IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

MONDAY, THE 29TH DAY OF SEPTEMBER 2025 / 7TH ASWINA, 1947

RFA NO. 62 OF 2011

AGAINST THE JUDGMENT DATED 19/10/2010 IN OS NO.602 OF 2006 OF ADDL. SUB COURT, IRINJALAKUDA

APPELLANTS/PLAINTIFFS 2 TO 9:

1 SIVANANDA PRABHU, AGED 55
S/O.KALAPURAKAL VASANTHA BAI,
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK.

2 SREEKARA PRABHU
S/O.KALAPURAKAL VASANTHA BAI,
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK.

3 GOPINATHA PRABHU
S/O.KALAPURAKAL VASANTHA BAI,
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK.

4 SANTHIA, D/O KALAPURAKAL VASANTHA BAI
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK.

5 SINDHU, D/O KALAPURAKAL VASANTHA BAI
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK.

6 RAJALAKSHMI, W/O.KALAPURAKAL HARIDAS
SHENOY,LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK.

7 DEEPA, D/O.KALAPURAKAL HARIDAS SHENOY
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK.

8 PRADEEP, S/O.KALAPURAKAL HARIDAS SHENOY
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK.

BY ADVS.
SHRI.G.SREEKUMAR (CHELUR)
SMT.PREETHY KARUNAKARAN
SRI.K.RAVI (PARIYARATH)

RESPONDENTS/DEFENDANTS:

1** S.N.GOVINDA PRABHU & BROTHERS
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK,
THE FIRM REP.BY MANAGING PARTNER,
S.G.RAJAGOPALA PRABHU,(PREMANANDA PRABHU,
S/O.GOVINDA PRABHU, LOKAMALLESWARAM VILLAGE,
KODUNGALLUR TALUK, PIN 680 664 (DIED, R1 SUBSTITUTED)

2 NARAYANA PRABHU S.G.
S/O.SWARGATHU MADAM GOVINDA PRABHU,
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK,
PIN 680664.

3** MANAGING PARTNER S.G.PADMANABHA PRABU
S/O.SWARGATHU MADAM GOVINDA PRABHU,
LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK,
PIN 680664.(DIED, R1 SUBSTITUTED)

4 PRAKASA PRABHU, S/O.RAJENDRA PRABHU
8/1204, T.D.ROAD, COCHI, ERNAKULAM-35.

5 PRADEEP, S/O.JANADAS POYYANTHARA HOUSE
SRIRANGAPURAM, RESIDING NEAR GOVINDA PRABHU AND
SONS, SRIRANGAPURAM, KODUNGALLUR TALUK, PIN 680664.

6 RAJU, PUNNIKUDI HOUSE
SRIRANGAPURAM, KODUNGALLUR TALUK, PIN 680664.

7 NAZEER, KAYAMKULATH HOUSE
RESIDING NEAR GOVINDA PRABHU AND SONS GODOWN,
SRIRANGAPURAM, KODUNGALLUR TALUK, PIN 680664.

8 CHELLAMMA RAMAN, W/O.RAMAN
PANIKKASSERY VALLOMPARMBATH HOUSE,

RESIDING NEAR GOVINDA PRABHU AND SONS GODOWN,
PIN 680664.

ADDL.R9 BALU, S/O.HARIHARAR,PUNTHAKUDI HOUSE,RESIDIND NEAR GOVINDA PRABHU &SONS GODOWN ,SRINGAPURAM,KODUNGALLUR TALUK,KODUNGALLUR P.O,PIN-680664

ADDL. R9 IMPLEADED VIDE ORDER DATED 10.01.2024 IN I.A.NO.1/2023.

**THE FIRST RESPONDENT IS SUBSTITUTED AS,
"S.N.GOVINDA PRABHU & BROTHER, LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK, THE FIRM REP. BY MANAGING PARTNER, MRS. NANDINI R.DAS, D/O S.G.RAJAGOPALA PRABHU, LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK, PIN 680664 AND,
3RD RESPONDENT IS SUBSTITUTED AS,
"MANAGING PARTNER S.P.ANITHA, D/O S.G.PADMANABHA PRABHU, SWARGATHU MADAM, LOKAMALLESWARAM VILLAGE, KODUNGALLUR TALUK, PIN 680 664, VIDE ORDER DATED 08/07/2025 IN I.A.NO.1/2025 IN RFA NO.62/2011.

BY ADVS.
SRI.K.S.RAJESH FOR ADDL.R9
SRI.V.V.ASOKAN (SR.) FOR R1, R3
SHRI.K.B.ARUNKUMAR FOR R7
SHRI.K.I.MAYANKUTTY MATHER (SR.) FOR R1, R3
SRI.C.E.MANOJ NAIR FOR R4
SMT.RUKHIYABI MOHD KUNHI FOR R1, R3
SRI.M.SHAJU PURUSHOTHAMAN FOR ADDL.R9

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 22.09.2025, THE COURT ON 29.09.2025 DELIVERED THE FOLLOWING:

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SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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R.F.A.No.62 OF 2011

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Dated this the 29th day of September, 2025

JUDGMENT

P.Krishna Kumar, J.

The appellants are the plaintiffs in a partition suit filed before the Additional Subordinate Judge's Court, Irinjalakuda. By the judgment impugned in this appeal, the suit was dismissed by the trial court, finding that the property in question is not partible.

2. For the sake of convenience, the parties will be hereinafter referred to according to their status in the trial court. An extent of 2.15 acres of land (the plaint scheduled property) in Kodungallur Village belonged to one Rama Pai as per Ext. A1. It was his self-acquired property. Rama Pai had one female child, namely Yasodamma, and one

male child, Hari Pai. In the year 1965, the plaint scheduled property was sold to defendant Nos. 1 to 3, a firm and its partners, by Hari Pai together with his wife and children, through a registered sale deed (Ext. A2). Rama Pai and his family were governed by the Mitakshara law in the matter of succession.

3. As the above 2.15 acres of land was the self-acquired property of Rama Pai, it was contended by the plaintiffs that, on his death, the rule of survivorship in the Mitakshara coparcenary law was not applicable for the devolution of interest, and hence the property would devolve upon Yasodamma and Hari Pai jointly. Being the legal heirs of Yasodamma, the plaintiffs and defendant No. 4 would get a half share over the said property, and defendant Nos. 1 to 3 would represent the remaining half share of Hari Pai. Accordingly, the property was claimed to be partible. It was further contended by the plaintiffs that, as Rama Pai died after 1956, the property had to be partitioned as per Section 6 of the Hindu Succession Act, 1956 (“the Act,

1956", for short), as amended in 2005.

4. Defendant Nos. 1 to 3 contended that Rama Pai had died before 1956, and thus the separate property owned by him devolved solely upon his male heir Hari Pai, in accordance with the pristine Hindu law applicable under the Mitakshara law of inheritance. The sale deed executed by Hari Pai, together with his wife and children, was therefore contended to be perfectly valid. Hence, the property was stated to be not partible.

5. We have heard Sri. Sreekumar G. (Chelur), the learned counsel appearing for the plaintiffs, and Sri. K. I. Mayankutty Mather, the learned senior counsel, as instructed by Smt. Uthara Asokan, the learned counsel appearing for defendant Nos. 1 to 3.

6. Though it was pleaded in the plaint that Rama Pai died after 1956, no evidence was adduced by either side in that respect, except the oral testimony of DW1, wherein it

was stated that Rama Pai had died in the year 1950. The said statement remained unchallenged. Referring to the circumstance that Hari Pai executed Ext. B1 mortgage deed in favour of a Bank in 1954, a conclusion was drawn by the trial court that Rama Pai had died before 1956; otherwise, Hari Pai would have had no occasion to execute the said deed. During the course of hearing, the said finding was not challenged by the learned counsel appearing for the plaintiffs. Hence, we are also persuaded to accept that he died before 17.06.1956, i.e., the appointed day for the commencement of the Act.

7. Proceeding on the inference that Rama Pai had died prior to 1956, the precise question that arises for consideration is upon whom the separate property of a person governed by the Mitakshara law of inheritance would devolve, prior to the commencement of the Act.

8. It was submitted by Sri. Sreekumar G. (Chelur), the learned counsel appearing for the plaintiffs, that by

virtue of the provisions of the Hindu Law of Inheritance (Amendment) Act, 1929, the separate property of a Mitakshara follower would devolve equally upon his male and female children, and not upon the coparcenary, unless disposed of by a will. Referring to the Commentary on *Hindu Law by S. V. Gupte*, 4th edition, All India Reporter, he contended that the sapinda class included female heirs common to all schools and that they, together with the male child, equally inherited the separate property of their father.

9. It was submitted by Sri. Mayankutty Mather, the learned senior counsel arguing for the defendants, that the self-acquired property of a Hindu following Mitakshara law devolved only upon his male children, and that the widow or female child would succeed to the property only in the absence of a male child. In support of the said contention, reliance was placed on the observations of the Apex Court in **Arunachala Gounder (Dead) by Lrs. v. Ponnusamy and Ors.** (AIR 2022 SC 605).

10. Let us now consider the scope of the Hindu Law of Inheritance (Amendment) Act, 1929. The Act contains only three provisions. Section 1 deals with the short title and extent of the statute and it further states that *the said Act applies to such persons in respect only of the property of males not held in coparcenary and not disposed by will.* Section 2 is the operative provision, whereas Section 3 acts as a saving provision. Sections 2 and 3 read thus:

> "Section 2: *A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother:*
>
> Provided that a sister's son shall not include a son adopted after the sister's death.
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> Section 3: Nothing in this Act shall-
>
> (a) affect any special family or local custom having the force of law, or
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> (b) vest in a son's daughter, daughter's daughter or sister an estate larger than, or different in kind from, that possessed by a female in property inherited by her from a male according to the school of Mitakshara law by which the male was governed, or

> (c) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir."

A conjoint reading of Sections 1 and 2 with Section 3(b) and (c) makes it evident that the statute intended only to rank certain heirs in the order of succession immediately after the father's father, and not to limit any superior rights of other heirs. Section 2 further presupposes an existing line of descendants and *a father's father and a father's brother* were already *ranked* in that line. The Act contains nothing regarding a daughter's rights or about conferring on her the same status as a son. This is also evident from the observations of the Apex Court in ***Arunachala Gounder***'s case (supra). In paragraph 49 of the said Judgment, the Apex Court held as follows:

> "49. The Hindu Law of Inheritance (Amendment) Act, 1929 was the earliest statutory legislation which brought the Hindu females into the scheme of inheritance. The 1929 Act introduced certain female statutory heirs which were already recognised by the Madras School i.e. the son's daughter, daughter's daughter, sister and sister's son in the order so specified, **without making any modifications in the fundamental concepts underlying the textual Hindu Law relating to inheritance; only difference being that while before the Act, they**

> **succeeded as bandhus, under the Act, they inherited as "gotra sapindas."**
>
> (Emphasis added)

Thus, it is evident that the purpose of the statute was not to modify the fundamental concepts of Shastric Hindu law relating to inheritance. The only difference it introduced was that the chance of inheritance of a son's daughter, daughter's daughter, sister, etc., was recognised in a different capacity from that which prevailed earlier. In short, the Hindu Law of Inheritance (Amendment) Act, 1929 has no application in the present factual situation.

11. This takes us to the prime question, namely, upon whom the separate property of a person governed by the Mitakshara law of inheritance would devolve prior to the commencement of the Act. Before the enactment of the Act, 1956, succession to the property of Hindus—whether ancestral or self-acquired—was governed by the pristine principles of Hindu law, as embodied in the Shastric texts and Smritis. Under the Mitakshara law, even the self-acquired property of

a male devolved exclusively upon his male issue, and only in the absence of such male issue did it pass to other heirs. In ***Katama Natchiar v. Srimut Rajah Moottoo Vijaya Raganadha Bodha Gooroo Sawmy Periya Odaya Taver*** (MANU/PR/0010/1863), the Privy Council held that, by the law of inheritance prevailing in Madras and throughout the southern parts of India, the self-acquired estate of a male would descend to his male issue and only in default of such issue would it descend to others. The Court held as follows:

> *"It is to be observed, in the first place, that the general course of descent of separate property according to the Hindoo law is not disputed. It is admitted that, according to that law, such property descends to widows in default of male issue.* It is upon the Respondent, therefore, to make out that the property here in question, which was separately acquired, does not descend according to the general course of the law. The way in which this is attempted to be done, is by showing a general state of co-parcenaryship as to the family property; but assuming this to have been proved, or to be presumable from there being no disproof of the normal state of co-parcenaryship, this proof, or absence of proof, cannot alter the case, unless it be also the law that there cannot be property belonging to a member of a united Hindoo family, which descends in a course different from that of the descent of a share of the property held in union; but such a proposition is new, unsupported by authority, and at variance with principle. The two courses of descent may obtain on a part division of joint property, is apparent from a passage in *W. H. Macnaghten's* "Hindu Law," title "Partition," vol. I. p.

> 53, where it is said as follows: "According to the more correct opinion, where there is an undivided residue, it is not subject to the ordinary rules of partition of joint property; in other words, if at a general partition any part of the property was left joint, the widow of a deceased brother will not participate, notwithstanding the separation, but such undivided residue will go exclusively to the brother." Again, it is not pretended that on the death of the acquirer of separate property, the separately acquired property falls into the common stock, and passes like ancestral property. On the contrary, it is admitted that if the acquirer leaves male issue, it will descend as separate property to that issue down to the third generation. *Although, therefore, where there is male issue, the family property and the separate property would not descend to different persons, they would descend in a different way, and with different consequences ; the sons taking their father's share in the ancestral property subject to all the rights of the co-parceners in that property, and his self-acquired property free from those rights. The course of succession would not be the same for the family and the separate estate; and it is clear, therefore, that, according to the Hindoo law, there need not be unity of heirship.*"
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> (Emphasis added)

12. In ***Arunachala Gounder's*** case (supra), the Apex Court also observed on the law of inheritance applicable to a person who died before 1956 and who was governed by the pristine Mitakshara law. The Court considered the matter by referring to various Smritis and other textual authorities applicable to different parts of India, and in

paragraphs 23 and 24 stated as follows:

> "23. The Mitakshara is supposed to be the leading authority in the school of Benaras. Mr Colebrooke, a famous Sanskrit scholar of Bengal, writes "the range of its authority and influence is far more extensive than that of Jinota Vahanas Treatise for it is received in all other schools of Hindu Law, from Benaras to the southern extremity of the Peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent" [A Treatise on the Hindoo Law of Inheritance by Standish Grove Grady published in 1868 by Gantz Brother Mount Road, Madras]. The Mitakshara has always been considered as the main authority for all the schools of law, with the sole exception of that of Bengal, which is mostly covered by another school known as Daya Bhaga.
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> 24. Reference may also be made to another observation at Page-165, where it is stated as under:
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> > "Failing male issue, therefore, a widow takes the self-acquired property of her husband. No doubt, on failure of male issue and a widow, the daughter would take."

13. In paragraph 38, the Court again referred to the *Treatise on Hindoo Law of Inheritance* by Standish Grove Grady, wherein certain precedents in this line were also noted. In paragraph 39, reference was made to *Hindu Law and Judicature* from the Dharma-sastra of Yajnavalkya by Edward Roer. The above texts state that the wife or daughter of a

male would inherit his separate property only if he died without a male child.

14. The Commentary on Hindu Law by S. V. Gupte, to which attention was drawn by the learned counsel for the plaintiffs, does not specifically state that a daughter could claim her father's property together with her brother. On the contrary, the said text states with precision more than once that the nearer heir in each line excluded the remoter in that line (p. 802). It is also relevant to note a Full Bench decision of the Allahabad High Court in ***Ghurpatari & Ors. v. Sampati & Ors.*** (AIR 1976 All 195), which is quoted in paragraph 59 in *Arunachala Gounder*. It reads as follows:

> "59. The Hindu Law of Inheritance (Amendment) Act II of 1929 (hereinafter called as "the 1929 Act"), for the first time entitled the daughter's daughter, subject to a special family or local custom, to succeed to the property of a male Hindu governed by Mitakshara Law. Daughter's daughter then ranked 13th-B in the order of succession. The order of succession to the estate of a Hindu dying intestate and governed by Mitakshara Law are set out in Para 43 of Mulla's Principles of Hindu Law [Mulla's Principles of Hindu Law (14th Edn.)] as under:

> "The Sapindas succeeded in the following order:
> 1-4. A son, grandson (son's son) and great-grandson (son's son's son) and (after 14th April, 1937) widow, predeceased son's widow, and predeceased son's son's widow.
> 5. Daughter
> 6. Daughter's son
> 13. Father's father
> 13.A Son's daughters
> 13.B Daughter's daughter"

Significantly, the order of succession to the estate of a Hindu dying intestate and governed by Mitakshara law is set out therein, where it is evident that a daughter is placed only at serial no. 5, below a son, grandson, great-grandson, widow, and predeceased son's widow.

15. To conclude, when a Hindu governed by Mitakshara law died before 1956, his separate property would completely devolve upon his son. A female child could claim a right in such property only in the absence of a male child. The Hindu Law of Inheritance (Amendment) Act, 1929 did not affect the son's absolute right to inherit his father's property. It merely enlarged the circle of heirs who could succeed in default of male issue, by introducing certain female heirs and the sister's son.

16. Coming to the facts of this case, Rama Pai was admittedly following Mitakshara law. He died before 1956. On his death, his self-acquired property would devolve entirely upon Hari Pai. Hari Pai conveyed his rights over the plaint scheduled property to the contesting defendants through Ext. A2. In the said circumstances, we find no reason to interfere with the impugned judgment, wherein it was rightly held that the property is not partible.

In the result, the appeal is dismissed. No order as to costs.

Sd/-

SATHISH NINAN
JUDGE

Sd/-
P. KRISHNA KUMAR

JUDGE

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