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C.R.P(PD). No.1927 of 2003 and W.P No.11951 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 27.09.2023
Pronounced On: 20.10.2023

CORAM:

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYAN

C.R.P(PD). No.1927 of 2003 and
C.M.P.No.14272 of 2003 and
W.P No.11951 of 2003

In C.R.P No.1927 of 2003

Thiru Kumara Rathina Veera Udaiyar,(Died)

- 1.Thiru S.K.Ganesh,
- 2.Tmt. Venkatammal
- 3.Tmt.Samathal
- 4.Tmt.Valliammal
- 5.Tmt.Bhuvaneswari
- 6.Mr.Periyamma Venna
- 7.Tmt.Nallammal @Nandhini
- 8.Tmt.Loganayaki
- 9.Kuppusamy @Narondram

... Petitioners

(Petitioners 5 to 9 brought on record
as LRS of the deceased Kumara
Rathina Veera Udaiyar vide Court
order dated 26.08.2016 in
C.M.P.Nos.239 to 241 of 2015 in
CRP.No.1927 of 2003)

vs.

- 1.The District Revenue Officer,
(Land Reforms)
Chepauk, Chennai-5.

- 2.The Assistant Commissioner,



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Land Reforms,
Erode.

Respondents

Prayer : Civil Revision Petition filed under Section 83 of The Tamil Nadu Land Reforms Special (Fixation of Ceiling on Land) Act, 1961 against an order in L.T.C.M.A.No.6/98 dated 21.01.1999 passed by the 1st Respondent.

IN W.P.No: 11951 of 2003

Thiru Kumara Rathina Veera Udaiyar,(Died)

- 1.Tmt.Bhuvaneswari
- 2.Mr.Periyamma Veena Udaiyar
- 3.Tmt.Nallammal @Nandhini
- 4.Tmt.Loganayaki
- 5.Kuppusamy @Narendran

...Petitioners

Vs.

- 1.State of Tamil Nadu rep.
By its Secretary to Government,
Revenue Department, Secretariat,
Chennai - 600 009.

- 2.The Assistant Commissioner,
Land Reforms, Erode.

Respondents

For petitioner : Mrs.Chitra Sampath Senior Counsel
(In both petitions) For Mr.V.Anandamurthy

For respondents : Mr.R.RamanLal (AAG)
(In both petitions) Assisted by
Mr.A.Edwin Prabhakar(Spl.G.P) and
Mr. B.Tamilnidhi AGP(CS)

ORDER

This Civil Revision petition arises against an order passed by the



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District Revenue Officer (Land Reforms), Chepauk in his proceedings in

L.T.C.M.A.No.6/98, dated 21.01.1999.

2. Originally this revision was presented before the Tamil Nadu Land Reforms Special Appellate Tribunal at Chennai. This was in exercise of the powers vested in the said Tribunal under Section 83 of the Tamil Nadu Land Reforms (Fixation of ceiling on land) Act, 1961 (hereinafter referred to as “the Act”). The Special Appellate Tribunal was abolished and the revisions which were pending before the said Tribunal were transferred to this Court. Accordingly, the revision which was received as SRP.No.36 of 2001 was renumbered before this Court as CRP(PD).No.1927/2003.

3. Pending the revision, the Government passed an order in G.O.Ms.No.551, Revenue, LR-I.(2) Department dated 07.12.2001. This was issued, since no interim orders were passed in SRP.No.36/2001. The Government Order being a consequent proceeding of the orders impugned in the revision, out of an abundant of caution, W.P.No.11951 of 2003 has been filed. Since the result in W.P.No.11951 of 2003 is dependant on the orders to be passed in CRP(PD).No.1927 of 2003, the



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Udaiyar was partitioned again in the year 1969 between Kumara Rathina Veera Udaiyar and his son Balasubramaniam @ Periyana Nenaudayar.

In a 1969 partition between the aforesaid persons, a portion of the properties which fell to Kumara Rathina Veera Udaiyar, was settled in the year 1970 in favour of his daughter Nallammal and the remaining extent was being enjoyed by his wife.

6. The issue in this revision is whether the shares which fell to the daughters as per the partition deed dated 19.03.1959 could be included in the shares of the father Kuppusamy Gounder.

7. The proceedings were originally initiated against S.V.Kuppusamy Gounder. A draft Notification was published under Section 10(1) of the Act on 02.04.1969. Since the said Kuppusamy Gounder had passed away in the year 1965, objections were filed by his wife Muthammal. Consequent to the draft Notification under Section 10(1) of the Act, an order was passed under Section 10(5) of the Act on 30.09.1970. Challenging the same, Muthammal preferred an appeal before the Principal Subordinate Judge at Coimbatore who was then the Land Tribunal. This appeal was taken on file as L.T.A.No.815 of 1971.



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The Land Tribunal allowed the appeal in and by way of its order dated 27.07.1972, wherein, it set aside the order passed under Section 10(5) of the Act and remanded the matter for fresh disposal.

8. On remand, the Assistant Commissioner (Land Reforms), Erode, issued a fresh Notification on 06.02.1991 declaring that an extent of 325.686 ½ acres equivalent to 86.601 standard acres as surplus holdings. This was objected to before the second respondent. Considering the objections, the second respondent decided that 305.67 ½ acres which is equivalent to 81.529 standard acres as surplus holdings. This order dated 15.12.1997 in proceedings No.28K/MRI/58-61/A2 was challenged before the Land Tribunal cum District Revenue Officer at Chennai. The first respondent concurred with the findings of the second respondent and dismissed the appeal. Hence, the revision.

9. Heard Mrs. Chitra Sampath, learned Senior Counsel representing Mr.V.Anandhamurthy, learned counsel for the petitioner and Mr.R.Ramanlaal, learned Additional Advocate General assisted by Mr.Edwin Prabhakar, learned Special Government Pleader and



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Mr.N.Tamil Nidhi, learned Additional Government Pleader for the respondents.

10. I have carefully gone through the records and perused the materials available on record.

11. Mrs.Chitra Sampath would argue that there is no dispute that Kuppusamy Gounder, Kumara Rathina Veera Udaiyar, Ganesh and Muthammal, the wife of Kuppusamy Gounder had entered into a registered partition deed on 19.03.1959. She would point out that the Land Reforms Act was enacted in Tamil Nadu as Act 58 of 1961. She would state that the Act commenced with effect from April 6th, 1960. The notified date for the purpose of the Act was 2nd October 1962. She would argue that since the document dated 19.03.1959 had been entered into before the date of commencement of the Act, the validity of the said document cannot be challenged by the Department.

12. Mrs.Chitra Sampath would state that the E schedule property had been set apart as “Stridhana” for the married daughters. Therefore,



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she would state, the said property cannot be added with the lands of the father and hence, the impugned order deserves to be set aside. She would further plead that as per the Will left behind by Kuppusamy Gounder, the property fell to the share of totally four persons and therefore, this too, had not been properly considered by the respondents herein. She would rely upon the judgment of this Court in the case of ***N.Rajammal (Died) and another vs. P.Maragathammal & 28 others*** reported in (1998) 1 CTC 314 and would pray that the revision be allowed.

13. Rejecting these arguments, Mr.R.Ramanlal, learned Additional Advocate General would submit that the right of the daughters to claim partition in a joint family property arose only after the Hindu Succession Amendment Act of 2005. Therefore, the partition document of the year 1959 had been properly appreciated by the respondents 1 and 2. He would rely upon the judgment of this Court in the case of ***Appasami Naidu vs. The Authorised officer in CRP.No.1101 of 1975 dated 24.02.1978***, to substantiate his case. He would also rely upon the following judgments of the Supreme Court

(i) ***Prasanta Kumar Sahoo and Others vs. Charulata Sahu and Others*** reported in (2023) SCC Online SC 360 (paragraph 71 E)



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(ii) *State of Gujarat & 1 vs. Shivarjsinh Harishchandraisnh & 2*

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Referring to the aforesaid judgments, he would state that the parties have properly appreciated the law and it does not require interference with the hands of this Court.

14. I have carefully considered the arguments of either sides.

15. The first issue that I have to answer is whether a joint family can make provision for Stridhana for daughters under a registered document.

16. Mulla in his treatise on Hindu Law states that Stridhana is an amalgamation of two words namely '*Stri*' meaning women and '*Dhana*' meaning property. It literally means women's property. The property which is given to a lady by her father, mother, husband or brother and obtained by

- (i) inheritance,
- (ii) purchase,
- (iii) partition,
- (iv) Seizure (example adverse possession), and
- (v) gifts at the time of wedding

are treated as Stridhana.



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17. Insofar as the Madras school of Hindu law is concerned, it has been a subject matter of interpretation by a Full Bench of this Court in the case of *Subramanian Chetti and Others vs. Arunachelam Chetti and Others* reported in (1905) ILR 28 Mad (FB) 1.

18. I have to refer to the issue that was presented before the Full Bench in order to appreciate the position of law. It was the case where a Hindu Widow viz., Kunjara Nachiyar purchased a property with her money, which she received from a decree of maintenance. She was never in possession and enjoyment of the property of her husband, which was a joint family property, enjoyed by other co-parceners. The said Kunjara Nachiyar died leaving behind her daughter /Mangaleswari surviving to her estate. The said Mangaleswari also died leaving behind three daughters viz., Rani Nachiar, Kulandai Nachiar and Velu Nachiar and a son Vijiasami Tevar. The three granddaughters of Kunjara Nachiyar sold the property in favour of Arunachelam Chetti and others. On the strength of the purchase, the vendors presented a suit for declaration of title and for delivery of possession.



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WEB COPY 19. The plea of the plaintiffs therein was that the property was Stridhana property and therefore, the daughters succeeded to the same and alienation conferred title. It was contended by the defendants therein that the property was not the Stridhana of Kunjara Nachiyar and it was only a limited estate and therefore, on her death, it devolved on the lineal male descendants of her husband. In fine, the argument was as the property was not inherited by Mangaleswari, it could not have been enjoyed by the three granddaughters of Kunjara Nachiyar and consequently, the sale in favour of the plaintiffs was null and void. The suit was decreed by the learned Subordinate Judge at Madurai against which an appeal was presented before this Court.

20. After considering various authorities on the points, the Full Bench concluded that as per the definition of Stridhana given in Mitakshara and Manu, the property given absolutely to a woman for maintenance and purchases, which were made on such money, constituted Stridhana and therefore, would descend to her heirs and not on the heirs of her husband. Though the law has changed pursuant to the Hindu Succession Act and other parliamentary legislations, I would rely upon this judgment for the definition of Stridhana. If the property that



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has been given for maintenance is "Stridhana", I will have to see whether the property given under the deed of partition will also be termed as one.

Fortunately for me, this issue has been answered by the Privy Council in ***Debi Mangal Prasad vs. Mahadeo Prasad*** reported in (1911-12) 39 IA 121.

21. The facts of the aforesaid case are one Gaya Prasad Singh died leaving behind his wife Kunwari and three sons viz., Sheo Partap Singh, Mahadeo Singh and Sitla Bakhsh Singh. The first son, Sheo Partap Singh died leaving behind his wife, Dharamraj Kunwari and son, Debi Mangal Prasad Singh. Debi Mangal Prasad Singh sued his paternal uncles for partition of the property left behind by Gaya Prasad Singh. Pursuant to the decree of the High Court, the joint family property of Gaya Prasad Singh was divided into four shares. One share was allotted to Debi Mangal Prasad Singh, one share to his widow Kunwari and one share each to the surviving sons of Gaya Prasad Singh. Kunwari passed away in the year 1900. Her grandson Debi Mangal Prasad Singh again brought a suit for partition claiming 1/3rd share in the property which fell to the share of Kunwari. It was argued by his paternal uncles viz., Mahadeo Singh and Sitla Bakhsh that the property of Kunwari was her



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Stridhana and therefore, passed to them and not to the grandsons.

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22. The Trial Court dismissed the suit. Therefore, an appeal was preferred to the Allahabad High Court by the plaintiff. This judgment was reported in **(1910) 7 ALJ 269**. Following the previous judgments of that Court, the Division Bench held that according to Mitakshara, the share which the mother in a joint family succeeds to on the death of her husband, on partition of the property, between herself and her male children, becomes her Stridhana. The Division Bench further held that on her death, it would devolve upon her own legal heirs and not on the legal heirs of her husband. The plaintiff was not satisfied and took the matter on further appeal to the Privy Council.

23. The Privy Council allowed the appeal and decreed the suit. During the course of discussion, it held as follows

"the members of a joint family effecting a partition. may agree that a portion of the property shall be transferred to the widow by way of absolute gift, as part of her stridhan, so as to constitute a provision for her stridhan heirs; but, in the absence of any such intention, their Lordships do not feel justified in putting property acquired by a widow, on a partition of the joint estate,



upon a footing different from that on which property coming to her by way of inheritance has been placed.”

24. This observation assists me to take a decision in the present case. This judgment very categorically holds that it is open to a joint family to make provisions for Stridhana for the females of the family, though they are not coparceners. A perusal of the partition deed dated 19.03.1959 reveals as follows: (page 41 and 42).

“தவிர 1, 4 லக்கமிட்டவர்களுக்கு பெண் மக்களும் 2, 3 லக்கமிட்டவர்களுக்கு சகோதரரிகளுமான பொன்னாபுரம் அப்பாசாமிக் கவுண்டர் மனைவி வெங்கிட்டம்மாள், கூர பாளையம் சுப்பய்யா கவுண்டர் மனைவி சாமாத்தாள் -2, அவினாசி பாளையம் புதுார் முத்துசாமிக் கவுண்டர் மனைவி வள்ளியாத்தாள் -3 இவர்களுக்கு மேற்படியார்கள் விவாக காலங்களில் வாக்களித்தப்பட்டியும் நம் குலாசாரப்படி பெண் மக்களுக்கு நாமன் திரீதனம் கொடுக்க வேண்டிய அவசியம் இருக்கிறபடியாலும் நம் அந்தஸ்திற்குத் தகுந்த படி நாம் அவர்களுக்குச் செய்ய வேண்டிய கடமை இருப்பதால் நம் சொத்துக்களை பாகம் பிரிவினை செய்து கொள்ளும் பொழுதே அவர்களுக்கு ஸ்திரீதனமாக ஸ்தாவர சொத்துக்களை ஒதுக்கி வைத்து நாம் பாகம் செய்து கொள்வது நலம் என்று கருதி அடியில் கண்ட E ஜாபிதாவில் கண்ட சொத்துக்களை அவர்களுக்கு ஸ்திரீதனமாக கொடுத்து மேற்படியவர்களால் சுவாதீனம் செய்து கொடுத்து விட்டோம். மேற்படி சொத்துக்களை அவர்கள் சர்வ



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சுதந்திரமாய் புத்திர பவுத்திர பாரம்பரியமாய்த் தானாதி கிரைய
விக்கரையங்களுக்கு யோக்கியமாய் ஆண்டு அனுபவித்துக் கொள்ள
வேண்டியது.”

25. The execution of this document is not denied by Mr.R.Ramanlaal, learned Additional Advocate General. He would contend that the daughters not being coparceners, during the relevant time, are not entitled to share and consequently, schedule E should be clubbed along with the property of the father and hence, the order passed by the respondents does not deserve any interference.

26. Mr.R.Ramanlaal, learned Additional Advocate General would point out to the judgment of this Court in CRP.No.1101/1975 to substantiate the same.

27. A reading of the judgment of this Court would support the arguments of Mr.R.Ramanlaal. However, a deeper probe shows that it is factually inapplicable to the present case. In the case before Justice Nainar Sundaram, it is seen that the property belonged to the joint family of one Appasami Naidu. Appasami Naidu had no male heirs. Just a day



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before the notified date, i.e. 01.10.1970, the said Appasami Naidu and his married daughters entered into a partition deed. By virtue of the said partition deed, certain properties were allotted to Appasami Naidu and his daughters. The authorised officers found that the partition deed dated 30.09.1970 is hit under Section 22 of the Land Reforms Act, and the entire extent has to be held as the holdings of Appasami Naidu. This factual narration shows that the date on which, the partition document was entered into, i.e., on 30.09.1970, Appa Samy Naidu had no male heirs. All the properties belonged to him. In order to get over the clutches of Land Reforms Act, he and his married daughters entered into a partition document. The authority under the Land Reforms Act found that it is contrary to Section 22 and ignored the same.

28. This is clear from the order passed by Justice Nainar Sundaram holding as follows:

"the daughters cannot during the life time of the petitioner claim any interest in the properties concerned and demand a partition and in that context, the partition put forth appears to be not a genuine one and in any event cannot be put forth as taking away the title of the land owner in the lands in question."



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29. I am unable to understand, how this judgment would apply to the facts of the present case. It was a case where the document as already been pointed out, was entered into, after coming into force of the Land Reforms Act and thereby, the officers constituted under the Act were entitled to ignore the same under Section 22. In our case, the partition document was entered into one year before the Act was even legislated. Apart from that, it is not a partition document under which non-existing right claimed by the daughters was conferred on them. In this case, the daughters are not parties to the documents, but the joint family in its wisdom and according to the customs prevailing in their community had set apart properties for the daughters as Stridhana. As seen from the observations of Privy Council, it is always open to a joint family to set apart properties as Stridhana at the time of partition for the female heirs. Therefore, the reliance placed upon the judgment of this Court in CRP.No.1101 of 1975 is utterly misplaced.

30. There are two more aspects of the case which I have to refer to.

31. In the present case, the property set apart as Stridhana for the



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daughters had been included in the share of the father. Section 3(14) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961

defines the term family which reads as follows:

“family” in relation to a person, means the person, the wife or husband, as the case may be, as such person and his or her-

(i) minor sons and unmarried daughters, and

(ii) minor grand sons and unmarried grand-daughters in the male line, whose father and mother are dead.”

32. A reading of this provision makes it clear that only the share which belongs to unmarried daughters can be included in the definition of a family. It also makes it clear that where a property belongs to a wife of a person, it should be included in the holdings of her husband. Therefore, by the very definition, the holdings of the married daughters namely, civil revision petitioners 3 to 5 could not have been added onto the share of the father, but should have been added only to the share of their respective husbands.

33. It is here the submission of Mrs.Chitra Sampath becomes relevant. She points out from the impugned order that accepting the



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partition deed, the holdings of Samathal was added on to the holdings of her husband Subbaiah Gounder. Similarly the properties allotted to Valliathal was also included in the holdings of her husband A.S.Muthusamy Gounder and similarly, the properties that fell to the share of Venkittammal was included in the Land Ceiling proceedings against her husband Appasamy Gounder. To substantiate the same, she has also produced the order of the authorities including the properties which were allotted to the three daughters under the partition deed dated 19.03.1959, in the holdings of their husband. In other words, it is clear that the Government accepted the partition deed and consequently, the ownership of the three daughters to the properties allotted to them in E schedule clubbed them along with the properties of their respective husbands and had also declared on such clubbing, the properties were held by their respective husbands in excess.

34. Section 11 of the Act makes it very clear that an authority under the Act has a right to decide the title to the property. Having decided that the petitioners 3 to 5 are the owners of the Stridhana property and having clubbed them to the holdings of their husbands, it is not open to the authorised officer to state that the daughters are not entitled to any share as per the partition deed. It is not as if the daughters



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were treated as coparceners and given share in the property. The Joint family in its wisdom decided to give them Stridhana and that too, much before the legislation was enacted.

35. In this regard, I will take support of the verdict of this Court relied upon by Mrs.Chitra Sampath. Considering a similar issue, the Hon'ble Mr. Justice S.S.Subramani in the case of *N.Rajammal (Died) and another vs. P.Maragathammal & 28 others* reported in *1998 (1) CTC 314* was pleased to hold that in a partition deed between a father and his daughter, the daughters cannot claim the property as co-owners. He further held that they do not have any right during the lifetime of their father. However, he went on to hold that under the partition deed, the father wanted to confer ownership on the daughters and treated the partition deed as gift deed. A reading of this judgment, supports the case of the petitioner. Therefore, I respectfully follow the same.

36. I have already concluded that the joint family consisting of a father and two sons had decided to give their married sisters, Stridhana, as per their customs in that family. Even if I were to consider that it is not so by virtue of the view taken by Mr.Justice S.S.Subramani, I can



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construe it as gift deed. In fact, the Government itself had accepted the title of the daughters to the property and clubbed it along with the holdings of their respective husbands. It is not open to the authority to approbate and reprobate, especially when the title has already been decided in favour of the daughters in a proceeding under the same Act.

37. Now I turn to the authority cited by Mr.R.Ramanlal, learned Additional Advocate General. Insofar as the judgment of the Gujarat High Court in the case of *State of Gujarat & 1 vs. Shivarjsinh Harishchandraisnh & 2* reported in (2018) 2 GLH 294 is concerned, it was a case where the court had held that the married daughters cannot be treated as a member of the Hindu Undivided family of which their father is a kartha and as such, on marriage, she ceases to be a member of the father's family and becomes a member of her husband's family. The Gujarat High Court held that merely because the properties are ancestral properties, the major married daughters cannot be treated as separate unit. This judgment in paragraph 67 and 68 does not support the case of the respondents. But on the contrary, would support the case of the petitioners.



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38. The next judgment I have to refer to is ***Prasanta Kumar Sahoo***

and others vs. Charulata Sahu and others reported in ***2023 SCC Online***

SC 360. In paragraph 71E, the Supreme Court held that the right of a daughter to step into coparcenary arose only from 09.09.2005. This is a settled position of law and no one can quarrel with the same.

39. A reading of the partition document in the present case shows that the daughters have not been given shares as coparceners as in the case of ***Appasami Naidu*** dealt with by Mr.Justice Nainar Sundaram. The partition document merely made a provision for Stridhana of the daughters and the law having been analysed to the effect that a joint family can create Stridhana for their children, I feel this judgment also does not apply to the case. On the contrary, the judgment of the Supreme Court in the case of ***State of Orissa and others vs. K.Srinivasa Rao (Dead) through LRs*** reported in ***(2001) 4 SCC 743*** applies in full force to the facts of the case.

40. The Supreme Court was pleased to held that the property of a married daughter cannot be clubbed along with that of her parents and should be taken only along with that of her husband and children. In this



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case, we have already seen that the property which was allotted as Stridhana under the partition deed dated 15.03.1959 has been rightly clubbed by the authorities along with their respective husbands. Therefore, the impugned order insofar as it deals with the schedule E property as that of the father deserves to be interfered. Accordingly, it is set aside.

41. Now turning to the other aspect about the Will that had been left behind by Kuppusamy Gounder in favour of his wife and three others, the said Will has been treated to be void in terms of Section 22 of the Act. The Karnan of the Village has found that no lands were enjoyed by the persons to whom the land was bequeathed. This is a factual finding which cannot be assailed by me sitting in revision. Therefore, the order insofar as it holds that the Will is hit under Section 22 of the Act, is upheld.

42. In fine, **C.R.P(PD).No.1927 of 2003 is partly allowed.** The order passed in L.T.C.M.A.No.6/98 dated 21.01.1999 is set aside, insofar as it treats the holdings of the properties of the petitioners 2, 3 & 4, which were allotted as Stridhana to Venkitammal, Samathal and Valliammal, as holdings of their father Kuppusamy Gounder. In respect



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of the Will, the order passed in L.T.C.M.A.No.6/98 stands confirmed.

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43. Since I have to come to the conclusion that the clubbing of the Stridhana properties of the daughters along with the holdings of their father is wrong, necessarily, the exercise to find out the excess holdings has to be re-worked. Consequently, **W.P.No.11951/2003 stands allowed.** The authorities shall rework the holdings of Kuppusamy Gounder in line with the orders passed in this Civil Revision Petition.

No costs. Consequently, connected miscellaneous petition is closed.

20.10.2023

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order



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C.R.P(PD). No.1927 of 2003 and W.P No.11951 of 2003

To

- 1.The District Revenue Officer,
(Land Reforms)
Chepauk, Chennai-5
- 2.The Assistant commissioner,
Land Reforms
Erode.
- 3.The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Secretariat,
Chennai - 600 009.



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C.R.P(PD). No.1927 of 2003 and W.P No.11951 of 2003

V.LAKSHMINARAYAN, J.

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W.P No.11951 of 2003



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20.10.2023