2026:KER:12551

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 12TH DAY OF FEBRUARY 2026 / 23RD MAGHA, 1947

RSA NO. 245 OF 2016

AGAINST THE JUDGMENT AND DECREE DATED 17.09.2015 IN AS NO.259 OF 2010 OF THE ADDITIONAL DISTRICT COURT-III, ERNAKULAM ARISING OUT OF THE JUDGMENT AND DECREE DATED 3.7.2010 IN OS NO.585/2007 OF II ADDITIONAL SUB COURT, ERNAKULAM.

APPELLANTS/APPELLANTS/ADDITIONAL DEFENDANTS 4 TO 6:

1 SANTHA
AGED 63 YEARS
W/O. MOHANAN POTTY, MATTAVANA, VADAKKEMADOM, KEEZHCHERIMEL, NEAR SASTHA KULANGARA TEMPLE, CHENGANOOR.

2 RATNAM
AGED 61 YEARS
W/O. LATE HARIDASAN POTTY, HARI NIVAS, ANCHAL ROAD, KANIKETTU NAGAR, TRIPUNITHURA.

3 RADHA
AGED 53 YEARS
W/O. GOPALAKRISHNAN POTTY, RADHEYAM, WARRIAPURAM ROAD, PALLIPARAMBUKARA, TRIPUNITHARA - 682 301.

BY ADVS.
SHRI.S.RAMESH BABU (SR.)
SHRI.N.KRISHNA PRASAD
SRI.P.RAVINDRA NATH

RESPONDENTS/RESPONDENTS/PLAINTIFF, 2ND DEFENDANT AND ADDITIONAL 3RD DEFENDANT:

1 RAGHAVENDRAN, AGED 61 YEARS,
S/O. LATE T.V.RAMACHANDRA RAO, KAMOTH MADHOM,
NEAR PALLIPURATHU KAVU TEMPLE, TRIPUNITHARA.

2 K.R.VENKATARAMANAN
AGED 57 YEARS
S/O. LATE T.V.RAMACHANDRA RAO, HOTEL KRISHNA BHAVAN, NEAR TDM HALL, ERNAKULAM.

3 SULOCHANA (DIED)(DELETED)
AGED 62 YEARS
W/O. LATE T.V.RAMACHANDRA RAO, KAMOTH MADHOM,
NEAR PALLIPUATHU KAVU TEMPLE, TRIPUNITHARA.

(THE CAUSE TITLE IS CORRECTED BY DELETING THE WORD 'DIED' AGAINST THE NAME OF THE 3RD RESPONDENT AS PER ORDER DATED 10.04.2023 IN IA.2/2023.)

BY ADVS.
SRI.S.SREEKUMAR (SR.) FOR R1
SRI.P.MARTIN JOSE FOR R1
SRI.P.PRIJITH FOR R1
SRI.THOMAS P.KURUVILLA FOR R1
SHRI.HARKISH SREETHU V.S. FOR R3
SHRI.A.JANI(KOLLAM)
SHRI.T.T.HARIKUMAR

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 16.01.2026, THE COURT ON 12.02.2026 DELIVERED THE FOLLOWING:

"C.R"

EASWARAN S., J.

RSA No.245 of 2016

Dated this the 12th day of February, 2026

J U D G M E N T

Additional Defendants 4 to 6 in a suit for partition, OS No.585/2007 on the files of the Additional Sub Court-II, Ernakulam, are in this second appeal against the decree of partition.

2. The brief facts necessary for the disposal of the appeal are as follows:

One Venkitan Embranthiri acquired an extent of One (1) Acre 26 Cents by a sale deed in the year 1101 ME. Venkitan Embranthiri had six sons and two daughters. The plaintiff and the defendants claim under one of the sons, T.V Ramachandra Rao. On the death of Venkitan Embranthiri, six sons and two daughters came together to execute a partition deed on 1.2.1967, wherein 37 cents was allotted to T.V.Ramachandra Rao, father of the plaintiff and defendants 2 to 6. Later, one daughter of Venkitan Embranthiri, namely, Radhamma @ Radha released her share over 9 cents of the land allotted to her on 2.2.1967. Thus, T.V.Ramachandra Rao came into absolute right title

and interest over 46 cents of land. On 15.4.1978, Ramachandra Rao gifted 46 cents to his wife. Later, the mother of the plaintiff and defendants 2 to 6 had mortgaged the property for the purpose of availing credit facility for a hotel business run by the plaintiff during the year 1992 and that mortgage was subsequently discharged. Ramachandra Rao died in the year 1986, and during the lifetime and thereafter, his wife continued to hold the property. Later, the wife of Ramachandra Rao executed a registered Will in favour of the defendants 2 to 6 bequeathing the entire 46 cents of land in their favour. The plaintiff claimed right by birth, because at the time when the Hindu Succession Act, 1956 came into effect, he was in the womb of his mother and thus was entitled to right by birth over 46 cents of land in the name of Ramachandra Rao. In the suit, the mother as well as the other brothers, who did not have a right by birth, were made as parties and the appellants were not impleaded as defendants. The mother of the appellants resisted the suit by contending that the property absolutely belongs to her and that the plaintiff does not have any right over the property nor is he entitled to claim any right by birth, since the property is not a coparcenary property in the hands of T.V.Ramachandra Rao. During the pendency of the suit, the mother of the appellants and defendants 2 & 3

and the plaintiff expired, and thereafter the appellants were impleaded as additional defendants and they contested the suit. The trial court basically considered two issues; (1) Whether the parties are governed by the Nambudiri Act or by the Mitakshara Law, and (2) Whether the property is a coparcenary property at the hands of the plaintiff and his father T.V.Ramachandra Rao. Answering these two questions, the trial court held that the parties were governed by the Mitakshara Law because they are Tulu Brahmins, who migrated into the State of Kerala, and further, the property at the hands of T.V.Ramachadra Rao and the plaintiff was a coparcenary property and therefore, the plaintiff is entitled to claim right by birth. However, the gift deed in favour of the mother was upheld to the extent of transferring the share of the father of the plaintiff, and hence, the Will executed by the mother was also upheld. Accordingly, the suit was decreed and a preliminary decree for partition was passed. Aggrieved, the defendants 4 to 6 (appellants herein) filed an appeal and the plaintiff filed a cross objection questioning the upholding of the Will. Both the appeal and the cross objection were dismissed by the Additional District Court-III, Ernakulam by judgment dated 17.9.2015 and hence, the present second appeal.

3. On 29.3.2016, this Court issued notice to the respondents on the substantial questions of law framed in the appeal, which read as under:

"A. Whether the self acquired property of a Hindu male upon his death after the commencement of the Hindu Succession Act, 1956 coming into the hands of his son as a class I heir is held by him in his individual capacity or as a coparcenary along with his children?

B. Is the plaintiff not estopped in contending that the plaint schedule property is a coparcenary property and that therefore Ext B1 gift by his father in favour of his mother is void abinitio when he had joined his mother in execution of Ext B2 and B5, whereby he had raised a loan for himself by mortgaging the properties on the strength of his mother's title under the gift deed?

C. Is the plaintiff entitled to ignore Ext B1 gift deed executed by his father in 1978 in favour of his mother without challenging the same but also by active and explicit acceptance of his mother's title thereunder?

D. Are the Courts below justified in partitioning the plaint schedule property into 4/8 shares, 2/8 shares and 2/8 in favour of the plaintiff, second defendant and additional defendants 3 to 6 respectively ignoring the right of the mother and the daughters to inherit from their father and also the impact of Joint Hindu Family Abolition Act, 1976 in the matter?

E. Are the Courts justified in disregarding the fact that item no.1 unlike item no.1 of the plaint schedule property was not obtained by the plaintiff's father under Ext A2 partition deed but independently on assignment from his sisters?

F. Whether the Courts below were justified in ignoring the amendment to the Hindu Succession Act, 2005 by which females are given equal share in the property particularly when partition had not opened up prior to the introduction of the Amendment?

G. Whether the Courts below were justified in ignoring the dictum of the Honourable Supreme Court in (1986) 3 SCC 567 and whether the Courts below are justified in ignoring the decision based on the dictum of the Honourable Supreme Court in (2006)8 SCC 581."

4. Heard Sri.S.Ramesh Babu, the learned Senior Counsel, appearing for the appellants, assisted by Sri.N.Krishna Prasad, and Sri.S.Sreekumar, the learned Senior Counsel appearing for the 1st respondent/plaintiff, assisted by Sri.P.Martin Jose.

5. Sri.S.Ramesh Babu, the learned Senior Counsel appearing on behalf of the appellants, opened his arguments by mainly focusing on the impact of the partition deed executed between the parties and the nature of rights, which Venkitan Embranthiri had over the schedule properties. It is

contended that the property at the hands of Venkitan Embranthiri qua his sons, including Ramachandra Rao, cannot be construed as coparcenary property because the Mitakshara Law permits a coparcener to hold his individual property, which cannot be clubbed into a joint family property or the ancestral property and the same does not become joint in the hands of the father and his sons and hence, the grandson cannot claim right by birth. It is further pointed out that the right of the plaintiff, if any, would arise only if T.V.Ramachadra Rao had a right by birth over his father's property. At any rate, in the suit, the plaintiff has confined his claim for partition over the 46 cents of land allotted to his father under a partition deed executed among the children of Venkitan Embranthiri and thus the property at the hands of Ramachandra Rao cannot be construed as an ancestral property, but only a self-acquired property. If the plaintiff had any right over the properties of Venkitan Embranthiri, ideally, he should have asked for re-opening of the partition and sought for partition of the entire extent of 126 cents held by Venkitan Embranthiri. In not doing so, it is submitted that the suit is bad for partial partition. Alternatively, it is contended that even assuming that the plaintiff is entitled to claim right by birth, because of the advent of the Hindu Succession (Amendment) Act, 2005, the daughters are also included as

coparceners by which they are entitled to claim equal share over their father's property. In support of his contention, relied on the decisions of this Court in **Rajani** v. **Radha Nambidi Parambath [2025 (4) KLT 415],** which followed the decision of the Supreme Court in **Vineeta Sharma** v. **Rakesh Sharma [2020 (4) KLT OnLine 1009 (SC)],** and **Velayudhan v. Kuttooli [2026 (1) KLT 136]** and the Supreme Court decision in **Kenchegowda (Since Deceased) by Lrs v. Siddegowda @ Motegowda [(1994) 4 SCC 294].** In short, the specific plea raised on behalf of the appellants by the learned Senior Counsel is that the courts below have thoroughly misunderstood the scope of the suit and also the contentions raised by the defendants and had non-suited them on a perverse application of law.

6. Per contra, Sri.S.Sreekumar, the learned Senior Counsel appearing on behalf of the plaintiff, supported the concurrent findings recorded by the courts below and contended that no substantial questions of law arise for consideration in the present appeal. It is the specific case of the learned Senior Counsel that the property at the hands of T.V.Ramachandra Rao is a coparcenary property and therefore, the plaintiff is entitled to claim right by birth because he was in the womb of his mother at the time when the Hindu Succession Act, 1956 came into force. At any rate, it is pointed out

that the property at the hands of T.V.Ramachandra Rao was lying in common with the plaintiff and they were holding the property as they continued to hold property as tenants in common due to the promulgation of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976). In support of his contention, relied on the decisions of the Supreme Court in **Arshnoor Singh v. Harpal Kaur and Others [(2020) 14 SCC 436]** and **Sheela Devi and Others v. Lal Chand and Another [(2006) 8 SCC 581]**. It is contended that the suit is not bad for partial partition, especially since it is the choice of the plaintiff either to claim partition for the entire extent or the property allotted to his father under Ext.A2 partition deed. Moreover, the gift deed executed by his father in favour of his mother, transferring the entire 46 cents, is equally bad because the father did not have an absolute right over the property. It is the specific case of the learned Senior Counsel that as soon as the plaintiff was born, he along with T.V.Ramachandra Rao, his father, became coparceners and thus, the plaintiff had equal right over the property. Therefore, it is contended that going by the provisions of Section 6 of the Hindu Succession Act, 1956 the property would still devolve upon the plaintiff not by inheritance but by survivorship.

7. I have considered the rival submissions raised across the bar and perused the judgments of the courts below and the records of the case.

8. Before answering the substantial questions of law framed in the appeal, this court must first consider whether the plaintiff has any coparcenary right over the property of his father. This assumes significance since the plaintiff's father obtained 37 cents by inheritance through partition and 9 cents by release deed in his favour by one of his sisters. The plaintiff has claimed right by birth over the above two extents which is quite surprising.

9. It is in the above backdrop, this Court must consider the impact of the acquisition by late Venkitan Embranthiri. This Court must also hasten to add that the controversy in the present appeal has arisen solely because of the inability of the parties to clearly prove the date of death of Venkitan Embranthiri. If Venkitan Embranthiri had died after 1956, probably this issue would not have arisen at all for consideration.

10. The entitlement of the plaintiff to claim property by right by birth along with his father, T.V.Ramachandra Rao, will largely depend upon the character of property at the hands of Venkitan Embranthiri. It is indisputable that Venkitan Embranthiri had derived right title and interest

over an extent of 126 cents of land through a registered sale deed No.525/1101 ME. The sale deed was executed on 26.04.1101 ME (11.12.1925). The plaintiff was born on 10.10.1956, whereas the Hindu Succession Act came into force on 17.6.1956 and thus at that time the plaintiff was in the womb of his mother. Following the principles of law, there cannot be any dispute that a child in the womb is also entitled to claim right by birth over the ancestral property. Therefore, no further deliberation is required on that question.

11. However, the further question before this Court is whether a male Hindu governed by the Mitakshara Law is entitled to hold a self-acquired property while he was in a joint family with his sons and daughters. The rule of survivorship as embodied under the ancient text of Mitakshara Law continued to hold good, even after the promulgation of the Hindu Succession Act, 1956 because of the operation of Section 6. Therefore, to claim the benefit of Section 6, the plaintiff must demonstrate that the property of Venkitan Embranthiri constituted a coparcenary property in his hands along with his six sons.

12. The precedents cited across the bar by both the learned Senior Counsel may not throw a light on the crucial point which requires to be addressed by this Court.

13. To consider this question, this Court must address the issue as to whether the Mitakshara Law permits self-acquisition by a coparcener.

Chapter-I of Section-5 of Placitum-9 of the Mitakshara Law reads "***The grandson has a right of prohibition if his unseparated father is making a donation or sale of effects inherited from the grandfather : but he has no right of interference if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependent.***"

The distinction is explained by the Author in the text that follows

"***Consequently the difference is this : although he has a right by birth in his father's and in his grandfather's property; still since he is dependent on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property."***

14. What kind of interest a son would take in a self-acquired property of his father, which he receives by way of gift or testamentary bequest from him vis-a-vis his own issue. Does it remain self-acquired in his hands untrammelled by the rights of his son and grandson, or does it become an ancestral property in his hands?

15. ***Mulla on Hindu law 22nd Edition Para-220 page 326*** opines as follows: Incidents of separate or self acquired property- A Hindu, even if be joint, may possess separate property. Such property belongs exclusively to him. No other member of the coparcenary, not even his male issue , acquired any interest in it by birth. He may sell it, or he may make a gift of it , or bequeath it by will, to any person he likes. It is not liable for partition and on his death intestate, it passes by succession to his heirs and not by survivorship to the surviving coparcener.

16. In **C.N.Arunachala Mudaliar v. C.A.Muruganatha Mudaliar and Another [(1953) 2 SCC 362]**, a three Judges Bench of the Supreme Court was called upon to reconcile the conflicting views of the various High Courts on the question as to whether a male Hindu governed by the Mitakshara Law would constitute a coparcener along with his son in respect of his self-acquired property. In paragraph 11, the Supreme Court held as follows:

> "**11.** ***In view of the settled law that a Mitakshara father has absolute right of disposition over his self-acquired property to which no exception can be taken by his male descendants, it is in our opinion not possible to hold that such property bequeathed or gifted to a son must necessarily, and under all circumstances, rank as ancestral property in the hands of the donee in which his sons would acquire co-ordinate interest. This extreme view, which is supposed to be laid down in Calcutta case [Muddun***

> ***Gopal Thakoor v. Ram Buksh Pandey, (1866) 6 WR 71 (Cal)] referred to above, is sought to be supported on a twofold ground. The first ground is the well-known doctrine of equal ownership of father and son in ancestral property which is enunciated by Mitakshara on the authority of Yagnavalkya. The other ground put forward is that the definition of "self-acquisition" as given by Mitakshara does not and cannot comprehend a gift of this character and consequently such gift cannot but be partible property as between the donee and his sons."***

Quoting extensively from the well-known text of Yagnavalkya, which says, "***The ownership of father and son is co-equal in the acquisitions of the grandfather, whether land, corody or chattel***", and relying on Chapter-I, Section-1, Placitum 19 of the Mitakshara, which says, "***Excepting what is gained by valour, the wealth of a wife and what is acquired by science which are three sorts of property exempt from partition; and any favour conferred by a father***", the Supreme Court concluded that whatever is acquired by the coparcener himself without detriment to the father's estate as present from a friend or a gift at nuptials, does not appertain to the co-heirs. Further in paragraph 17 of the decision the Supreme Court held as follows:

> **"17.** As the law is ***accepted and well settled that a Mitakshara father has complete powers of disposition over his self-acquired property, it must follow as a necessary consequence that the father is quite competent to provide expressly, when he makes a gift, either that the donee would take it exclusively for himself or that the gift would be for the benefit of his branch of the family. If there are express provisions to***

that effect either in the deed of gift or a will, no difficulty is likely to arise and the interest which the son would take in such property would depend upon the terms of the grant. If, however, there are no clear words describing the kind of interest which the donee is to take, the question would be one of construction and the court would have to collect the intention of the donor from the language of the document taken along with the surrounding circumstances in accordance with the well-known canons of construction. Stress would certainly have to be laid on the substance of the disposition and not on its mere form. The material question which the court would have to decide in such cases is, whether taking the document and all the relevant facts into consideration, it could be said that the donor intended to confer a bounty upon his son exclusively for his benefit and capable of being dealt with by him at his pleasure or that the apparent gift was an integral part of a scheme for partition and what was given to the son was really the share of the property which would normally be allotted to him and in his branch of the family on partition? In other words, the question would be whether the grantor really wanted to make a gift of his properties or to partition the same. As it is open to the father to make a gift or partition of his properties as he himself chooses, there is, strictly speaking, no presumption that he intended either the one or the other."

17. In **Arunachala Gounder (dead) by Legal Representatives v. Ponnusamy and Others [(2022) 11 SCC 520]**, the Supreme Court considered the right of the widow or a daughter to inherit the self-acquired property or shares received in partition of coparcenary/family property of a Hindu male dying intestate and held as follows:

> "69. In the case at hands, since the property in question was admittedly the self-acquired property of Marappa

> Gounder despite the family being in state of jointness upon his death intestate, his sole surviving daughter Kupayee Ammal, will inherit the same by inheritance and the property shall not devolve by survivorship."

Though the above decision may not directly apply to the context of the present case, the principles will apply with equal force to the present case.

18. Yet another facet of law which requires to be addressed by this Court is the extent of right of T.V.Ramachandra Rao over 46 cents of land. It is beyond cavil that Ramachandra Rao, the father of the appellants and the plaintiff, derived right title and interest by virtue of a partition deed in the year 1967. Surprisingly, the plaintiff did not question the partition deed, which gives an indication that the suit is hit by the principle of partial partition. However, this Court need not address itself to the said issue, especially since the said question is only an incidental one and not touching upon the outcome of the case.

19. Whether the property acquired by the father of the plaintiff would remain joint at his hands as well as his sons' hands is another question. In **Angadi Chandranna v. Shankar and Others [2025 SCC OnLine SC 877]**, the Supreme Court held that after the joint family property has been distributed in accordance with law, it ceases to be the joint family property

and hence, the shares of respective parties become their self-acquired property. This decision probably gives an indication as regards the right of the sharers on execution of a partition deed in respect of an ancestral property. Even, in a case of an ancestral property, on partition, it is held to be self-acquired. But the moment a son is born to the sharer, a coparcener is formed along with the father and son and the property acquired by the father becomes joint with his son.

20. In order to succeed the plaintiff must prove the nature of acquisition at the hands of his father. Irrespective of the nature of acquisition, if the plaintiff fails to prove that the property at the hands of his grandfather is not an ancestral property then the edifice of the suit collapses. With the above principle in mind, this court proceeds to consider the nature of the acquisition by the late Venkitan Embranthiri.

21. The only evidence adduced by the plaintiff is Ext.A2 partition deed and his oral testimony. On contrary, the defendants 2 to 6 have produced the sale deed by which Venkitan Embranthiri purchased the property. Read as may, this court could not find any indication from the evidence adduced by the plaintiff that the property held by Venkitan Embranthiri is an ancestral property.

22. However, Sri S Sreekumar learned Senior Counsel appearing for the 1st respondent/plaintiff contended that irrespective of the nature of acquisition of the property, there is a presumption that he along with his father T V Ramachandra Rao constituted a joint family and hence the plaintiff has a right of birth over the share of the property.

23. This court has no difficulty in accepting the above proposition. But then the plaintiff can claim right by birth over the property at the hands of his father, only if it is shown that the property in hands of his father is an ancestral property. The fact that Venkitan Embranthiri and six sons continued as joint family, is no ground to presume that the property in question is an ancestral property, because under law, no presumption is available as regards a jointness of the property though the presumption may be drawn as regards the jointness of the family as such.

24. At any rate, it was obligatory on the part of the plaintiff to have adduced evidence to prove that the property at the hands of his father was an ancestral property. The evidence is completely lacking on these aspects, which would persuade this Court to conclude that the framework of the suit itself was thoroughly misconceived.

25. However, the learned Senior Counsel appearing for the 1st respondent/plaintiff tried to distinguish the factual scenarios presented before this Court by drawing the attention of this Court to the decision of the Supreme Court in **Arshnoor Singh v. Harpal Kaur and Others [(2020) 14 SCC 436]**. The facts of the aforesaid case disclose that the property originally belonged to Lal Singh and on his death in the year 1951, it was inherited by Inder Singh and during his lifetime, he effected partition of the entire property among the sons. One of the sons of Inder Singh executed a sale deed, which was called in question, and thus, the question presented before the Supreme Court was whether the suit property was a coparcenary or self-acquired property of Dharam Singh and, also, the validity of the sale deed executed by him. The Court went on to hold that the nature of the property inherited by Inder Singh was a coparcenary in nature and even though Inder Singh effected a partition of the coparcenary property among his sons, the nature of the property inherited by Inder Singh's sons would remain as coparcenary property qua their male descendants up to three degrees below them.

26. This Court has bestowed its anxious consideration to the afore-cited decision and is of the considered view that the facts of the decision of

the Supreme Court are clearly distinguishable from the facts of the present case. In the present case, Venkitan Embranthiri had admittedly acquired the property by a sale deed. Going by the decision of the Supreme Court in **C.N.Arunachala Mudaliar** (supra), the said property did not constitute a coparcenary property with Venkitan Embranthiri as well as his six sons, and therefore, the question decided by the Supreme Court in **Arshnoor Singh** (supra) will not apply to the facts of the present case.

27. In **Sheela Devi and Others v. Lal Chand and Another [(2006) 8 SCC 581]**, it was held by the Supreme Court that as soon as a son was born to a male Hindu, the concept of property being a coparcenary property in terms of the Mitakshara School of Hindu Law gets revived. Though the question as regards the applicability of the Hindu Succession (Amendment) Act, 2005 was also dealt with by the Supreme Court, in the light of the decision of the Supreme Court in **Vineeta Sharma** v. **Rakesh Sharma [2020 (4) KLT OnLine 1009 (SC)],** the said proposition is no longer res integra. However, as regards the concept of reviving a coparcenary under the Mitakshara Law as soon as a son is born, one must remember that, to apply the concept of revival of coparcenary, the nature of acquisition at the hands of a male Hindu must be established beyond doubt.

28. As a matter of fact, if a male Hindu gets a property on partition of an ancestral property, though the same may be constituted as a self-acquired property, as soon as a son is born to him, it changes the character of a self-acquired property, and then becomes a co-parcenary property with his son. But, when the original acquisition by a male Hindu itself is a self-acquired property, then, even the son will not get a right by birth and the father is not prevented from disposing of the self-acquired property at his wish.

29. Accepting the proposition canvassed by the learned Senior Counsel appearing for the 1st respondent/plaintiff would necessarily lead to a situation where, the concept of revival of a coparcenary property would still hold to continue in respect of a self-acquired property of a male Hindu. This is not permitted under the Mitakshara Law, because despite the Rule of Survivorship, the Mitakshara Law did not prohibit a male Hindu from holding self-acquired property according to his wish.

30. Most importantly, the conduct of the plaintiff is also required to be commented upon by this Court. It has come out in evidence that on 15.4.1978 late T.V.Ramachandra Rao transferred the entire 46 cents in his wife's favour by executing a gift deed. The plaintiff availed a credit facility

for the expansion of his hotel business by persuading his mother to mortgage the entire extent of 46 cents. At that point of time, the plaintiff never had a case that he was also a co-owner of the property. If he had a case, necessarily, he would not have required his mother to execute the entire security documents, including the letter of confirmation of mortgage with the Co-operative Bank, from where the credit facility was availed by him. When this was pointed out to the learned Senior Counsel for the plaintiff, no plausible explanation was forthcoming as to the peculiar conduct of the 1st respondent/plaintiff. Therefore, this court is inclined to think that the plaintiff must be non suited by applying the principles of acquiescence.

31. That apart, the courts below were under complete remiss in not realising the fact that out of 46 cents, the father of the plaintiff got the title over 9 cents by virtue of the release deed. If the six sons of Venkitan Embranthiri decided to confer right in favour of their sisters, this court is at loss to understand why the plaintiff must be aggrieved by the said act. At any rate, once it is held that plaintiff cannot become a coparcener *qua* his grandfather, no further deliberation is required. But then, the plaintiff claims right by birth in respect of 9 cents which was released by the sister of Ramachandra Rao.

32. The most intriguing factor which the courts below failed to note is that as on date of birth of the plaintiff, there was no crystallization of rights in favour of T.V.Ramachandra Rao nor he had any right by birth over 126 cents held by his father. Therefore, it passes one's comprehension as to how the plaintiff can claim right over the property of his father when his father himself had no right. Still further, when the plaintiff's father derived a right under a partition deed executed after the commencement of the Hindu Succession Act 1956, it is deemed to be his self-acquisition and thus the plaintiff had no right over the same. At any rate, it is beyond cavil that plaintiff has no semblance of right over 9 cents, which T.V.Ramachandra Rao obtained from his sister through release deed.

33. Thus, applying the principles laid down by the Supreme Court in **C.N. Arunachala Mudaliar** (Supra) and **Angadi Chandranna** (Supra) this court has no hesitation to hold that the property in the hands of late T.V. Ramachnadra Roa is not an ancestral property but it assumes all the character of a self acquired property over which he retained all rights of disposition. Resultantly, this Court is inclined to answer the first substantial question of law in favour of the appellants, as follows:

A) The self acquired property of a Hindu male upon his death after the commencement of the Hindu Succession Act, 1956 coming into the hands of his son as a class I heir is held by him in his individual capacity and not as a coparcenary along with his children.

In the light of the above, the rest of the substantial questions of law do not arise for consideration since it has come out that T V Ramachandra Rao had executed a gift deed in favour of his wife by which the entire 46 cents was bequeathed. Consequently, the will deed executed by his wife in favour of the appellants must hold good. If that be so, the suit for partition is liable to be dismissed with costs. Consequently, the impact of the Hindu Succession (Amendment) Act, 2005 on the facts of the case does not arise for consideration. Thus, the courts below did not advert to the questions of law presented before it properly and they went on a wrong tangent altogether and erred egregiously in holding that the plaint schedule property is a joint family property with the plaintiff and T.V.Ramachandra Rao.

In fine, this Court concludes that the judgments and the decrees of the courts below are unsustainable and accordingly this appeal is allowed by reversing the judgment and decree dated 3.7.2010 in OS No.585/2007 of the II Additional Sub Court, Ernakulam as affirmed in AS No.259/2010 by

the III Additional District Court, Ernakulam by judgment dated 17.9.2015.

Resultantly, OS No.585/2007 stands dismissed with costs.

Sd/-
EASWARAN S.
JUDGE

jg