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A.S.NOS.299& 688 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03 / 06 / 2024

JUDGMENT DELIVERED ON: 02 / 07 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

A.S.NOS.299 AND 688 OF 2018

AND

CMP SR.NO.23810 OF 2021 IN A.S.NO.299 OF 2018

CMP NO.7407 OF 2018 IN A.S.NO.299 OF 2018

CMP NOS.19063 & 19065 OF 2018 IN A.S.NO.688 OF 2018

A.S.NO.299 OF 2018

1.Mr.Mohan

2.Mr.D.Gurunathan

3.Mr.D.Boopalan

4.Mr.D.Maruthi

5.Ms.S.Renuka

6.Ms.D.Selvi

7.Ms.S.Sumathi

8.Minor Rithika

9.Minor Boopesh

(Appellants 9 & 10 minors are represented

by their mother & guardian 7th appellant) ...

Appellants /

3rd to 11th Defendants

Versus



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1.Mrs.Susila Tharani

2.Mrs.Sachutha

... 1st & 2nd Respondents /
Plaintiffs

3.Mrs.R.Vasanti Ram Narayan

... 3rd Respondent /
D2

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, 1908, praying to set aside the judgment and decree dated 22.12.2017 made in O.S.No.237 of 2005 on the file of Additional District Judge, Chengalpattu and dismiss the Original Suit.

For Appellants : Mr.R.Bharanidharan
for Mr.M.Arunkumar

For Respondent-1 : Mr.R.Pavankumar Dhanuka

For Respondent-2 : Mr.D.Senthil Kumar

For Respondent-3 : Mr.V.Raghavachari
Senior Advocate
for Mr.E.Senthil Kumar
for M/s.Sampath Kumar &
Associates

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Mrs.Sachutha

... Appellant /
2nd Plaintiff

Versus

1.Mrs.Vasanti Rama Narayanan

2.Mr.D.Mohan

3.Mr.D.Gurunathan



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4.Mr.D.Bhoopalan

5.Mr.D.Maruthi

6.Ms.Renuka

7.Ms.D.Selvi

8.Ms.S.Sumathi

9.Minor Rithika

10.Minor Bhoopesh

(Minors are represented by their mother
and natural Guardian Mrs.S.Sumathi)

11.Mrs.Susila Tharani

(Appellant No.(1) is transposed as

Respondent No.11 vide order of this

Court dated 16.04.2024 passed in CMP

No.8745 of 2024 in A.S.No.688/2018)

... Respondents /
2nd to 11th Defendants

... 11th Respondent /
1st Appellant /
1st Plaintiff

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, 1908, praying to set aside the judgment and decree dated 22.12.2017 made in O.S.No.237 of 2005 on the file of Additional District Judge, Chengalpattu and decree the Suit as prayed in the Original Suit.

For Appellants : Mr.D.Senthil Kumar

For Respondent -1 : Mr.V.Raghavachari
Senior Advocate
for Mr.E.Senthil Kumar
for M/s.Sampath Kumar
& Associates

For Respondents

2 to 10 : Mr.R.Bharanidharan
for Mr.M.Arunkumar

For Respondent – 11 : Mr.R.Pavankumar Dhanuka



COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved with the judgment and decree dated *December 22, 2017* passed in *O.S.No.237 of 2005* by 'the Additional District Court, Chengalpattu' (henceforth 'Trial Court'), the plaintiffs therein filed an Appeal Suit in *A.S.No.688 of 2018*, and the defendants 3 to 11 therein filed an Appeal Suit in *A.S.No.299 of 2018*. Since both the Appeal Suits arise out of the same judgment and decree, they are disposed of by this Common Judgment.

2.For the sake of convenience, henceforth, the parties will be referred to as per their array in the suit.

Case of the Plaintiffs:

3.The plaintiffs and the first defendant - Devan are sisters and brother respectively, born to the couple - Murugan and Kuppammal. Murugan died in the year 1974 and Kuppammal died in the year 1995 leaving behind the plaintiffs and the first defendant (D1) as their legal



representatives.

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3.1.Item Nos.1, 2, 3, 4, 8 and 9 of the Suit Properties are ancestral properties. From the income derived from the above properties, Item Nos. 5 to 7 of the Suit Properties were purchased in the name of D1. Thus, Item Nos. 1 to 9 of the Suit Properties are all ancestral properties.

3.2.D1 with a view to defeat and defraud the lawful claim of the plaintiffs, tried to create sham and nominal documents in favour of second defendant (D2). Hence, the plaintiffs issued a legal notice dated March 11, 2005. D1 issued separate reply notices to the plaintiffs on March 24, 2005 with incorrect particulars. Hence, the plaintiffs filed a Suit for partition seeking to divide the Suit Properties into three equal shares and allot 2/3 share jointly to the plaintiffs.

Case of the Defendants:

4.D1 filed a written statement stating that the Suit properties are not ancestral properties of the plaintiffs. Item Nos.5 to 7 of the Suit Properties are separate properties of D1. He had purchased Item Nos.5 and



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6 of the Suit Properties vide Sale Deed dated December 2, 1971 and Item

No.7 of the Suit Properties vide Sale Deed dated December 14, 1962. D1

sold Item Nos.5 to 7 of the Suit Properties to the second defendant (D2)

vide Sale Deeds dated December 15, 1999 and October 12, 2000. Further,

Item Nos.3 and 4 of the Suit Properties were sold to one Mr.Shanmugam in

the year 2005. Thereafter, the purchaser Shanmugam is in possession and

enjoyment of Item Nos.3 and 4 of the Suit Properties.

4.1.Further, D1 has stated that the plaintiffs had been already given properties measuring 47 Cents in *Survey No.52/I*, and 31 Cents in Survey No.118 of Rajakilpakkam Village under various registered documents. Further, the plaintiffs were permitted to construct a building for their own use in the land measuring 12 Cents in Survey No.30 at Rajakilpakkam Village.

4.2.In short, the case of D1 is that the Suit Properties are not ancestral properties and Item Nos. 1 and 3 to 7 of the Suit Properties had



already been sold. Accordingly, he prayed to dismiss the Suit.

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5.Pending the Suit, D1 – Devan died on December 12, 2012.

Hence, Defendant Nos.3 to 11 being legal representatives of D1, were added as parties and they have filed written statement wherein, they have reiterated the averments of the written statement filed by their father Devan (D1).

6.D2, who is the purchaser of Item Nos.5 to 7 of the Suit Properties has filed a written statement stating that Item Nos.5 to 7 of the Suit Properties are personal properties of D1. D2 purchased the said properties from D1 vide Sale Deeds dated December 15, 1999 and October 12, 2000. She is the *bona fide* purchaser for value. After her purchase, the revenue records were also mutated in her name. The Suit is barred by limitation against the D2. She prayed to dismiss the Suit.

7.Based on the above pleadings, the Trial Court framed the



following issues:

“(i) Whether the plaintiffs are entitled to the relief of partition as prayed for?

(ii) Is it correct to assert that item nos.5 to 7 are separate properties of first defendant?

(iii) Whether the Suit properties are joint family properties?

(iv) Whether the second defendant is the bona fide purchaser for value?

(v) Whether the first defendant is liable to render the accounts?

(vi) To what other reliefs?

Additional issues:

(i) Whether the plaintiffs were in joint possession and enjoyment of the Suit properties?

(ii) Whether the Sale Deeds executed by the defendants 1 and 3 in favour of the second defendant are true, valid and binding on the plaintiffs?



7.1. Thereafter, the Trial Court recast all the issues. The recast issues reads as follows:

- i) *Whether the plaintiffs are entitled to partition?*
- ii) *To what other reliefs?*

7.2. At trial, on the side of the plaintiffs, the husband of the second plaintiff namely Ponnusamy was examined as P.W.1 and Ex-A.1 to Ex-A.7 were marked. On the side of the defendants, the third defendant - D.Mohan was examined as D.W.1 and the husband of D2 - S.Ramanarayan was examined as D.W.2 and Ex-B.1 to Ex-B.12 were marked.

7.3. The Trial Court, after full trial, held that the Item Nos.5 to 7 of the Suit Properties are self-acquired properties of D1 and Item No. 1, 2, 3, 4, 8 and 9 of the Suit Properties are ancestral properties. The Trial Court further held that Item Nos.3 and 4 of the Suit Properties were sold to one Shanmugam prior to institution of the Original Suit. Hence, the said share shall have to be adjusted at the time of final decree by applying the



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principle of equity. Accordingly, the Trial Court dismissed the Suit in respect of Item Nos.5 to 7 of the Suit Properties and decreed the Suit in respect of Item Nos. 1, 2, 3, 4, 8 and 9 of the Suit Properties and passed a preliminary decree granting 1/6 share each to the plaintiffs in Item Nos. 1, 2, 3, 4, 8 and 9 of the Suit Properties.

7.4. Feeling aggrieved with the said decree and judgment, the plaintiffs and the defendants preferred these appeals as stated *supra*.

8. Further, the plaintiffs filed a petition in C.M.P.No.19065 of 2018 under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (henceforth 'CPC') praying to receive additional documents.

9. Pending the appeals, the first plaintiff namely, Susila Tharani filed a petition in C.M.P.No.8745 of 2024 in A.S.No.688 of 2018 praying to transpose her as 11th respondent and the same was allowed by this Court on April 16, 2024.

10. Thereafter, the second plaintiff, namely Sachutha, filed a petition in C.M.P.SR.No.23810 of 2021 under Order XLI Rule 27 of CPC



praying to receive some additional documents.

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Arguments:

11.Mr.D.Senthil Kumar, learned counsel for the second plaintiff argued that the common ancestor - Murugan died in the year 1974 and his wife - Kuppammal died in the year 1995. The plaintiffs and the first defendant are daughters and son respectively of the couple - Murugan and Kuppammal. The said couple had ancestral properties and they were doing agriculture. D1 had no independent income other than the income derived from agriculture. The common ancestor - Murugan purchased the property in the name of D1 for the benefit of the joint family. Hence, the Suit Properties are all joint family properties.

11.1. He further submitted that the plaintiffs being co-parceners by birth, are each entitled to equal share along with D1. However, the Trial Court miserably failed to appreciate the evidence properly and con-



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cluded that Item Nos.5 to 7 of the Suit Properties are self-acquired properties of D1 and accordingly, dismissed the Suit *qua* Item Nos.5 to 7 of the

Suit Properties. Further, the Trial Court has erroneously decided that since Murugan died in the year 1974, the plaintiffs are not co-parceners as per the Hindu Succession Act, 1956 (henceforth 'H.S. Act') as amended by 'the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005)' (henceforth '2005 H.S. Amendment Act'). Accordingly, he prayed to allow the appeal in *A.S.No.688 of 2018*.

11.2.Further submitted that, the second plaintiff was initially not aware of the documents sought, by her, to be received in C.M.P.SR.No.23810 of 2021. The said documents are registered / public documents. To decide the dispute between the parties, the said documents are vital. Accordingly, he prayed to allow C.M.P.SR.No.23810 of 2021.

12.Mr.V.Raghavachari, learned Senior Counsel appearing for D2 argued that Item Nos.5 to 7 of the Suit Properties were self-acquired properties in the hands of D1. They were purchased by D1 vide Ex-A.2 :



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Ex-B.2 and Ex-A.3 : Ex-B.3. Then, on December 15, 1999 under Ex-B.5,

and on October 12, 2000 under Ex-B.6, D2 purchased Item Nos.5 to 7

from D1 for valuable consideration. Hence, he is a *bona fide* purchaser for value. He prayed to dismiss the appeal in *A.S.No.688 of 2018*.

12.1.Further submitted that there was no joint family nucleus, plaintiffs have not proved the existence of joint family properties and surplus income therefrom to purchase other Suit properties. Further argued that there was no presumption in law that a property purchased in the name of a member of a joint family had ipso-facto the character of Joint Hindu Family property unless it could be shown that the family possessed a nucleus for the purchase of the same. In the absence of proof for the said facts, the item nos.5 to 7 of the Suit properties are self-acquired properties of D1. The learned Senior Counsel submitted the following case laws in support of his submissions:

- (i) Division Bench judgment of this Court in A.Bhadra Chetty @ A.B.S. Kumar and Another Vs. Shanmugam and Others [2024 (1) L.W.389]



(ii) Division Bench judgment of this Court in Rajendran & Another Vs. Radhakrishnan & Others [2023 (5) L.W.1]

(iii) Judgment of the Hon'ble Supreme Court in Makhan Singh (D) by LR. Vs. Kulwant Singh [2007 (3) L.W.475]

(iv) Division Bench judgment of this Court in R.Deivanai Ammal and Another Vs. G.Meenakshi Ammal and Others [AIR 2004 MADRAS 529]

(v) Judgment of this Court in K.V.Ramasamy Vs. K.V.Raghavan and 3 Others [2009 (4) CTC 440]

(vi) Judgment of this Court in Renuga and Another Vs. K.G.Chandran and Another [2015 (3) CTC 129]

(vii) Judgment of the Hon'ble Supreme Court in Bhagwat Sharan (Dead) thr. LR. Vs. Purushottam and Others [2020 (3) CTC 111]

(viii) Division Bench judgment of this Court in S.M.Sivaswami Vs. Nagammal and 5 Others [2011 (1) CTC 337]

(ix) Judgment of this Court in Veerappan and



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Others Vs. Cauvery and Others [2019 (3) CTC 687]

(x) Division Bench judgment of this Court in K.S.Ananthanarayanan Vs. S.Vaidy and Others [2004 (4) CTC 424]

(xi) Judgment of this Court in Murugaiyan and 2 Others Vs. Subbaiyan [2001 (3) CTC 393]

(xii) Division Bench judgment of this Court in Sri Chandru and Another Vs. K.Nagarajan and Others [2012 (3) CTC 785]

(xiii) Judgment of the Hon'ble Supreme Court in Raghubanchmani Prasad Narain Singh Vs. Ambica Prasad Singh [AIR 1971 SC 776]

(xiv) Division Bench judgment of the Karnataka High Court in T.S.Subbaraju Vs. T.A.Shivarama Setty and Others [AIR 2004 KARNATAKA 479]

12.2.Further submitted that, the Sale Deeds were executed way before December 20, 2004 and hence, they are saved by the proviso under sub-section (1) of Section 6 of the H.S. Act as amended by 2005



H.S. Amendment Act. Further, even if the Court comes to the conclusion

that Item Nos.5 to 7 are ancestral properties, since D1 is the *Kartha* of the joint family, the Sale Deeds are valid and binding on the plaintiffs.

13.Mr.R.Bharanidharan, learned counsel appearing for the Defendant Nos. 3 to 11 argued that Item Nos.5 to 7 of the Suit Properties are separate properties of D1, and D1 had executed a Sale Deed with regard to Item Nos.5 to 7 of the Suit Properties in favour of D2 vide Ex-B.5 and Ex-B.6. The Trial Court rightly dismissed the Suit *qua* Item Nos.5 to 7 of the Suit Properties.

13.1. He further submitted that Item Nos.3 and 4 of the Suit Properties were sold to one Shanmugam. However, the said purchaser was not impleaded in this case. Hence, the Trial Court ought to have dismissed the Suit *qua* Item Nos. 3 and 4 of the Suit Properties.

13.2.Further submitted that, D1 purchased half share (an extent of 52 Cents) in Item Nos.1 and 2 of the Suit Properties vide Ex-B.4 – Sale Deed. Hence, $\frac{1}{2}$ share in Item Nos.1 and 2 of the Suit Properties is



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the self-acquired property of D1, in which, the plaintiffs have no claim at

all. As regards Item Nos.8 and 9 of the Suit Properties, the plaintiffs are not

in possession and enjoyment of the same. D1 constructed a house therein

and hence, the plaintiffs are not entitled to seek partition in the said

property. The Trial Court ought to have dismissed the Suit in its entirety,

instead, the Trial Court erroneously granted decree to the plaintiffs in

respect of Item Nos. 1, 2, 3, 4, 8 and 9 of the Suit Properties. Accordingly,

he prayed to allow the appeal in *A.S.No.299 of 2018*.

Points for Consideration:

14.This Court has considered both sides' submissions and perused the evidence available on record. The points that arise for consideration in these appeals are as follows:

- (i) Whether the first plaintiff's application under Order XLI Rule 27 shall be allowed?



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(ii) Whether Item Nos.1 to 4, 8 and 9 of the Suit properties are ancestral properties?

(iii) Whether Item Nos.5 to 7 of the Suit properties are ancestral in character?

(iv) Whether the plaintiffs are entitled to the benefit of Section 6 of the H.S. Act as amended by 2005 H.S. Amendment Act?

(v) Whether the plaintiffs are entitled to seek partition in Item Nos.5 to 7 of Suit Properties?

(vi) Whether the Original Suit is bad for non-joinder of parties?

(vii) Whether the Trial Court's judgement and decree is to be interfered with?

Discussion and Decision:

Point No.(i) - *Whether the first plaintiff's application under Order XLI Rule 27 shall be allowed?*



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15.This Court has perused the affidavits filed in support of the

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16.The plaintiffs filed a Civil Miscellaneous Petition in

C.M.P. No.19065 of 2018 praying to receive some additional documents.

The first document is the Sale Deed dated July 31, 2007 executed by D1 - Devan in favour of G.Shanmugam and two others. Documents 2 and 3 are the Encumbrance Certificates relating to the Suit Properties.

17.Further, in C.M.P.SR.No.23810 of 2021 in A.S.No.299 of 2018, the second plaintiff has sought to receive four documents. The first document is a certified copy of the registered Sale Deed (Document No.509 of 1953) executed by one Parthasarathy Naidu and others in favour of Murugan, who is the father of plaintiffs and D1. The second document is the 'General Power of Attorney' (henceforth 'GPA') dated June 6, 2005 granted in favour of Vasanthal, wife of G.Shanmugam, by the defendants



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1, 3 to 9. The third document is the Sale Deed dated July 31, 2007, executed pending the Suit. The fourth document is the Encumbrance Certificate in respect of *Survey Nos.141/4 and 141/5* for a period of 25 years from *January 1, 1987 to January 20, 2011*.

18.The 4 documents sought to be received in C.M.P.SR.No.23810 of 2021 in A.S.No.299 of 2018, includes the 3 documents sought to be received in C.M.P.No.19065 of 2018 in A.S.No.688 of 2018. Since the Registered Sale Deeds and Encumbrance Certificates are public documents, this Court is inclined to allow Civil Miscellaneous Petition in C.M.P.SR.No.23810 of 2021 in A.S.No.299 of 2018. Since C.M.P.SR.No.23810 of 2021 is comprehensive of C.M.P.No.19065 of 2018, C.M.P.No.19065 of 2018 shall stand closed. The documents in C.M.P.SR.No.23810 of 2021 in A.S.No.299 of 2018 are hereby received and marked as tabulated below:

<i>S.No.</i>	<i>Dated</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	1953	Ex-A.8	Certified copy of Sale Deed (Document No.509 of 1953).
2	06.06.2005	Ex-A.9	Certified copy of the General Power of Attorney



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<i>S.No.</i>	<i>Dated</i>	<i>Exhibits</i>	<i>Description of documents</i>
			executed in favour of Vasanthal, wife of G.Shanmugam, by the defendants 1 and 3 to 9 (Document No.1638 of 2005)
3	31.07.2007	Ex-A.10	Photo copy of the Sale Deed (Document No.7744 of 2007).
4	20.08.2018	Ex-A.11	Photo copy of the Encumbrance Certificate for 25 years in respect of properties in S.No.141/4 and 141/5

Point No.(i) is answered accordingly in favour of the plaintiffs.

Point No.(ii) - *Whether Item Nos.1 to 4, 8 and 9 of the Suit properties are ancestral properties?*

19.The plaintiffs side marked Ex-A.1 – Adangal for the Fasli years 1370, 1375, 1380, 1383 and 1384. The said documents show that, an extent of 70 Cents in Survey No.3, an extent of 1 Acre 57 Cents in Survey No.140 and an extent of 45 Cents in Survey No.118, stands in the name of Sangu Vagaiyara. According to the plaintiffs, Sangu is none other than the paternal uncle of the plaintiffs. P.W.1 has deposed that one Ponnan is the common ancestor and the Ponnan had three sons - Sangu, Palayam and Murugan, and one daughter - Varadhammal. P.W.1 is the son of said



Varadhammal. He married the second plaintiff who is D1's sister. There is

no dispute regarding the said relationships. Hence, P.W.1 is a competent witness.

20.D.W.1, son of D1 - Devan, in his evidence has deposed that Murugan and his son Devan (D1) were practicing agriculture. Their family did not have any other income except agricultural income. D.W.1 has also admitted that the Item Nos.8 and 9 are ancestral properties. The relevant extract is as follows:

“ . . . பி.வா.ச.ஆ.4ல் சொத்து விவரத்தில் குறிப்பிடப்பட்டுள்ள “தங்கள் பாக நிலத்திற்கு” மேற்கு என்று குறிப்பிடப்பட்டிருப்பது சங்கிற்கும் அவரது சகோதரர்களுக்கும் இடையே ஏற்பட்ட பாகப்பிரிவினையைக் குறிக்கிறது என்று சொன்னால் சரிதான். என் தாத்தா முருகன் தொழில், விவசாயம், முதல் பி.வாதியின் தொழில் விவசாயம், என் தொழில் விவசாயம். எங்களுக்கு விவசாய தொழில் தவிர வேறு தொழில் கிடையாது. தாவா 8 மற்றும் 9 அயிட்ட சொத்துக்கள் பூர்வீக சொத்துக்கள் என்று சொன்னால் சரிதான். இந்த சொத்துக்களைப் பொருத்து எங்கள் குடும்பத்தில் பாகப்பிரிவினை ஏற்படவில்லை. தாவா 1 முதல் 4 வரை மற்றும் 8, 9 அயிட்டச் சொத்துக்கள் முதல் பி.வாதியின் பூர்வீக சொத்துக்கள் என்றும், அந்த



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சொத்துக்கள் அவரின் தனிப்பட்ட சொத்துக்கள் என்று நான் தவறுதலாக சொல்கிறேன் என்றும் சொன்னால் சரியல்ல. பூர்வீக சொத்துக்களில் வந்த வருமானத்தை வைத்துதான் தாவா அயிட்டம் 5, 6, 7 சொத்துக்களை முதல் பிவாதி கிரயமாக வாங்கினார் என்று சொன்னால் தவறு. பால் வியாபாரம் மற்றும் ஆடு வியாபாரம் ஆகியவைகளில் இருந்து வந்த வருமானத்தை வைத்து முதல் பிரதிவாதி மேற்சொன்ன சொத்துக்களை வாங்கினார். . . ”

21.Item Nos.8 and 9

21.1.Item Nos.8 and 9 pertains to Survey No.3. As stated *supra*, D.W.1 (D1's son) has admitted that Item Nos.8 and 9 of the Suit Properties are ancestral properties and Ex-A.1 would also support the same. There is no evidence contrary to it. Hence, this Court concludes that Item Nos.8 and 9 were ancestral properties in the hands of the plaintiff's father - Murugan.

22. Item Nos.1 and 2

22.1.Item Nos.1 and 2 of Suit Properties pertains to Survey Nos.140/1 and 140/3. A conjoint reading of Ex-A.1, Ex-B.4, and the



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depositions of P.W.1 and D.W.1, would prove that plaintiff's father -

Murugan owned ancestral properties in Survey No.140 and that the land subsequently purchased by D1 from his paternal uncle's family – Palayam's family, is from and out of agricultural income and therefore, is also ancestral in nature. The reasoning is in the following paragraphs.

22.2. Admittedly, agriculture was the only source of income for the joint family consisting of Murugan and his son – D1. Further, Ex-A.1 reveals that Survey No.140 is a Nanja land. D.W.1 (D1's son) has deposed that, out of the income from milk vending and sheep rearing, D1 purchased an extent of 52 Cents out of the total 1 Acre 57 Cents in Survey No.140 vide Ex-B.4 - Sale Deed dated September 15, 1980. Milk vending and sheep rearing are closely associated with agricultural land and the income derived therefrom. Traditionally, these activities are considered integral to agriculture, as sheep and cows are typically reared on agricultural lands. Hence, this Court is of the view that the said 52 Cents



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purchased under Ex-B.4 is from and out of the income from the joint family property, and therefore, it is ancestral in nature.

22.3.Ex-B.4 Sale Deed was executed by D1's paternal uncle Palayam and his son in favour of D1. In Ex-B.4 – Sale Deed, “தங்களுடைய பாக நஞ்சைக்கு மேற்கு” (on the west of our land / portion) has been described as one of the four boundaries for the 52 Cents purchased thereby. D.W.1 in his evidence, when he said “தங்களுடைய பாக நஞ்சைக்கு மேற்கு”, he denoted the properties allotted to Murugan in the partition held between Murugan and his two brothers – Sangu and Palayam. Relevant extract of Ex-B.4 is hereunder:

“ . . . எங்களுக்கு பிதுராஜிதமாய் கிடைத்ததும்
எங்கள் பாகத்திற்கு வந்து எங்களுடைய அனுபோக
சுவாதீனத்திலும் வரும் இதனடியில் கண்ட நஞ்சை
நிலம் மண் கிணர் உள்பட நாங்கள் நாளது
தேதியில் நிச்சயித்ததும் தங்களுக்கு கிரையம். . . ”

(Emphasis supplied)

Relevant extract of Ex-B.4 – Description of property reads thus:

“ . . . நஞ்சை சர்வே 140 பூரா விஸ்தீரணம்



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1.57-ல் தங்களுடைய நஞ்சைக்கு தெற்கு, எங்களுடைய புஞ்சைக்கு வடக்கு, குறத்திவகையரா நஞ்சைக்கும் கிழக்கு, எங்களுடைய நஞ்சைக்கும் **தங்களுடைய பாக நஞ்சைக்கு மேற்கு**, இதன் மத்தியில் 0.52 செண்டு மேற்படி ஐம்பத்தி இரண்டு செண்டில் இருக்கும் மண், கிணர் கவலை பாரி உள்பட 1/3 பங்கு தாங்கள் அனுபவித்துக் கொள்ள வேண்டியது. . .”

(Emphasis supplied)

22.4.Conjoint reading of Ex-B.4 and Ex-A.1 would establish that the plaintiff's father - Murugan had owned ancestral properties in Survey No.140. There is absolutely no piece of evidence to suggest anything contrary to it.

22.5.Hence, as stated *supra*, Item Nos.1 and 2 of Suit Properties are ancestral properties.

23.Item Nos.3 and 4

23.1.Item Nos.3 and 4 pertains to *Survey Nos. 141/4 and 141/5*. They were purchased by plaintiffs' father - Murugan under Ex-A.8 – Sale Deed in the year 1953. In Ex-A.8, Murugan has described himself



as an agriculturist. There is absolutely no piece of evidence to suggest that

Murugan had any other source of income than agriculture. Hence, this

Court is of the view that, the income from the Nanja land in Item Nos.1

and 2 of the Suit Properties, which are ancestral in nature as stated *supra*,

is the source of income to purchase Item Nos.3 and 4 under Ex-A.8.

23.2.Further, the Original Suit was filed on June 24, 2005.

The plaintiffs had issued pre-suit notice dated March 11, 2005 to D1. After

receiving the said pre-suit notice, on April 8, 2005, D1 executed Ex-A.4 -

Settlement Deed in favour of his son – Mohan (third defendant). Ex-A.4

was subsequently disowned by D3. Disowning is not a concern for now. In

Ex-A.4, D1 has stated that Item Nos.4 and 5 of the Suit Properties are

ancestral properties.

23.3.Hence, Item Nos.3 and 4 are also ancestral in nature.

Point No.(ii) is answered accordingly in favour of the plaintiffs and

against the defendants.

Point No.(iii) - *Whether Item Nos.5 to 7 of the Suit properties*

are ancestral in character?



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24.Item No.7 is an extent of 19 Cents in Survey No.141/6-B which was purchased by D1 vide Ex-A.2 : Ex-B.2 – Sale Deed dated December 14, 1962 for a sum of Rs.100/-. In Ex-A.2 : Ex-B.2, D1 has described himself as an agriculturist.

24.1.Item Nos.5 and 6 pertains to an extent of 24 Cents in Survey No.141/3 and an extent of 19 Cents in Survey No.141/6-A which were purchased by D1, about 10 years after purchasing Item No.7, vide Ex-A.3 : Ex-B.3 – Sale Deed dated December 2, 1971 for a sum of Rs.1,470/-. The vendor is none other than D1's paternal uncle - Sangu and his sons.

24.2.As stated *supra*, there is ample evidence available on record to show the existence of joint family and joint family properties. Plaintiffs' father Murugan and D1 were living under one roof. In Ex-A.1 to Ex-A.8 and Ex-B.1 to Ex-B.6 sufficient reference has been made to presume the existence of joint family nucleus. Agriculture is the only source of income for the joint family comprising of Murugan and his son - D1, and there is no evidence available on record to prove the contrary.



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Hence, based on the available evidence, D1 could have purchased Item

Nos.5 to 7 only out of the agricultural income from the 52 Cents Nanja land

comprised in Survey No.140, which is ancestral in nature as stated *supra*.

24.3.Further, as stated above in Paragraph No.23.2., D1 has stated in Ex-A.4 that Item Nos.4 and 5 of the Suit Properties are ancestral properties.

24.4. Therefore, Item Nos.5 to 7 of the Suit Properties are ancestral in nature.

Point No.(iii) is answered accordingly in favour of the plaintiffs and against the defendants.

Point Nos.(iv) - *Whether the plaintiffs are entitled to the benefit of Section 6 of the H.S. Act as amended by 2005 H.S. Amendment Act?*



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25.As held in Point Nos.(ii) and (iii), the Suit Properties are all ancestral properties. The plaintiff's father – Murugan passed away in the year 1974 and his mother – Kuppammal passed away in the year 1995. The plaintiffs (daughters) and D1 (son) are their only children. There is no dispute regarding the above facts.

26.The first plaintiff was married off in or about 1953 and the second plaintiff was married off in or about 1963. Thus, both the marriages were before the commencement of 'The Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Act No.1 of 1990) (w.e.f. March 25, 1989)' (henceforth 'the H.S. T.N. Amendment Act'). Hence, the plaintiffs are not entitled to benefit of the H.S. T.N. Amendment Act.

27.Thereafter, H.S. Act was amended whereby Section 6 was substituted. As per Section 6 of the H.S. Act as amended by 2005 H.S. Amendment Act, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. For ease of reference, amended Section 6 (1) is extracted hereunder:



“6.Devolution of interest in coparcenary property.—

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.”

28.The Hon’ble Supreme Court in ***Vineetha Sharma’s case***

[Vineetha Sharma Vs. Rakesh Sharma reported in (2020) 9 SCC 1], has held that daughter of coparcener, just like son of coparcener, becomes a coparcener at the very moment of their birth; however, the right conferred



at the very moment of their birth is exercisable prospectively on and from the date of commencement of the Section 6 of the H.S. Act as amended by

2005 H.S. Amendment Act i.e., on and from *September 9, 2005*. Relevant extract is hereunder:

“73. It was vehemently argued that if the daughter is given the right to be a coparcener by birth and deemed to become a coparcener at any point in the past, in the normal working of the law, uncertainty would be caused. In our opinion, no uncertainty is brought about by the provisions of section 6 as the law of Mitakshara coparcenary makes the share of surviving coparceners uncertain till actual partition takes place. Uncertainty in the right of share in a Mitakshara coparcenary is inhered in its underlying principles, and there is no question of upturning it when the daughter is treated like a son and is given the right by birth; to be exercised from a particular date, i.e., 9.9.2005. It is not to resurrect the past but recognising an antecedent event for conferral of rights, prospectively.”

(Emphasis supplied)

29. Hence, the plaintiffs being coparceners, are entitled equal share in the ancestral properties along with D1 subject to the provisions contained under Section 6 of the H.S. Act as amended by 2005 H.S.



Amendment Act.

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Point No.(iv) is answered accordingly in favour of the plaintiffs and against the defendants.

Point No.(v) - *Whether the plaintiffs are entitled to seek partition in Item Nos.5 to 7 of Suit Properties?*

30. On December 15, 1999, under Ex-B.5 and on October 12, 2000, under Ex-B.6, D2 purchased Item Nos.5 to 7 from D1 for a valuable consideration. In pursuance of the two Sales, mutations were effected on Ex-B.7 – Chitta, Ex - B.8- Adangal, and Ex-B.9 – Computer Patta in the name of D2. As rightly argued by the learned Senior Counsel for D2, Exs-B.5 and B.6 – Sale Deeds are saved by the proviso under sub-section (1) of Section 6 of the H.S. Act as amended by the 2005 H.S. Amendment Act.

For ease of reference, the said proviso is extracted hereunder:

“Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any



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partition or testamentary disposition of property which had taken place before the 20th day of December, 2004”

30.1. Hence, the plaintiffs are not entitled to seek partition in respect of Item Nos.5 to 7 of Suit Properties.

Point No.(v) is answered accordingly in against of the plaintiffs and in favour D2.

Point No.(vi) - *Whether the Suit is bad for non-joinder of parties?*

31.Learned Counsel for defendants 1 and 3 to 11 contended that defendants 1 and 3 to 9 executed Ex-A.9 - GPA dated June 6, 2005 in respect Item Nos.3 and 4 at Survey Nos.141/4 and 141/5 to one Vasanthal wife of Shanmugam. In pursuance of Ex-A.9, GPA holder - Vasanthal executed Ex-A.10 - Sale Deed dated July 31, 2007 in favour of her husband - G.Shanmugam, her son G.S.Babu Kumar and one S.V.Srinivasan.



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31.1.Further contended that item nos.3 and 4 were sold before

the date of institution of the Suit. Hence, the purchasers namely Shanmugam and Others are necessary parties to the Suit. Since they are not impleaded, the Suit must fail. In Ex-A.9 - GPA and Ex-A.10 - Sale Deed, a reference regarding Ex-A.4 - Settlement Deed has been made that Ex-A.4 had not been acted upon. Further, in Ex-A.9 - GPA and Ex-A.10 - Sale Deed, a reference has been with regard to Ex-A.8 - Sale Deed that Item Nos. 3 and 4 of the Suit Properties were separate properties in the hands of D1's father – Murugan. In this regard, it is relevant to extract a portion of Ex-A.10 – Sale Deed hereunder:

“காஞ்சிபுரம் மாவட்டம், தாம்பரம் வட்டம், தென் சென்னை பதிவு மாவட்டம், தாம்பரம் துணைப்பதிவு மாவட்டம், நெம்பர் 174, இராஜகீழ்பாக்கம் கிராமத்தில் நஞ்சை சர்வே எண் 141/4-ல் பூரா விஸ்தீரணம் ஏ.0.32 செண்டும், நஞ்சை சர்வே எண் 141/5-ல் பூரா விஸ்தீரணம் ஏ.0.28 செண்டும், ஆக மொத்தம் ஏ.0.60 செண்டு நிலத்தை எங்களில் 1-வது நபருக்கு தகப்பனாரும், மற்ற நபர்களுக்கு பாட்டனாருமான முருகன் அவர்கள் 1 புத்தகம், ஆவண எண் 509 ஆக 1953



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ஆம் ஆண்டு பல்லாவரம் சார்பதிவகத்தில் கிரயம் பெற்று, ஆண்டு அனுபவித்து வந்து, மேற்படி முருகன் அவர்கள் காலமானபிறகு அவருடைய நேரிடை வாரிசான 1-வது நபர் பெயரில் 578 நெம்பர் பட்டாவாய் தாக்கலாகி ஆண்டு அனுபவித்து வந்து, மேற்படி 1-வது நபர் 2-வது நபருக்கு 1 புத்தகம், ஆவண எண் 3025 ஆக 2005 ஆம் ஆண்டு தாம்பரம் சார்பதிவகத்தில் செட்டில்மெண்டு பத்திரம் எழுதி பதிவு செய்துக்கொடுத்த போதிலும், இதுநாள் வரை நாங்கள் கூட்டாக வரி வகையராக்களை செலுத்திக்கொண்டு எந்தவிதமான வில்லங்கத்திற்கும் உட்படுத்தாமல் ஆண்டு அனுபவித்து வருகிற சொத்து விவரத்தில் விவரித்தப்படி உள்ள சொத்தை, மேற்படி தங்களுக்கு சுத்த விக்கிரையம் செய்த ரூபாய் 6,00,000/- எழுத்தால் ரூபாய் ஆறு லட்சம் மட்டும் இன்று தேதியில் தங்களிடமிருந்து ரொக்கமாய் பெற்றுக்கொண்டுவிட்டபடியாலும், மேற்படி கிரையத்தொகை எங்கள் பற்றாகி விட்டபடியாலும், அடியிற்கண்ட சொத்து விவரத்தில் விவரித்தப்படி உள்ள சொத்தை இன்றே தங்கள் சுவாதீனம் செய்து விட்டோம்.”

32.As held *supra* under Point Nos.(ii) and (iii), all the Suit

Properties are ancestral properties. The plaintiffs being coparceners are



entitled to equal share therein. As stated *supra*, the proviso under sub-

section (1) of Section 6 of the H.S. Act as amended by the 2005 H.S.

Amendment Act saves any transaction/alienation done before December

20, 2004. It is pertinent to note that Ex-A.9 - GPA is executed on June 6,

2005 *i.e.*, before the commencement of the 2005 H.S. Amendment Act.

Further, Ex-A.9 is not power deed coupled with interest. It is only a

General Power of Attorney. Merely granting General Power of Attorney

does not amount to transfer [*vide Suraj Lamp & Industries (P) Ltd. v.*

State of Haryana reported in (2012) 1 SCC 656]. To be noted, the

plaintiffs issued Ex-A.5 – Notice to D1 on March 11, 2005. D1 issued Ex-

A.6 and Ex-A.7 - replies on March 24, 2005. Soon after, D1 executed a

Settlement Deed (Ex-A.4) in favour of the third defendant on April 8,

2005, which was admittedly not acted upon. Ex-A.9 - GPA was executed

on June 6, 2005. Ex-A.10 - Sale Deed was executed on July 31, 2007.

Hence, it is not saved by the proviso under sub-section 1 of Section 6 of

the H.S. Act as amended by the 2005 H.S. Amendment Act.



33. Moreover, the plaint in the Original Suit has been taken on

file on June 24, 2005. It is settled law that pending the Suit, if any alienation is done, the said alienation would not affect the rights of the parties to the Suit and said alienation is valid subject to the final judgment of the Court. In this case, Ex-A.10 - Sale Deed was executed during the pendency of the Suit, hence, would not affect the rights of the plaintiffs.

33.1. It is quite obvious that the above transactions were done only with a view to defeat and defraud the rights of the plaintiffs over the Suit Properties. For the sake of argument, even if the recitals in Ex-A.9 - GPA and Ex-A.10 - Sale Deed are considered as true, the plaintiffs being Class I Legal Heirs of Murugan under Section 8 of the H.S. Act and also being Legal Heirs of Kuppammal - wife of the said Murugan - under Section 15 (1) (a) of the H.S. Act, are entitled each 1/3 share. In such a scenario, Ex-A.10 - Sale Deed is not valid in respect of the plaintiffs' 2/3 share.

33.2. Therefore, *pendente lite* purchasers are not necessary



parties to the Suit.

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**Point No.(vi) is answered accordingly in favour of the plaintiffs and
against the defendants.**

Point No.(vii) - *Whether the Trial Court's judgement and decree
is to be interfered with?*

34.The Trial Court has erroneously held that since the plaintiffs' father - Murugan passed away in 1974, the plaintiffs are not coparceners. In view of Section 6 of the H.S. Act as amended by the 2005 H.S. Amendment Act, the plaintiffs are coparceners by birth and their right is exercisable on and from *September 9, 2005*. Since the right in coparcenery is by birth, it is not necessary that father co-parcener should be alive as on September 9, 2005 vide: para 137.3 of *Vineetha Sharma's case* referred *supra*. The contra findings recorded by the Trial Court deserves to be set aside. Further, the Trial Court held that super-structures were constructed by D1 in which the plaintiffs have no right at all. This



finding recorded is not based on any evidence. In this regard, it is apposite

to state that plaintiffs have stated in the plaint description of properties that

in item nos.8 and 9, superstructures were constructed. In this regard,

neither D1 nor D3 to D11 pleaded that D1 has constructed superstructure

out of his personal / own money. In the absence of plea any amount of oral

evidence is of no use. Hence, the said finding also deserve to be set aside.

34.1. There is no quarrel regarding the legal position stated in the case laws submitted by the learned Senior Counsel for the second defendant. As discussed supra, D.W.1 himself has admitted the factum of joint family properties. Hence, the case laws do not support the defendants' case.

Point No.(vii) is answered accordingly in favour of the plaintiffs and against the defendants.

35. Resultantly, the Appeal Suits in A.S.No.299 of 2018 and A.S.No.688 of 2018 are partly allowed and the judgment and decree of the Trial Court is modified and the Original Suit is decreed in the



following terms:

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(a) *C.M.P.SR.No.23810 of 2021* in *A.S.No.299 of 2018* is allowed and the documents are received and marked as Ex-A.8 to Ex-A.11.

(b) The first plaintiff, namely Sushila Tharani, is entitled to 1/3 share in Item Nos.1, 2, 3, 4, 8 and 9 of the Suit Properties. Since she was transposed as respondent, she shall be entitled to a preliminary decree on payment of Court Fee as per law.

(c) The second plaintiff, namely Sachutha, is entitled to 1/3 share in Item Nos.1, 2, 3, 4, 8 and 9 of the Suit Properties. To that effect, a preliminary decree is passed.

(d) The plaintiffs are not entitled to seek partition in Item Nos.5, 6 and 7 of the Suit Properties. Hence, the Suit is dismissed in respect of Item Nos.5 to 7 of the Suit Properties.

(e) The Civil Miscellaneous Petitions in *C.M.P.No.7407 of 2018* in *A.S.No.299 of 2018* and *C.M.P.Nos.19063 and 19065 of 2018* in



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A.S.No.688 of 2018 are closed.

[R.S.M., J.]

[R.S.V., J.]

02 / 07 / 2024

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order

TK

**LIST OF ADDITIONAL DOCUMENTS MARKED ON THE SIDE OF THE
SECOND PLAINTIFF / MRS.SACHUTHA:**

<i>S.No.</i>	<i>Dated</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	1953	Ex-A.8	Certified copy of Sale Deed (Document No.509 of 1953)
2	06.06.2005	Ex-A.9	Certified copy of the General Power of Attorney executed in favour of Vasanthal, wife of G.Shanmugam, by the defendants 1 and 3 to 9 (Document No.1638 of 2005)
3	31.07.2007	Ex-A.10	Photo copy of the Sale Deed (Document No.7744 of 2007)
4	20.08.2018	Ex-A.11	Photo copy of the Encumbrance Certificate for 25 years in respect of properties in S.No.141/4 and 141/5

[R.S.M., J.]

[R.S.V., J.]



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To

The Additional District Judge
Chengalpattu.



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A.S.NOS.299& 688 OF 2018

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN
A.S.NOS.299 & 688 OF 2018

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