

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.08.2026

Pronounced on: 25.08.2026

WEB COPY

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

**CRP. No.3576 of 2023
and CMP. No.22376 of 2023**

K.Duraisamy

..Petitioner

Vs

Dhanalakshmi (Died)

1.Uma Maheswari

2.Premavathy

3.Brinda

Janakiammal (Died)

4.K.Devaraj

5.Lalithamani

Kannaiyan @ K.Palanisamy (Died),

6.Gunasekaran

Vanalamani (Died)

7.Sarathamani

Ravi @ Ravikumar (Died)

8.Chinnathambi @ Narayanasamy

9.Mahalakshmi

10.K.Devaraj

11.Sangeetha

12.Vasanthamani

13.Rukumani

14.K.Mohammed Ismail

..Respondents



PRAYER: This Civil Revision Petition has been filed under Article 226 of the Constitution of India, to set aside the Docket order dated 26.02.2018 passed in E.P. No.618 of 2017 in O.S. No.91 of 1993 on the file of the learned Subordinate Judge, Coimbatore.

For Petitioner(s):

Mr.S.Natarajan

For Respondent(s):

Mr.N.Istiaq Ahmed for R5

R1-Died

No Appearance for

R2, R4, R6 to R12

R3- Address Absent

R13- Insufficient Address

R14- Address cannot be located

ORDER

The 4th defendant as Decree Holder in E.P. No. 618 of 2017, on the file of the Subordinate Judge, Coimbatore is the revision petitioner, challenging the docket order dated 26.02.2018.

2. I have heard Mr.S.Natarajan, counsel for the Revision Petitioner and Mr.N.Ishtiaq Ahmed, counsel for the contesting 5th respondent.

3. The short, but interesting point that arises for consideration in the present revision is as to whether the share of the deceased coparcener/son would

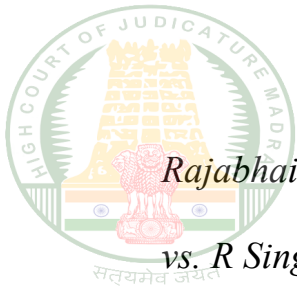


go back to the other coparceners, when his wife had chosen to remarry after his demise or whether the daughter of the deceased coparcener son would inherit the entire share of the said deceased coparcener.

4. Admittedly, it is not in dispute in the facts of the present case that the estate opened prior to Act 39 of 2005, which omitted Section 24 disentitling a widow to any share consequent to remarriage. It is also not in dispute in the facts of the present case that the widow of the deceased coparcener remarried and therefore, she is not entitled to a share in her former husband's estate.

5. Mr. S. Natarajan, learned counsel for petitioner would state that the wife having chosen to remarry, the undivided share of the deceased coparcener son would revert back to the other coparceners, thereby enlarging their shares and even though the deceased coparcener died leaving behind a daughter, such daughter would not be entitled to a share. He would therefore state that the learned Subordinate Judge clearly fell in error in returning the application filed by the 4th defendant staking a claim over the share of the deceased coparcener, Venkatesan.

6. The learned counsel for the petitioner would also place reliance on the decision of the Hon'ble Supreme Court in *Vasudev Dhanjibhai Modi vs.*



Rajabhai Abdul Rehman and ors, reported in 1970 AIR 1475 and in *Vellikannu vs. R Singaperumal and anr*, reported in 2005 INSC 267.

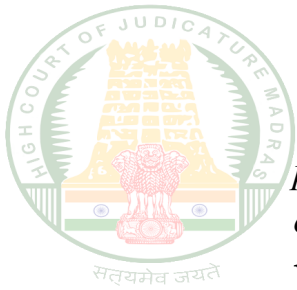
WEB COPY

7. Per contra, Mr.N.Ishtiaq Ahmed, learned counsel for the 5th respondent, who appears for the daughter of the deceased coparcener, would firstly contend that the very execution petition itself is not maintainable since proceedings have already terminated and the daughter has stepped into the shoes of the deceased coparcener, Venkatesan and has also alienated the said property in favour of a third party. It is his further submission that merely because the widow of Venkatesan has chosen to remarry, at best the widow alone would stand to lose her entitlement and by no stretch of imagination, the other legal heirs, the 5th respondent in the present case, being the daughter would also lose her right to inherit the share of the deceased Venkatesan. The learned counsel prays for the dismissal of revision petition.

8. I have carefully considered the submissions advanced by the learned counsel on either side.

9. The relevant Section 24 of the Hindu Succession Act, 1956 as it stood before the Amendment Act 39 of 2005 is as follows:-

*“Certain widows remarrying may not inherit as widows.
Any heir who is related to an intestate as the widow of a
pre-deceased son, the widow of a per-deceased son of a*



WEB COPY

pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried.”

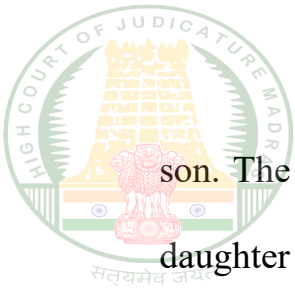
10. As already discussed in the opening paragraphs of this order, there is no quarrel with regard to the factual position in this case. The widow of Venkatesan, remarried and she never chose to stake any claim in the estate of Venkatesan. The entire share of Venkatesan was allotted to his only daughter and class I legal heir, the 5th respondent, who took the entire entitlement and also alienated the said property. It is at that juncture, belatedly that the 4th defendant attempted to execute the decree in OS No. 91 of 1993, contending that since the widow of Venkatesan had remarried and applying the then prevailing Section 24, her rights being forfeited, the share of the deceased coparcener, Venkatesan would revert back and enlarge the existing shares of the other coparceners.

11. In *Vellikannu's* case (referred herein supra), the Hon'ble Supreme Court confirmed the view of the High Court that the widow of a coparcener cannot claim any share in view of proviso to Section 6 of the Hindu Succession Act, 1956 and, property being coparcenary property, she was entitled to a half share so long as the deceased father and son had not partitioned the property. However, on facts it is to be noticed that it was a case where the disqualification of the coparcener deceased son was on account of the son having murdered his



own father. It is in this context that the Hon'ble Supreme Court, discussed the relevant provisions namely Sections 25 and 27 of the Hindu Succession Act, 1956 and held that the son himself having become disentitled to any share in the coparcener property, his wife cannot claim any right or share in the said coparcenary property. I am unable to see how this ratio can be applied for the facts of the present case. Admittedly, this case does not involve Section 25 in the first place. Section 25 deals with a coparcener becoming disentitled to a share when he commits murder of his father, through whom he becomes entitled to a right in the property. It is in this context that the Hon'ble Supreme Court held that the son is treated to be a non-existent entity and therefore nobody can claim right under him, including his widow.

12. However, the facts of the present case have nothing to do with Section 25 but only with Section 24. Even a cursory glance of the above provision only indicates that a widow of a pre-deceased son or a widow of a brother are not entitled to succeed to the property of an intestate, if such widow on the date of succession opening, has remarried. The coparcenary interest of the pre-deceased son does not get extinguished unlike Section 25 and continues to be available to be taken by the other preferential class 1 legal heirs, say the mother or children of the pre-deceased son. The widow, as already discussed is not claiming any entitlement in the present case. The embargo is only on the widow and not on other legal heirs to succeed to the estate of the pre-deceased



son. The present case being the only the class 1 legal heirs, the 5th respondent, daughter of Venkatesan has inherited his entire coparcenary interest on his demise and as already pointed out she has already dealt with the property and third-party interest has flown. In view of the above, I am unable to countenance the arguments of the learned counsel for the petitioner that on the remarriage of the widow, the entire coparcenary interest of the son Venkatesan would revert back to the other coparceners and none of the Class I legal heirs including the daughter can claim right under the said deceased Venkatesan.

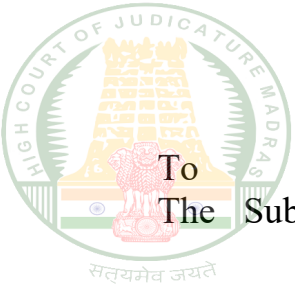
13. For various reasons discussed in above, the judgment of the Hon'ble Supreme Court was relating to a totally different factual matrix where Section 25 and not Section 24 of Hindu Succession Act, 1956 was interested.

14. In such view of the mater, I do not see any error committed by the Subordinate Court in refusing to entertain the Execution Petition filed by 4th defendant and I find no merit in this revision. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

25-08-2026

Index: Yes
Speaking order
Neutral Citation: Yes

RKP



To
The Subordinate Judge, Coimbatore.

WEB COPY

P.B.BALAJI, J.

RKP

Pre-delivery Order in
CRP. No.3576 of 2023
and **CMP. No.22376 of 2023**

25-08-2026