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A.S.No.682 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM:

THE HONOURABLE Mr. JUSTICE **R.SUBRAMANIAN**  
AND  
THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

**A.S.No.682 of 2020**

1. P.T.K.Somasundara Chettiar
2. Smt.Kalavathi

... Appellants/Plaintiffs

-Vs-

1. Mr.P.T.Muthukumaraswamy Chettiar,
2. P.T.Selvaraj Chettiar
3. Mr.P.T.Kasiviswanatha Chettiar
4. Ramesh Kumar M.Jain
5. Manju Bai
6. Praveen Kumar

... Respondents/Defendants

**PRAYER:** First Appeal filed under Section 96 R/W Order 41 Rule 1 & 2 of the Code of Civil Procedure against the Judgment and decree dated 23.10.2019 passed in O.S.No.5676 of 2019 on the file of the XVIII Additional Judge, City Civil Court at Chennai [being transferred from High Court of Judicature at Madras vide C.S.No.1010 of 2010 formerly].

For Appellants : Mr.V.Manohar  
For Respondents : Mr.N.R.Anantha Ramakrishnan  
for R1 & R2  
Mr.T.S.Baskaran for R4 to R6  
R3-Served

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*A.S.No.682 of 2020*

WEB COPY

## **J U D G M E N T**

[Judgment of the Court was delivered by **R.SUBRAMANIAN, J**]

The plaintiffs are the appellants. They laid a suit for partition and separate possession of their share in the suit property as decided in the Partition Deed dated 22.09.1995, a direction to the defendants to pay a sum of Rs.10,000/- [Rupees Ten Thousand only] per month towards mesne profit and for costs.

2. According to the plaintiffs, the suit properties belonged to the families of Kuppu Chettiar and Dharmalinga Chettiar and the properties were divided. The said division was recorded by a document dated 22.09.1995. In and by the said document, while confirming the earlier oral partition of the other properties, the suit property, which is a house in Ponnappa Chetti Street, George Town was not divided as a litigation was pending and it was agreed that the said property should be shared between the parties equally after the disposal of the pending proceedings. Therefore, the plaintiffs would contend that they are entitled to  $\frac{1}{2}$  share, as the heirs of Kuppu Chettiar being the children of his son Chockalingam.



A.S.No.682 of 2020

WEB COPY

3. The defendants 1 to 3 appeared through counsel, but they did not participate in the proceedings and were set *ex parte*. The defendants 4 to 6 resisted the suit by filing counter claim contending that they have purchased the 3/4<sup>th</sup> share of the other sharers except the plaintiffs under two sale deeds dated 03.01.2011 and 20.12.2013 and therefore, they are entitled to 3/4<sup>th</sup> share in the suit property. On the claim and the counter claim, the learned Trial Judge framed the following issues:-

*“1) Whether or not the suit property is liable to be divided in metes and bounds in accordance to the partition deed dated 22.09.1995 registered as document No.2363/1995 on the file of SRO?*

*2) Whether or not the defendants are liable to pay the sum of Rs.10,000/- per month from the date of the suit till handing over of the same in accordance to the partition directed under partition deed dated 22.09.1995 registered as document No.2363/1995?*

*3) Whether or both the defendants 4 to 6 have any right of participation in the suit if so in what capacity?*

*4) Whether or not the defendants 4 to 6 are all legally prevented from making any right over the suit property as they are alleged subsequent purchaser of portion of the property from the other defendants in the suit?*

*5) Whether the right of claim in favour of female member get enlarge as per the amended act of 2005 as the partition was completed as early as in 1995 as per the proviso of the amendment*



A.S.No.682 of 2020

*the said enlargement of share in favour of family member of the family being dislodged under the enactment?*

*6) Whether the plaintiffs are entitled to any other relief and if so what relief the plaintiffs are entitled to?*

*7) Whether the deed of partition dated 22.09.1995 is valid and binding on all the legal heirs of Kuppu Chettiar and Dharmalinga Chettiar?*

*8) Whether the suit for partition, filed by the plaintiff as per the deed of partition dated 22.09.1995 is maintainable in law as against the defendants 4 to 6?*

*9) Whether the defendants are entitled to seek partition and separate possession of their 3/4<sup>th</sup> share in the suit property?*

*10) Whether the issue Nos.3, 4 and 5 can be established against the defendants 4 to 6 in the absence of any pleading?"*

4. At Trial, the first plaintiff was examined as PW1 and the 4<sup>th</sup> defendant was examined as DW1. While Exs.A1 to A7 were marked on the side of the plaintiffs, Exs.B1 to B3 were marked on the side of the defendants.

5. On a consideration of the evidence, the learned Trial Judge found that the suit property belonged to the families of Kuppu Chettiar and Darmalingam Chettiar. Kuppu Chettiar died leaving behind a son and a daughter by name P.T.K.Chockalingam and Gnanasoundariammal.



*A.S.No.682 of 2020*

Darmalinga Chettiar has two wives by name Pinchi Ammal and Varadammal. Pinchi Ammal had two daughters by name Saraswathi and Radha Rukmani. Varadammal had 3 sons and 2 daughters by name Muthukumarasamy, Selvaraj, Kasi Viswanathan, Muthulakshmi and Gowri. While P.T.K.Chockalingam died leaving behind the two plaintiffs, his sister Gnanasoundariammal died leaving behind 3 sons by name Balakrishnan, Devarajan and Krishnamurthy. The Trial Court upheld the claim of the defendants 4 to 6, since the defendants 4 to 6 had purchased  $\frac{3}{4}$  of the property from all the other heirs except the plaintiffs under the two sale deeds, which were marked as Exs. B2 and B3. Having held that the defendants 4 to 6 have become owners of the  $\frac{3}{4}$  property, the Trial Court granted a preliminary decree in favour of the defendants 4 to 6 for partition and separate possession of  $\frac{3}{4}$  share. While dismissing the suit, the Trial Court also faulted the plaintiffs for not filing the reply statement to the counter claim.

6. We have heard Mr.V.Manohar, learned counsel for the appellants, Mr.T.S.Baskaran, learned counsel appearing for respondents 4 to 6 and Mr.N.R.Anantha Rama Krishnan, learned counsel appearing for the



A.S.No.682 of 2020

respondents 1 and 2. The 3<sup>rd</sup> respondent though served, he has not appeared either in person or through any counsel.

7. The only issue that is urged by the counsel for the parties before us is that the Partition dated 22.09.1995 marked as Ex.A2 only recognizes a partition that had taken place in 1968 and the Sister of the plaintiffs Gnanasoundariammal having not questioned either 1968 partition or 1995 partition, is not entitled to a share in the property and therefore, the conveyance by her children of an alleged share in the suit property is not binding on the plaintiffs. Mr.T.S.Baskaran refuting the said submission would submit that the details of 1968 partition are not available and the Partition of the year 1995 specifically makes it clear that the share of the Sister of the parties will have to be decided. The relevant portion of the document states that “உபய பார்ட்டிகளின் தகப்பனார்கள் செய்துக்கொள்ளக் கூடியதாக இருப்பதால் குடும்ப பாகப்பிரிவினையில், 1 வது பார்ட்டியின் தாயார், சகோதரிக்கு அக்குபாத்யதை குறித்து நிர்ணயிக்க வேண்டும், மற்றும் சென்னை பொன்னப்ப செட்டி தெருவில் உள்ள 23 நெ. வீட்டின் போரில் வழக்கு உள்ளதால், வழக்கு முடிந்த உடன் 1983 முதல் வாடகை வரவு வழக்கு சிலவு ஆகியவைகளை உபய பார்ட்டிக்கும் ஏற்று வீட்டை சம்பாக்கமாக அடைய வேண்டும்.”



*A.S.No.682 of 2020*

WEB COPY

8. The said recital according to Mr.T.S.Baskaran would indicate that the share of the sister of the plaintiffs was recognised, but was not determined. Therefore, the sale by her heirs would be valid to the extent of her interest in the property. On the above contention, the following issue arises for consideration in this appeal.

Whether the Trial Court was right in concluding that the defendants 4 to 6 would be entitled to  $\frac{3}{4}$  share as per the Sale deeds dated 03.01.2011 and 20.12.2013 marked as Exs.B2 and B3?

9. The fact that Gnanasoundariammal is the daughter of Kuppu Chettiar is not in dispute. The fact that she had left behind 3 sons by name Balakrishnan, Devarajan and Krishnamurthy is also not in dispute. The 1995 Partition Deed is between the male heirs of Kuppu Chettiar and Darmalinga Chettiar. The female heirs namely daughter of Kuppu Chettiar and daughters of Dharmalinga Chettiar have been excluded. Whatever recital found in the document will not be binding on the female heirs. Therefore, whatever share that the female heirs are entitled to will be disposable by them at their discretion. The fact that two branches agreed to have the partition between



*A.S.No.682 of 2020*

WEB COPY

them to the exclusion of daughters cannot oust the right of the daughters in the property, particularly, when they are not made parties to the document.

Once the status/the legal heirs of Gnanasoundariammal and the daughters of Darmalinga Chettiar through the first wife as well as the second wife is not disputed, their entitlement in the share of the property cannot also be disputed. In fact, the male heirs of Darmalinga Chettiar namely Muthukumarasamy, Selvaraj, Kasi Viswanathan, who are the parties to the 1995 document have also joined the execution of the Sale Deeds of the year 2011 and 2013. Therefore, the conclusion of the Trial Court that the defendants 4 to 6 would be entitled  $\frac{3}{4}$  share in the property cannot be said to be unjust. However, we find that the Trial Court has dismissed the suit, while granting the decree for  $\frac{3}{4}$  share in favour of the defendants in the counter claim made by them. The plaintiffs put together would be entitled to the remaining  $\frac{1}{4}^{\text{th}}$  shares heirs of P.T.K.Chockalingam Chettiar. Therefore, while we do not find any reason to interfere with the grant of  $\frac{3}{4}$  share in favour of the defendants by the Trial Court, we find that the Trial Court should have granted preliminary decree for partition for division of  $\frac{1}{4}$  share in favour of the plaintiffs also.



A.S.No.682 of 2020

WEB COPY

10. In fine, the Appeal Suit is partly allowed, granting a preliminary decree for partition for  $\frac{1}{4}$  share of the plaintiffs, while sustaining the decree for  $\frac{3}{4}$  share granted in favour of the defendants 4 to 6. The parties shall bear their own costs.

[R.S.M., J] [C.K., J]  
04.11.2024

Index : No

Speaking Order

NCC : No

*kmi*

To

The XVIII City Civil Court,  
Chennai.

**Note:** The decree shall be drafted as follows:

1. The appeal is partly allowed;
2. The suit is partly decreed granting a preliminary decree declaring the  $\frac{1}{4}$ <sup>th</sup> share of the plaintiffs in the suit property.
3. The counter claim is allowed granting a preliminary decree declaring the  $\frac{3}{4}$ <sup>th</sup> share of the defendants in the suit properties.
4. Parties will bear their own costs.



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*A.S.No.682 of 2020*

**R.SUBRAMANIAN, J**  
**and**  
**C.KUMARAPPAN, J**

*kmi*

A.S.No.682 of 2020

04.11.2024