition between the penultimate coparcener and the sole surviving coparcener and that it is only then that one can ascertain the females subject to whose right to shares the property passes by survivorship. Since the penultimate coparcener and the surviving coparcener were brother, the Court for purposes of cl. (d) assumed partition between brothers and applied the principle of cl. (b) and held that S's widow was entitled to a share in her capacity as the widow of the predeceased undivided brother.

In Venkatachaliah v. Ramalingiah (49 My. H.C. Reports 456) the High Court held that the object of section 8(1) being to confer larger rights on females by giving them a share in the family property clause (d) has effected a departure from the law which prevailed before the enactment by making the specified female co-sharers along with the single coparcener when the joint family property passes to him by survivorship. In Venkatagowda v. Sivanna ([1960] My. L.J. 85) a Single Judge of the High Court, however, went further than these decisions. In that case R had a son K by his wife G. K. died in 1936 leaving his widow L and a son M. Later on R died whereupon the joint family property passed to M as the sole surviving coparcener. The question was cl. (d) applied and G, the widow of R, had a right to a share. Narayana Pai J. held that G was entitled to 1/4th share, i.e., half of what R would have not if a partition had taken place between R and M. He observe :-

"The position contemplated under cl. (d) of sub-section 1 of s. 8 is one where of the two coparceners living one dies survived by the other alone as the single coparcener. When both were alive both had an interest in the joint family property. Although upon the death of one of them, the entire property passed by survivorship to the survivor, the interest that really passes is the interest of the deceased coparcener. In strict theory of the Mitakshara Law nothing really passes on the death of the one but the death of one merely enlarges the interest of the survivor. When however the section contemplates some property or interest as passing, the natural meaning is that what passes is the property or interest of the deceased coparcener to the surviving coparcener. It is this interest that is made to pass subject to the right to shares of classes of females entitled to receive such shares. The expression "share" necessarily contemplates a partition because it is upon partition that a share is ascertained. It is necessary therefore to theoretically postulate a partition to ascertain both the classes of females entitled to shares as well as the shares to which they are entitled. From the wording of the section the appropriate time as which such a theoretical partition must be postulated to have taken place is the time of the death of the last but one coparcener. At such a partition the male coparceners participating therein could only be the last two coparceners, the one that died and the other that survived treating the dead coparcener to be alive. The purpose of treating the dead person to be alive at a partition though dead is obviously to determine the shares of his female relatives by applying the provisions of sub-sections 2 and 4 because the shares of those female relatives have to be carved out of his share... We must therefore in this case postulate a partition taking place between Rangiah treating him as alive and his grandson Mahima. Although Mahima is grandson of Rangiah, as the term "son" includes a grandson (please see sub-sec. 3) that partition would be a partition between a person and his son, that is, a partition falling under clause (a) of sub-section (1). At that partition Rangiah would get one share and Mahima would get one share. Mahima's mother Lakshamma would be the widow of a predeceased son of Rangiah but because she has a son alive, viz., Mahima, she will not get a share. As Rangiah died without partition, his share normally passes intact to the grandson Mahima. His getting the entire share is prevented by cl. (d) of sub-section 1."

So far there is no difficulty. But the learned Judge further observe :-

"Rangiah did not leave any unmarried daughter; his widow steps in and takes one half of what he, if he were alive, would receive as his share of what he, if he were

> alive, would receive as his share. In terms of the entire property her share will be 1/4th."

If for ascertaining the females entitled to a right to a share under cl. (d), cl. (a) is applied as the learned Judge did, how would the widow of Rangiah be considered to be one entitled to a share ? Clause (a) envisages partition between a person and his son or sons. Under that clause the widow of that person is not entitled to a share. But the learned Judge held :-

> "It must be remembered that in ascertaining the shares of the widows of pre-deceased sons under cl. (a) those sons are treated to be alive and have to be allotted one share and their widows will get a half carved out of that share reading cl. (a) of sub-section 2 and sub-section 4 together. In an actual partition under cl. (a) between living male coparceners therefore the clause contemplates clearly a share being allotted to a widow of a deceased coparcener treated as alive and participating in that partition. When therefore for the purposes of cl. (d) we postulate a theoretical partition between a living and dead coparcener, there is no violence done to the language of either cl. (a) or cl. (d) in giving out of the one share of the deceased last but one coparcener one half to his widow and also 1/4th to an unmarried daughter if alive at the time."

This part of the judgment is contrary to the provisions of clause (a). Assuming that clause (d) postulates a theoretical partition between R and M, G the widow of R gets no share under clause (a). The case of Dakshnaimurthy (45 My. H.C.R. 102) relied on by the learned judge is not applicable as the clause found relevant there was clause (b) under which the widow of a predeceased undivided brother was held to be entitled to a share on the footing that the assumed partition was between brothers. In that case the property passed by survivorship to the brother as the sole surviving coparcener. If a theoretical partition were to be assumed between him and his deceased brother, that is, the plaintiff's husband, it would be a partition between brothers under clause (b) and it was possible to hold that the widow of the predeceased undivided brother was entitled to a share. Though Act X of 1933 is a social legislation and should be liberally construed the construction has to be in conformity with its language. These decisions seen to show that the High Court has been inclined to the view that cl. (d) properly construed requires assumption of a partition between the last but one and the sole surviving coparcener and that on such assumption the females entitled to a right to shares are to be ascertained depending upon which of the three cls. (a), (b) or (c) applied considering the relationship in which the last but one coparcener and the sole surviving coparcener stood.

Is the step grandmother of Nagendra then entitled to a right to a share under cl. (d) ? Where clause (a) applies i.e., where partition takes place between a father and his son or sons the females entitled to a share are the mother the unmarried daughters of such a father and the unmarried daughters of his predeceased sons and brothers who have left no male issue. The wife of such a father has no share. Clause (b) cannot apply where the surviving coparcener and the last but one coparcener are the grandson and grandfather as the partition contemplated thereunder is between brothers. Nor would cl. (c) apply as the partition there is between coparceners other than those under cl. (a) and cl. (b). Under sub-section 3, a son includes a grandson and great grandson. Nagendra would for purposes of this section therefore be a son. Consequently the partition to be assumed for the purpose of cl. (d) would be between a father and his son. Though under sub-section 3 a son includes a grandson and a great grandson and a mother includes a stepmother a grandmother is not included in the definition of "mother". The expression "provision of this section relating to the mother shall be

applicable mutatis mutandis to the paternal grandmother and the great grandmother" mean only that the grandmother and the great grandmother of the father would have a share under cl. (a) but not the grandmother of the son. Nagendra's grandmother therefore would have no right to a share.

The important words in clause (d) are : "subject to the right to share of the classes of females enumerated in the above sub-sections." These words indicate that in a case falling under cl. (d) where there could be no partition one must ascertain the females entitled to a right to share as if there was a partition between the last but one coparcener and the sole surviving coparcener. If that is not done there is no method by which female relatives subject to whose right the sole surviving coparcener takes the property can be ascertained and cl. (d) would become infructuous. There can be a right to a share only if there is a partition and not otherwise. There is, a distinct difference between cases falling under cls. (a), (b) or (c) where a share vests in the female relatives enumerated therein when actual partition takes place and cl. (d) where no partition can occur. A partition has therefore to be assumed because it is only on such assumption that females on whom a right to a share is conferred can be ascertained, i.e., those females who on such partition, if one had taken place, would have been entitled to a share. The question as to who are those females entitled to such a share a theoretical partition. In the present case, in view of the definition of a 'son' in sub-section 3 the assumed partition would be between a father and a son under cl. (a) and the plaintiff would be entitled to a share only if she is one of those enumerated in that clause.

Her claim was either as the widow of Mendappa, the last but one coparcener or as the step grandmother of the appellant, the sole surviving coparcener. In whatever capacity she may claim a right to a share, as cl. (d) is phrased she would have such a share provided she falls under or the other enumerated classes under cl. (a), (b) or (c) as the case may be. For, clause (d) does not create any independent class. If the assumed partition were to be between Mendappa and the appellant, the appellant by reason of sub-sec. 3 being a son, the partition would be under cl. (a) In that case the respondent would have no right to as share either as the wife of Mendappa or as the grandmother of the appellant. The High Court took the view that cl. (d) would take in not only the female relatives of the last but one and the sole surviving coparcener but also of those who predeceased them on the assumption that there was a partition between them and the surviving coparcener. Therefore, according to the High Court, the respondent as the widow of the grandmother of the sole surviving coparcener falls under cl. (d) as the widow of the predeceased undivided coparcener. But there are two difficulties in accepting such a view. Firstly, if a partition is assumed with Guruswamy, the predeceased son of Mendappa, such a partition would be between him and his father Mendappa or between him, Mendappa and the appellant. Such a partition would attract cl. (a) in which case the respondent would have no share as only the mother of Mendappa and the widow of the predeceased son i.e. Guruswamy, provided such a son left no male issue, would have a share. The respondent does not fall in either of the two categories. The second difficulty is that cl. (d) does not warrant such a wide construction. The words "subject to the right to shares of the classes of females enumerated in the above sub-sections" must mean those females who fall under one or the other clause on an assumed partition between those coparceners, on the death of one of whom the property passes to the sole surviving coparcener. The High Court was therefore in error in adopting such a wide interruption. The High Court was also in error in holding that the respondent was entitled to a share relying on the definition of a "son" as including a grandson and therefore a mother as meaning a paternal step grandmother. The mother in cl. (a) means the mother including the grandmother of Mendappa and not the grandmother of the appellant.

For the reasons aforesaid the judgment and decree of the High Court are set aside and the plaintiff's suit is dismissed. There will be no order as to costs.

ORDER

In accordance with the opinion of the majority, the appeal is dismissed with costs.

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