



WEB COPY



S.A.No.986 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

S.A.No.986 of 2022

Chinnamma (Dead)

1. Valliammal

2. Jayamani

Kaliappan (dead)

3. Jeganathan

4. Kavitha

5. P.Natarajan

... Appellants

..Vs..

1. Govindammal

2. Chinnammal

... Respondents

PRAYER : Second Appeal filed under Section 100 C.P.C., against the decree and judgment dated 17.02.2022 in A.S.No.80 of 2019 on the file of the Principal District Court, Tiruppur, reversing the decree and judgment dated 29.01.2018 in O.S.No.285 of 2012 on the file of the Additional Sub Court, Tiruppur.

For Appellant : Mr.K.Govi Ganesan

For Respondents : Mr.K.Vasanthanayagan



WEB COPY



S.A.No.986 of 2022

JUDGMENT

The appellants are the defendants in O.S.No.285 of 2012 on the file of the Additional Sub Court, Tiruppur. The respondents/plaintiffs filed the suit for partition of the suit properties into three equal shares and to allot two such shares to them.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiffs in a nutshell is as follows :

The suit properties are the ancestral properties of Ponnia Gounder, the father of the plaintiffs. There was a partition between Ponnia Gounder and his brother Marappa Gounder in the year 1965 and the partition deed was executed on 23.06.1965 (Ex.A1). The 'A' schedule property mentioned in the partition deed (Ex.A1) was allotted to the share of Ponnia Gounder. Ponnia Gounder sold a portion of the property in favour of one Kaliappan, the fourth defendant, through a registered sale deed dated 14.03.1984 (Ex.A2). Subsequently, he executed a release deed



S.A.No.986 of 2022

dated 28.06.1985 (Ex.A3) in respect of his half share in the suit properties in favour of his son Ramasamy for valid consideration. Ponniah Gounder died on 15.12.1985. The plaintiffs and their brother Ramasamy Gounder were in possession and enjoyment of the entire properties. Ramasamy Gounder died intestate on 22.11.2007, leaving behind his legal heirs, defendants 1 to 3. The defendants 5 to 7 are the legal heirs of Rajammal another sister of the plaintiffs. The plaintiffs wanted to have their share divided and therefore they issued a legal notice dated 15.05.2012 (Ex.A5) to the defendants. Since there was no response from the defendants, they have filed the suit seeking for partition of the suit properties.

4. The suit was resisted by the defendants on the following grounds:

- i. The suit properties are the ancestral properties of Ponniah Gounder.
- ii. The suit properties were partitioned in the year 23.06.1965 between Marappa Gounder and Ponniah Gounder.
- iii. Ponniah Gounder during his lifetime sold a portion of the land measuring 2.56 $\frac{3}{4}$ acres in SF.No.32/1 to the fourth defendant through a registered sale deed dated 14.03.1984 (Ex.A2).



WEB COPY

- iv. He also executed the registered release deed dated 28.06.1985 (Ex.A3) in respect of the remaining family properties in favour of his son Ramasamy Gounder for valid consideration.
- v. On 05.07.1990, the fourth defendant purchased 1.17 acres in SF.No.4/1 from the legal heirs of late Ramasamy Gounder through a registered sale deed dated 05.07.1990 (Ex.B15).
- vi. The fourth defendant along with his son Jeganathan sold the lands purchased by him under the sale deed dated 05.07.1990 (Ex.B15) to one Natarajan, son of Palanisamy Gounder through a registered sale deed dated 20.10.1993 (Ex.B19).
- vii. The remaining portion of the land in survey number 32/1, which belonged to Ramasamy Gounder was partitioned on 24.02.2012 (Ex.B16) among his legal heirs.
- viii. Thus the plaintiffs do not have any right over the suit properties.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- "i. Whether the plaintiff is entitled for the relief of partition of the suit property as prayed for ?*
- ii. Whether the suit is bad for non-joinder of necessary parties ?*



S.A.No.986 of 2022

WEB COPY

iii. Whether any properties available for partition after execution of the sale deed dated 14.03.1984 and release deed dated 28.09.1985?

iv. To what other reliefs ?"

6. In the trial Court, the first plaintiff examined herself and marked Ex.A1 to Ex.A10. The defendants 3, 5 and 7 examined themselves and marked Ex.B1 to Ex.B33.

7. The learned trial court judge after analysing the oral and documentary evidence on record, dismissed the suit filed by the plaintiffs, vide his decree and judgment dated 29.01.2018, on the following grounds:

- i. It is admitted by the defendants that the properties allotted to the share of Ponnia Gounder was released in favour of his son Ramasamy.
- ii. Prior to the release deed Ponnia Gounder sold certain extent of land in favour of the fourth defendant.
- iii. The recitals of release deed (Ex.A3) shows that Ponnia Gounder received a sum of Rs.7,500/- towards consideration from his son



S.A.No.986 of 2022

Ramasamy.

WEB COPY

- iv. The defendants 1 to 3 have sold the properties belonging to the family in favour of the fourth defendant through a registered sale deed dated 05.07.1990 (Ex.B15).
- v. The fourth defendant in turn executed a sale deed in favour of one Natarajan through a registered sale deed dated 20.10.1993 (Ex.B19).
- vi. All these transactions took place prior to amendment to Section 6 of the Hindu Succession Act, 2005.

8. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiffs filed an appeal in A.S.No.80 of 2019 before the Principal District Court, Tiruppur. The learned Principal District Judge, Tiruppur, vide her decree and judgment dated 17.02.2022 reversed the findings recorded by the trial court judge on the ground that the properties in the hands of Ponniah Gounder are self acquired properties and not joint family properties and therefore, the plaintiffs are entitled to get 2/3 share in the suit properties. Aggrieved over the same, the present second appeal is filed.



WEB COPY

9. At the time of admission the following substantial questions of law were framed :

“i. Whether the respondents can claim right under the amendment to the Hindu Succession Act of the Year 2005 in the teeth of the Sale deed Ex.A2 and Release Deed Ex.A3 which were executed much prior to the amendment?

ii. Whether in a coparcenary property, when a son gets share by birth, that aspect has been properly adjudicated by the First Appellate Court?”

10. Heard Mr.K.Govi Ganesan, learned counsel for the appellants and Mr.K.Vasanthanayagan, learned counsel for the respondents.

11. The plaintiffs, late Ramasamy and late Rajammal are the children of one Ponniah Gounder. The defendants 1 to 3 are the legal heirs of Ramasamy Gounder while the defendants 5 to 7 are the legal heirs of Rajammal. It is an admitted fact that the suit properties are the ancestral



S.A.No.986 of 2022

properties of late Ponnia Gounder. Ponnia Gounder during his life time sold certain extent of land which he got through the partition deed dated 23.06.1965 (Ex.A1) in favour of the fourth defendant through a registered sale deed dated 14.03.1984 (Ex.A2). Subsequently, he executed a release deed in respect of his half share in the properties in favour of his son Ramasamy after receiving consideration of Rs.7,500/-. It is relevant to extract the recitals of Ex.A3

“1985 ஆம் வருடம் ஜீன் மாதம் இருபத்தி எட்டு தேதிக்கு பல்லடம் தாலுக்கா இடுவாய் கிராமம் சீரங்ககவுண்டன்பாளையத்தில் குடியிருக்கும் சென்னியகவுண்டர் மகன் பிராமசாமிக்கவுண்டர் ஆகிய உங்களுக்கு மேற்படி தாலுக்காக இடுவாய் கிராமம் சீரங்ககவுண்டன்பாளையத்தில் குடியிருக்கும் பெருமாக்கவுண்டர் மகன் பொன்னியகவுண்டர் ஆகிய நான் எழுதிக் கொடுத்த பாகபாத்திய விடுதலைப்பத்திரம். இதனடியிற் கண்ட சொத்துக்கள் நமக்கு பிதுராஜ்ஜித வகையில் பாத்தியப்பட்டும் நீ எனக்கு மகனான படியாலும் உமக்கும் எனக்கும் பிரிவினை ஏற்படாமல் பொதுவாக பாத்தியப்பட்டு நீங்களும் நானும் பொதுவாக அனுபவித்து வந்ததில் எனக்கு வயோதிகம் ஏற்பட்டு சாகுபடி செய்து அனுபவித்து வர சௌகரியம் ஏற்படாமல் இருப்பதாலும் எனக்குள்ள பாக பாத்தியங்கள் விடுதலை செய்து கொடுக்க வேண்டுமென்று என்னை நீங்கள்



S.A.No.986 of 2022

WEB COPY

கேட்டுக் கொண்டபடியாலும் நானும் அதற்கு ஒப்புக் கொண்டபடியாலும் நானும் அதற்கு ஒப்புக் கொண்டு இந்த விடுதலை தஸ்தாவேஜீக்கு பிரதிப்பிரயோஜனமாய் ரூபாய் 7500.00 ஏழாயிரத்தி ஐநூறும் பெற்றுக் கொண்டதற்கு விவரம் நான் ஆண்டிபாளையம் கூட்டுறவு விவசாய கடன் சங்கத்தில் கடன்கள் வாங்கிய வகையில் மேற்படி கடன்கள் தீர்க்கும் செலவுகளுக்காகவும் வேறு முன் கடன் தீர்க்கவும் தங்களிடம் முன்னரும் ரொக்கம் பெற்றுக் கொண்டது ரூபாய் 5000.00 ஐயாயிரமும் என குடும்ப செலவுக்கும் வைத்திய செலவுக்கும் வைத்திய செலவுகளுக்காகவும் இதனடியிற் கையொப்பமிட்ட சாட்சிகள் முன்னிலையில் ரொக்கம் பெற்றுக் கொண்டது ரூபாய் 2500.00 இரண்டாயிரத்தி ஐநூறும் ஆக வகை இரண்டிலும் மேற்படி விடுதலை தஸ்தாவேஜின் தொகை ரூபாய் 7500.00 ஏழாயிரத்தி ஐநூறும் எனக்கு செல்லாகி விட்டபடியால் இதன் மூலம் என பாக பாத்தியத்தை விடுதலை செய்து இருக்கிறேன்.”

12. Mr.K.Govi Ganesan, learned counsel for the appellants contended that after execution of the release deed there was no property in the hands of Ponnia Gounder and therefore, the plaintiffs cannot claim any right over the suit properties.

12.1. On the contrary, the contention of the learned counsel for the respondent/plaintiffs is that after the execution of the release deed



there were lands belonging to Ponnia Gounder as described in the plaint schedule and that the plaintiffs are entitled to get 2/3 share in the suit properties.

13. It is pertinent to point out that Ponnia Gounder in the release deed dated 28.06.1985 (Ex.A3) has categorically stated that he was enjoying the family properties jointly with Ramasamy Gounder and that he is releasing his share in favour of his son Ramasamy Gounder after receiving consideration of Rs.7,500/-. Based on this release deed, the defendants 1 to 3 had executed a sale deed in favour of the fourth defendant and the fourth defendant in turn had sold the properties in favour of one Natarajan. The relinquishment deed by late Ponnia Gounder in respect of his half share in favour of his son shows that Ponnia Gounder had dealt with his share in the suit properties. The plaintiffs got married long back and they have been living in their matrimonial home. They claim to be in deemed possession as sharers. A bald assertion of constructive possession, shall not suffice in the absence of any document supporting the same. Apart from this, Ramasamy Gounder was in exclusive possession and enjoyment of the entire properties to the



knowledge of the plaintiffs. After his death, his legal heirs had dealt with the properties. All the sale deeds in favour of third parties were of the year 1990.

14. Mr.K.Vasanthanayagan, learned counsel for the respondents would contend that there are certain properties in the hands of the legal heirs of Ramasamy Gounder and that a partition deed dated 24.02.2012 (Ex.B16) was executed between the family members leaving the plaintiffs. According to him, the plaintiffs are coparceners by birth. However, it is pertinent to point out that the plaintiffs did not assert their rights even when their ancestral properties were sold by the legal heirs of their brother Ramasamy Gounder and their sister Rajammal in the year 1990. The plaintiffs knew the existence of these sale deeds even at the time of the registration of the sale deeds. It is not their case that they came to know about these sale deeds very recently. The plaintiffs have issued the first legal notice during the year 2012 and they are seeking 2/3 share in the suit properties which include the properties sold in favour of the fourth defendant. They have not sought cancellation of the sale deeds executed in favour of the fourth defendant and Natarajan. Moreover, all



S.A.No.986 of 2022

the sale deeds are much prior to the amendment to Section 6 of the Hindu Succession Act, 2005. In the decision of the Hon'ble Supreme Court in *Vineeta Sharma vs Rakesh Sharma* reported in (2020) 9 SCC it has been held that the Amendment Act, 2005 is not retrospective. Moreover, in the instant case the possession of the properties by Ramasamy Gounder and by his legal heirs after the death of Ramasamy Gounder is in denial of title of the plaintiffs. Their possession is also in hostility to the plaintiffs by exclusion of them. In the circumstances, the plaintiffs cannot claim any share in the suit properties. Therefore, the substantial questions of law 1 and 2 are answered in favour of the appellants.

15. In the result,

- i. the Second Appeal is allowed. No costs.
- ii. The decree and judgment dated 17.02.2022 in A.S.No.80 of 2019 on the file of the Principal District Court, Tiruppur, is set aside.
- iii. the suit in O.S.No.285 of 2012 on the file of the Additional Sub Court, Tiruppur, is dismissed with costs.

04.12.2024

Index : Yes/No



S.A.No.986 of 2022

Internet : Yes/No

WEB COPY mtl

To

1. The Principal District Court, Tiruppur.
2. The Additional Sub Court, Tiruppur.
3. The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



S.A.No.986 of 2022

R. HEMALATHA, J.

mtl

S.A.No.986 of 2022

04.12.2024