



S.A.No.2204 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.2204 of 2003

K.Vallakondama Naicker ... Plaintiff/Respondent/Appellant

-Vs-

1.Sarkarai @ Subbaiah Naicker

2.Thathammal @ Vellaiammal

3.Muthu Velammal

... Defendants2to4/Appellants/
Respondents 1 to 3

4.Thavamani

5.Subbulakshmi

6.Veerachinnammal

7.Seenilakshmi

... Defendants 1,5to7/
Respondents2 to 5/Respondents 4 to 7

(Respondents 5 to 7 are given up as they
were set exparte in both Courts)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 30.06.2003 in A.S.No.22 of 2002 on the file of the Sub-Court, Srivilliputhur,



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reversing the decree and judgment dated 29.11.2001 in O.S.No.68 of 1999 on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellant : Mr.M.Saravanan
for Mr.Subramani

For R1 to R3 : Mr.Venkatesan
for Mr. A.Sivaji

For R4 : No appearance
For R5toR7 : Given up

J U D G M E N T

Being aggrieved by the judgment and decree passed in A.S.No.22 of 2002 on the file of the Subordinate Court, Srivilliputhur, the sole plaintiff has preferred the second appeal.

2.Parties are referred to hereunder according to their litigative status before the trial Court.

3.Originally, the suit in O.S.No.68 of 1999 was filed before the District Munsif Court, Srivilliputur, by the present appellant herein



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against the legal representatives of Seeniammal, wife of Subba Naidu and Muthulakshmi Ammal, wife of Muthiah Naicker, his maternal aunt, for partition of 1/3rd share in the suit property, which is a land and tiled house situated at Thulukampatti Village, Srivilliputtur Taluk, Natham Survey Nos.155/13, 155/14.

4.The trial Court has concluded that, no revenue document was filed to show that the property belonged to their father Muthiah Naicker much less receipts. It was also observed by the trial Court that pursuant to the death of their father, kist was paid in the name of their mother and finally concluded that the plaintiff is entitled for 1/3rd share in the suit property.

5.Against the judgment of the trial Court, the legal representatives of the deceased Muthulakshmi Ammal (2 to 4 defendants) preferred an appeal before the Sub-Court, Srivilliputtur, in A.S.No.22 of 2002. After hearing both sides arguments, the first



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appellate Court concluded that as the plaintiff failed to prove that the suit property is a joint family property, based on the oral evidence of P.W.1 and the documents marked by the defendants' side, ordered to allow the appeal by setting aside the judgment of the Trial Court.

6.Against the judgment and decree of the Sub-Court, Srivilliputur, mentioned supra, the plaintiff herein has preferred the second appeal.

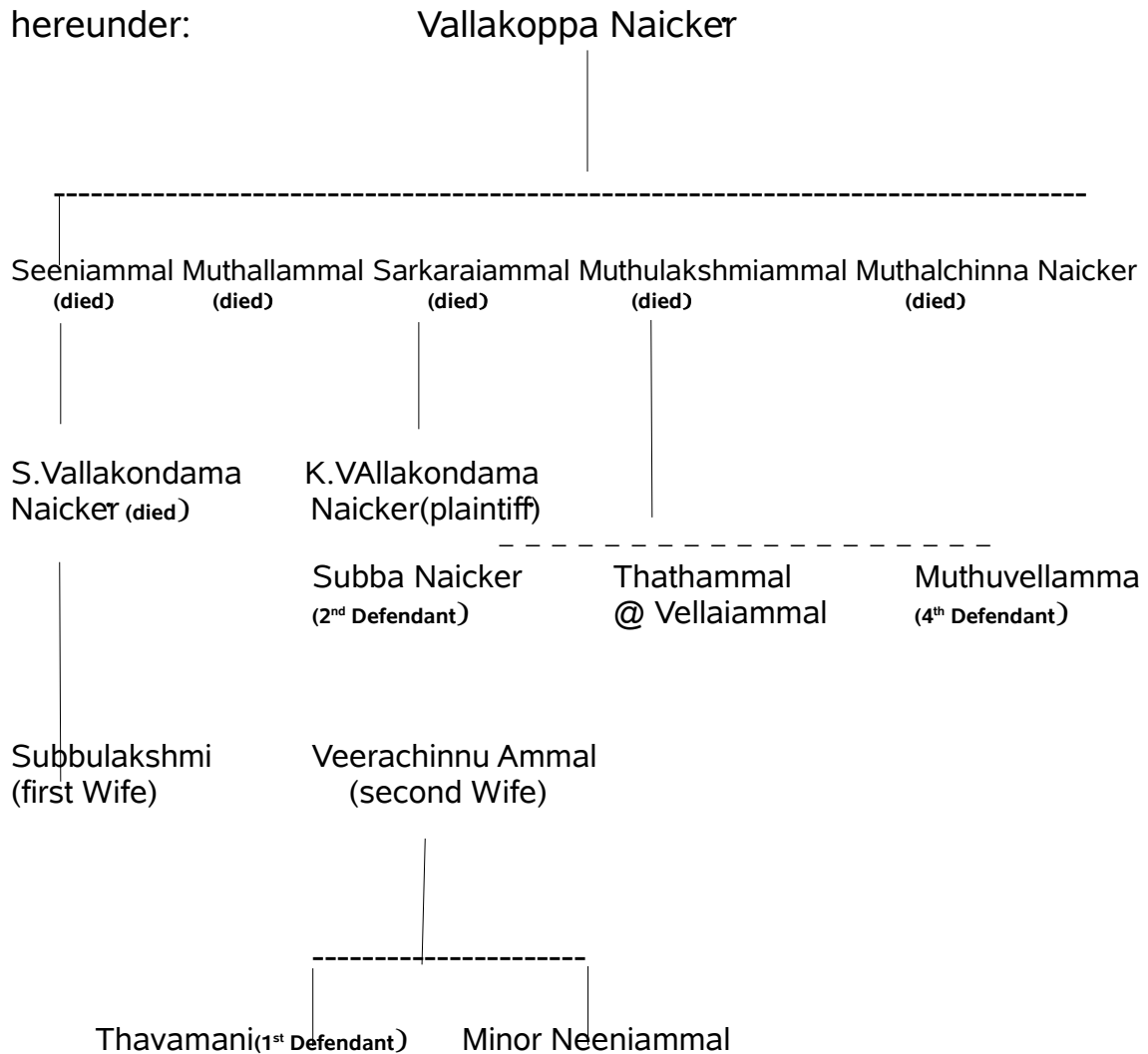
7.According to the plaintiff, his mother viz.,Sarkaraiammal, first defendant's paternal grandmother Seeniammal and Muthulakshmi Ammal, the mother of the defendants 2 to 4 are sisters. Their father is Vallakoppa Naicker and the mother is Vellaiammal. The suit property is the ancestral property of Vallakoppa Naicker. Both of them died long before. Muthallammal and Muthal Chinna Naicker died issueless. Therefore, the remaining three daughters are entitled for 1/3rd share in the suit property.



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8. The genealogy tree is drawn in the written statement of 2 to 4 defendants and there is no dispute about the same. In order to have a proper understanding, the genealogy tree is extracted hereunder:





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9.Counteracting the plaint details, 2 to 4 defendants claimed that the suit property is the property of Muthulakshmi Ammal's husband Muthiah Naicker and both the husband and wife constructed a house in the suit property. After sometime, thatched house was removed and a house was constructed. Tax was laying in the name of Muthulakshmi Ammal and Muthulakshmi Ammal obtained electricity connection for the said house. Therefore, the plaintiff is not entitled for any share in the suit property.

10.Per contra, the first defendant supports the case of the plaintiff as such and she has no objection at all for the property being partitioned into three shares as prayed for by the plaintiff. The defendants 5 to 7, despite receipt of summons, remained absent before the trial Court.



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11. Based on the above said pleadings, relevant issues were framed by the trial Court. As mentioned supra, by evaluating the evidence, the trial Court decreed the suit, granting 1/3rd share to the plaintiff.

12. Whereas the first appellate Court has observed that when the suit was filed for partition, the plaintiff has not filed any title deed in respect of the suit property and by perusing the oral evidence of D.W.1 coupled with the defendants' side documents viz., Ex.B1 to Ex.B3, as tax was levied in the name of 2 to 4 defendants' mother and the electricity connection stands in the name of the 2 to 4 defendants' mother Muthulakshmi Ammal, the relief sought for by the plaintiff is not granted and the appeal suit was allowed.

13. The following substantial question of law arises for consideration:



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Whether the first appellate Court has erred in holding that the property belonged to Muthulakshmi Ammal on the basis of kist receipt and EB consumption receipt.

14.On the plaintiff's side, the plaintiff has examined himself as P.W.1 and the fifth defendant Tmt.Subbulakshmi Vallakondama Naicker (daughter of Tmt.Seeniammal Subba Naicker) was examined as P.W.2. Exs.A1 to A5 were marked. Patta for the suit property in the name of the plaintiff is Ex.A1. Tax receipt based on Ex.A1 patta standing in the name of the plaintiff is Ex.A2. Ex.B2, dated 04.02.1999 is the house tax receipt pertaining to Door No.84. The third defendant Thathammal @ Vellaiammal was examined herself as D.W.1 and Exs.B1 to B3 were marked.

15.Originally, Vallakoppa Naicker and his wife Muthallammal had 4 daughters and one son viz., 1.Seeniammal 2.Muthallammal 3.Sarkaraiammal 4.Muthulakshmi Ammal and 5.Muthal Chinna



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Naicker. Among the said five persons, none is alive. Muthallammal and Muthal Chinna Naicker died issueless.

- The Plaintiff is the son of Tmt.Seeniammal Subba Naicker.
- D1 and D7 are the LRs. of Veera Chinna Ammal(second wife of Vallakondama Naicker S/o.Tmt.Seeniammal Subba Naicker)
- D5 and D6 are the first and second wife of the above said Vallakondama Naicker, S/o.Tmt.Seeniammal Subba Naicker.
- D2 to D4 are the children of Muthulakshmi Ammal.

16. To put it in a nutshell that the plaintiff claims that the suit property is the ancestral property of his maternal grandfather Vallakoppa Naicker. The suit property is a Natham Poramboke situated in S.Nos.155/13, 155/14, Thulukkapatti Village, Srivilliputur Taluk. The plaintiff, apart from examining himself as P.W.1, has marked patta for the suit property viz., Ex.A1 and kist receipt Ex.A2.

17.That apart, P.W.1, during his cross - examination, has admitted that Exs.B2 and B3 viz., house tax receipts and EB



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payment receipts in the name of Muthulakshmi Ammal, the mother of 2 to 4 defendants. The relevant portion of his evidence is extracted hereunder:

“... 2 முதல் 4 பிரதிவாதிகளின் தாயார் பெயரில் தாவா வீட்டிற்கு தீர்வை உள்ளது. ... தாவா வீட்டிற்கு மின் இணைப்பு பெற்று 30 வருடம் ஆகிறது. மின் இணைப்பு முத்துலட்சுமி பெயரால் தான் வாங்கப்பட்டது. ... தீர்வையும் மின் இணைப்பு கட்டணமும் வீட்டில் குடியிருப்பவர்கள் கட்ட முடியும் என்றால் சரிதான். ... எல்லா சொத்துக்களையும் பிரித்து கொண்டோம் தாவா வீட்டை மட்டும் பிரிக்காமல் வைத்திருந்தோம்.”

18. Whereas D.W.3 Thathammal @ Vellaiammal has claimed that the property originally belonged to her father and after his life time, the property was in possession and enjoyment of her mother Muthulakshmi Ammal. Therefore, the plaintiff cannot lay a claim in the suit property.



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19. Admittedly, the suit property is a Natham poramboke.

The crucial documents are Ex.A1, Natham patta stands in the name of the plaintiff and Ex.A2, kist receipt. The documents marked on the defendants' side are Exs.B2 and B3, house tax receipt and EB payment receipt standing in the name of Muthulakshmi Ammal.

20.In Ex.B2 - tax receipts, Door Number is mentioned as 84 and the name of 2 to 4 defendants' mother is mentioned. House Tax receipt does not bear the round seal and the signature of the President of Panchayat. Therefore, the trial Court thought it fit to reject Ex.B2. Ex.B3 is the series of EB payment receipts standing in the name of Muthulakshmi Ammal.

21.The candid case of defendants 2 to 4 is that the suit property is the property of their father and after his life time, their mother was in possession and enjoyment of the suit property. No piece of evidence is marked in the name of their father to prove the



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said details.

22. On the plaintiff's side, it was claimed that the suit property is an ancestral property of plaintiff's maternal grandfather Vallakoppa Naicker. Admittedly, no revenue record in the name of Vallakoppa Naicker is marked. Ex.A1 is the patta for the suit property in the name of plaintiff. A close perusal of Ex.A1 patta, his father's name is overwritten as Subbiah. This patta is granted for Natham S.No.155/13. Patta Number is 368 and it was granted on 28.01.1990. Ex.A1, Patta bears round seal and the signature of the special Tahsildar, Natham Land Tax scheme. For the said Patta No.368, kist was levied on 10.08.1995 in the name of K.Vallakondama Naicker, the plaintiff herein. It is not the plaintiff's case that the property stands in his name and it belongs to his family. The evidence of P.W.1 is strengthened by the evidence of P.W.2 viz., Tmt.Subbulakshmi Ammal, who is the fifth defendant in the suit. She is the daughter-in-law of Seeniammal, wife of Subba Naicker. It is pertinent to note that



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the fifth defendant viz., Tmt.Subbulakshmi Ammal was examined as P.W.2 (5th defendant) has no objection for grant of 1/3rd share to the plaintiff. In view of the aforesaid discussions, based on Ex.B2, house tax receipts, which does not bear the round seal and manual signature of the President of Panchayat, non-suiting the plaintiff by the first appellate Court is incorrect and the substantial question of law is answered in favour of the plaintiff.

23. Therefore, based on the oral evidence of P.Ws.1 and 2 and D.W.1 and the four documents as mentioned supra, it is made clear that the property belongs to Vallakoppa Naicker, who is the Kartha and LRs., of the three daughters, are entitled for 1/3rd share. Therefore, the plaintiff, being the son of one of the daughter of Vallakoppa Naicker, is entitled for 1/3rd share.



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24. In fine, the judgment and decree passed by the first appellate Court in A.S.No.22 of 2002 is hereby set aside. The suit in O.S.No.68 of 1999 stands decreed. The Second Appeal stands allowed. Considering the relationship between the parties, there is no order as to costs.

08.11.2023

NCC:Yes/No

Index:Yes/No

Internet::Yes/No

To

1.The Sub-Court,
Srivilliputhur.

2.The Additional District Munsif Court,
Srivilliputhur.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R. KALAIMATHI,J.

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