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A.S.NO.564 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 07 / 2024

JUDGMENT DELIVERED ON : 02 / 08 / 2024

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

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1.Vasuki

2.K.Vennila

3.K.Sekar

4.K.Kirubavathi (Died)

5.E.Rekha

6.E.Vasanthi

7.Vijayalakshmi

(Appellants 5 to 7 brought on record as LR's
of the deceased 4th appellant viz., K.Kirubavathi
vide this Court's order dated 22.02.2022 made in
CMP No.1765 of 2022 in A.S.No.564 of 2019)

... Appellants /
Plaintiffs

Vs.

1.K.Janakiraman

2.Devika Rani

... Respondents 1&2 /
Defendants 1&2



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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 27.02.2019 made in O.S.No.47 of 2016 on the file of II Additional District Judge, Vellore @ Ranipet, Vellore District.

For Appellants : Mr.K.V.Ananthakrishnan
For Respondents : Mr.V.Perumal
1 and 2 for M/s.T.Dhanyakumar

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved with the judgment and decree dated February 27, 2019, passed in O.S.No.47 of 2016 on the file of 'II Additional District Judge, Vellore @ Ranipet' (henceforth 'Trial Court'), the plaintiffs therein have filed this appeal under Section 96 of the Code of Civil Procedure, 1908 praying to set aside the judgment and decree, allow the Appeal and decree the Suit as prayed for in the plaint.

2.Since the fourth appellant – K.Kirubavathi passed away during the pendency of the appeal, her legal representatives were brought



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on record as Appellant Nos.5 to 7, vide order of this Court dated February

22, 2022 made in CMP No.1765 of 2022 in A.S.No.564 of 2019.

3.For the sake of convenience, henceforth, the parties to this appeal suit will be referred to as per their array in the Original Suit *i.e.*, the 'appellants' herein and the 'respondents' herein will be referred to as 'plaintiffs' and 'defendants' respectively.

Plaintiffs' case

4.The case of the plaintiffs is that the plaintiffs and the first defendant are children of the couple Kannan – Valliammal. Plaintiffs' and first defendant's paternal grandparents, Munusamy and Kullammal, had three sons namely Kannan, Subramani and Ekambaram. Their common ancestor-Munusamy owned considerable amount of ancestral properties. Munusamy passed away in or around 1968. His son Subramani predeceased him as a Bachelor in or around 1956. After the demise of their



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common ancestor-Munusamy, an oral partition took place between Kannan

and Ekambaram whereby, approximately an extent of 1 Acre 30 Cents in

various Survey Numbers was allotted to Kannan. That apart, after the

demise of Subramani (Kannan's brother) as a bachelor around 1956, his

share devolved upon his mother-Kullammal. Later, Kullammal divided the

said properties, giving 19 cents landed properties to Kannan and a house

property to Ekambaram. In that way, 19 Cents originally allotted to

Subramani was acquired by Kannan. Out of the said 19 Cents, the National

Highways Department acquired 13 cents of land to widen the MBT Road.

4.1.Further, there were also 42 cents of wet-land at Veppur Village irrigated by Palar River, as well as 30 cents of wet-land at Veppur Village situated opposite C.Abdul Hakeem Engineering College. Furthermore, there was an extent of 33 cents of wet-land at Veppur Village having irrigation from Soolai Kuttai Lake and Palar River. These were enjoyed by Kannan as ancestral properties. Apart from these lands, a wet



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land to the extent of 58 cents at Veppur Village having Palar River

irrigation was purchased by Valliammal, mother of the plaintiffs and the

first defendant, by selling her jewels, in the name of Kannan. Kannan and

Valliammal, parents of the plaintiffs and the first defendant, constituted a

Hindu Joint family and primarily cultivated the aforementioned lands for

their income. Kannan was the '*Kartha*' of the joint family. Kannan was also

a Tailor and derived modest income through his tailoring profession.

4.2.While so, Kannan, father of the plaintiffs and the first defendant, sold the 6 Cents of landed property remaining after acquisition by the Highways Department to one person, the said 42 Cents and 30 cents of wet-land with Palar River irrigation to one Ganesan and the said 33 cents of wet-land to one Kanni @ Kanniappan. The 58 cents of land purchased by Valliammal was sold to one Somu. The sale consideration received from selling these lands was retained by Kannan in his capacity as *Kartha* of the joint family.



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4.3.In fact, all the aforementioned lands were sold, in order to

purchase the second item of the Suit Properties, which is situated in one location, unlike the ancestral properties and Valliammal's land purchased in the name of Kannan which were scattered in different locations. Thus, the second item of the Suit properties purchased in the name of Kannan acquires the character of ancestral properties of the plaintiffs and the 1st defendant, as it was purchased out of the funds derived from selling the ancestral landed properties and also through the exertions of the joint family members. Patta No.45 which pertains to the second item of suit properties now stands jointly in the names of the plaintiffs and the first defendant. At the time of purchasing the said second item of Suit properties, a sum of Rs.8,000/- was borrowed from the second plaintiff's father-in-law and the debt was discharged later out of joint family funds.

4.4.Further case of the plaintiffs is that item Nos.1 and 3 of the Suit properties are the ancestral landed properties of the plaintiffs and



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the first defendant. Therefore, the plaintiffs are entitled to undivided

common 1/5 share each in the suit properties and the first defendant is also

entitled to an undivided common 1/5 share in the same. The second

defendant has no manner of right, title or interest over the Suit Properties.

4.5. While so, the plaintiffs came to know that their father, Kannan, allegedly executed a registered WILL dated November 20, 1996, in favour of the defendants, thereby giving life interest in the Suit properties with absolute right and title to the same passing on to the children born to them. The plaintiffs do not admit the genuineness and validity of the said WILL. The plaintiffs' father-Kannan had no absolute right and title over the properties mentioned in the WILL and therefore, he was not entitled to execute the said WILL in favour of anybody. Plaintiffs assert that at the time of the alleged WILL, Kannan lacked mental capacity to comprehend matters and was unable to respond to questions properly. After the death of their father, the plaintiffs and first defendant are entitled to get equal shares. Hence the Suit.



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Defendants' case

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5.The defendants admit the relationship between the parties as stated in the plaint and also acknowledge that an oral partition took place between Kannan and his brother Ekambaram. But they deny the allotment of property mentioned in the plaint as incorrect. According to the defendants, since Subramani who is the paternal uncle of plaintiffs and the first defendant, pre-deceased his mother-Kullammal, his share devolved upon Kullammal. The 58 Cents as stated in the plaint were purchased by Kannan as his self-acquisition.

5.1.Defendants further aver that the income derived from the landed properties was not sufficient to lead the family. They aver that Kannan supported the family by working as a tailor and thereby earning money. Further, defendants deny that the second item of the Suit Property was purchased from and out of the sale proceeds of ancestral properties. They assert that the properties mentioned in paragraph 5 of the plaint were



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sold out by the plaintiffs' father to save the third plaintiff from the criminal

cases filed by the Arcot Town Police Station and that the third plaintiff is

leading a wayward life. Apart from that, the plaintiffs' father sold some

properties to meet out the marriage expenses of the first, second and fourth

plaintiffs. The first item of Suit properties was purchased by Kannan as his

self- acquisition. Defendants deny that the plaintiffs' father borrowed a sum

of Rs.8,000/- from the second plaintiffs' father-in-law at the time of

purchasing the second item of the suit properties. The third plaintiff being

the younger brother of the first defendant was merely permitted to reside in

the third item of suit property. In a nutshell, the first and second item of the

Suit properties are self-acquired properties of Kannan, plaintiffs' and first

defendant's father.

5.2.Defendants further aver that Kannan executed a registered

WILL dated November 20, 1996. After the demise of Kannan on March

26, 1999, the WILL came into effect. As per the terms of the WILL, the



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defendants are in possession and enjoyment of the Suit properties. The

plaintiffs tried to interfere with the peaceful possession and enjoyment of

the defendants. Hence, the defendants filed a Suit in O.S.No.52 of 2002

before the District Munsif Court, Arcot for permanent injunction against

the plaintiffs with regard to the properties covered under the WILL dated

November 20, 1996 and the same was decreed as prayed for. Defendants 1

and 2 are in possession and enjoyment of item (1) and (2) of the Suit

properties. The plaintiffs have no right to claim share in the Suit properties.

Accordingly, the defendants prayed for dismissal of the Suit.

6.On these pleadings, the Trial Court framed the following

issues:

“1.Whether the plaintiffs, 1st defendant's father and their mother originally constituted Hindu joint family?

2.Whether the 2nd defendant has no right, title or interest over the plaint schedule properties?

3.Whether the Will, dated 20.11.1996 is true and valid?

4.Whether the plaintiffs are entitled to the relief of partition as prayed for?



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5.To what other relief, if any, the plaintiffs are entitled to?"

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7.At trial, on the side of the plaintiffs, P.W.1 to P.W.4 were examined and Ex-A.1 to Ex-A.11 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex-B.1 to Ex-B.8 were marked.

8.The Trial Court, after analysing the oral and documentary evidence, came to the conclusion that the Suit properties are properties of the Hindu joint family comprising of the plaintiffs, first defendant, their father Kannan and their mother-Valliammal; that the joint family had acquired some ancestral properties in an oral partition among the sons of Munusamy, the common ancestor; that upon partition of those properties among Kannan (plaintiff's father) and his brother, the ancestral character of those properties ceased and they assumed the character of absolute property; that Kannan as an absolute owner executed a WILL dated



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November 20, 1996 in respect of Suit properties; that the WILL has been proved as per law and consequently, plaintiffs have no right to claim partition over the Suit properties. Accordingly, the Trial Court dismissed the Suit.

9. Feeling aggrieved with the judgment and decree dated February 27, 2019 of the Trial Court, the plaintiffs have preferred this appeal.

Arguments

10. The learned counsel for the appellants / plaintiffs would argue that the Trial Court failed to consider the fact that the Hindu Joint Family had owned sufficient ancestral properties to derive sufficient income for the family's sustenance; that the Trial Court has failed to appreciate the admission made by D.W.1 regarding the existence of ancestral properties, in his evidence; that the Trial Court failed to consider the fact that Joint Patta stands jointly in the name of the plaintiffs and the



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first defendant; that the Trial Court grossly erred by deciding the character

of the Suit Properties as self-acquired properties; that the Testator namely

Kannan had no power to execute the WILL in regard of the Suit Properties

which are ancestral properties; that the Trial Court miserably failed to

appreciate the terms of the alleged WILL; that even while assuming that

the WILL dated November 20, 1996 is true and valid, the defendants only

be life estate holders and not absolute owners. Accordingly, the learned

counsel prayed to allow the appeal.

11.Per contra, learned counsel for the respondents/ defendants would argue that the first and second item of the Suit properties were purchased by Kannan out of his own earnings as self-acquisition; that Ex-A.11-Sale Deed was executed after the plaintiffs' purchase vide Ex-A.1-Sale Deed; that vide Ex-A.9 – Sale Deed, the father Kannan sold the properties for a sale consideration of Rs.1000/-; that Ex-A.10 – Sale Deed was effected for a sale consideration of Rs.2,400/-, that on the other hand,



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the properties covered under Ex-A.1 was purchased for a sum of Rs.12,000/-; that therefore, the plaintiffs' contention that properties purchased under Ex-A.1 second item of the Suit property were purchased out of the sale consideration received under Ex-A.9 to Ex-A.11 is incorrect; that Kannan was doing Tailoring work and thereby earned considerable amount; that the property purchased by Kannan through Ex-A.1 is his self-acquired properties.

12.He would further argue that as far as first item of Suit property is concerned, the said property was purchased by Kannan from his mother- Kullammal vide Ex-B.1 – Sale Deed dated April 13, 1978; that the first item of Suit property is his self-acquired property; that the defendants filed a Suit in O.S.No.52 of 2002 for permanent injunction against the plaintiffs in respect of the properties covered under Ex-B.3 - WILL and the same was decreed as prayed for; that the WILL dated November 20, 1996 has been proved as per law; that the Trial Court after



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appreciating the oral and documentary evidence, decided the case as per

law; that hence there is no warrant to interfere with the judgment and

decree of the Trial Court. Accordingly, the learned counsel for the

respondents / defendants prayed to dismiss the appeal.

Points for consideration

13.The points that arise for consideration in this appeal are as follows:

(i)Whether the plaintiffs and the first defendant's father namely Kannan owned Joint Family properties and had surplus income therefrom?

(ii)Whether the Suit Item Nos.1 and 2 were purchased from and out of the income derived from the Joint Family Properties?

(iii)Whether the Suit Item No.3 is ancestral property or self-acquired property of Kannan?

(iv)Whether the WILL dated November 20, 1996 (Ex-B.3) has been proved as per law?

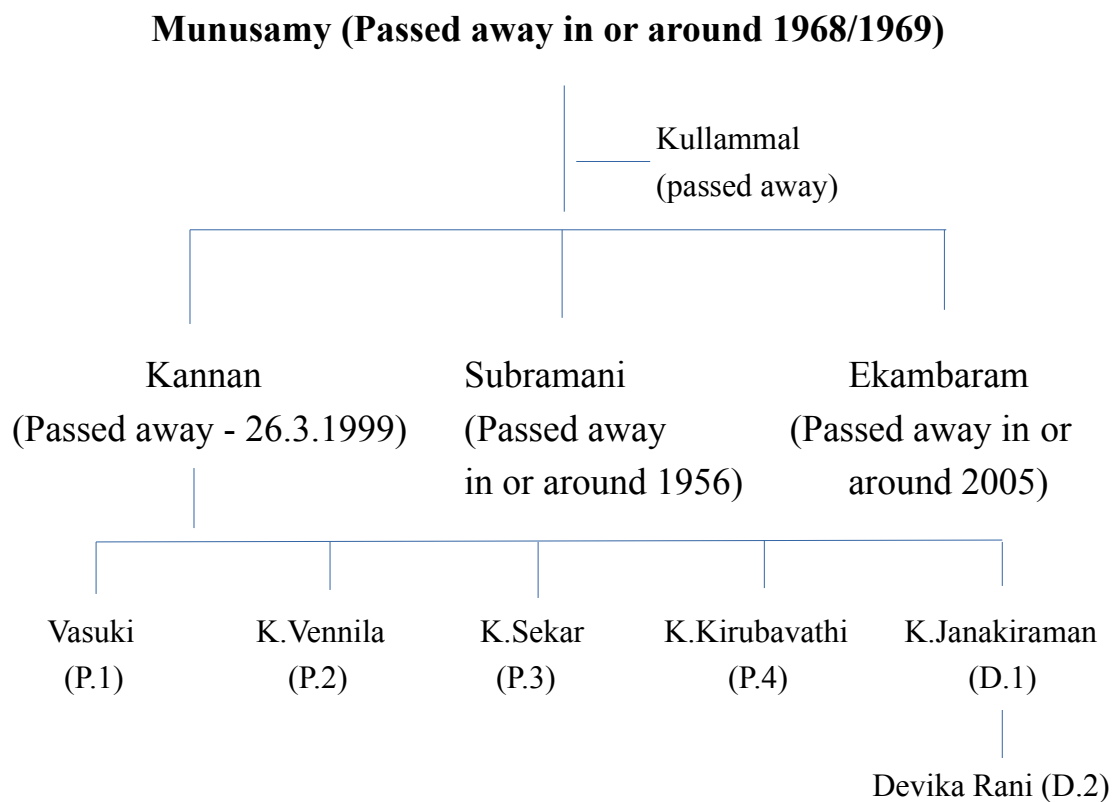


(v) Whether the Trial Court is right in dismissing the Suit?

(vi) To what other reliefs?

Discussion and Decision:

14. The relationship between the parties is elucidated through the following genealogy chart:





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15. Admittedly, Munusamy-Kullammal couple had three sons

namely Kannan, Subramani and Ekambaram. Subramani died in or about 1956 and Ekambaram died in or about 2005. Admittedly, after the demise of Munusamy in or around 1968, his sons Kannan and Ekambram orally divided the properties. According to the plaintiffs, Kullammal divided the properties inherited from her son Subramani and accordingly, house property was allotted to Ekambaram and landed properties were allotted to Kannan. Further case of the plaintiffs is that the properties acquired by Kannan through the Oral Partition between him and his brother, as well as the properties acquired by Kannan through his mother-Kullammal retained ancestral character. Further case of the plaintiffs is that Suit Item Nos.1 and 2 were purchased using surplus income from the ancestral properties as well as the sale proceeds of the ancestral properties.

16. The plaintiffs filed Ex-A.9 to Ex-A.11 documents to substantiate their case. This Court has carefully perused Ex-A.9 to Ex-

A.11. Under Ex-A.9, an extent of 14 Cents in Survey No.204/1, an extent



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of 6 ½ Cents in Survey No.204/5 and an extent of 6 Cents in Survey

No.204/6, totally an extent of 26 ½ Cents were sold by Kannan to one

G.Kanni for a sum of Rs.1,000/-. Further, an extent of 3½ Cents in Survey

No.217/4 and an extent of 14 Cents in Survey No.360/1 i.e., totally an

extent of 17 ½ Cents were sold by Kannan to one Ganesan for a sale

consideration of Rs.2,400/- vide Ex-A.10 – Sale Deed. An extent of 6

Cents in Survey No.360/1 was sold by Kannan and two others to one

Bakthavatchalam for a sale consideration of Rs.1,002/- vide Ex-A.11.

17.To be noted, Ex-A.11- Sale Deed was executed after the purchase of second item of Suit properties. Hence, the averment of the plaintiffs that, from and out of the sale consideration of Ex-A.11 – Sale Deed, the second item of Suit properties were purchased is incorrect.

18.A careful reading of Ex-A.9–Sale Deed would clearly show that the properties covered under Ex-A.9 were self-acquired properties of Kannan. An extent of 14 Cents in Survey No.204/1, an extent



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of 12 Cents in Survey No.204/6 were purchased by Kannan from his

mother-Kullammal vide Ex-B.1 – Sale Deed dated April 13, 1978. In the

said Sale Deed, Ekambaram, paternal uncle of plaintiffs and first

defendant has signed as one of the witnesses. Ex-B.1 – Sale Deed recites

that Kannan purchased the properties covered under the Sale Deed for a

sale consideration of Rs.2,895/- as his self-acquired properties. The

plaintiffs cannot argue against the terms of Ex.B.1-Sale deed. Hence, a

conjoint reading of Ex-B.1 and Ex-A.9 would show that the properties

covered under Ex-A.9 were self-acquired properties of Kannan. Hence,

this Court comes to the conclusion that the properties covered under Ex-

A.9 Sale Deed were separate properties of Kannan.

19.In Ex-A.10 – Sale Deed, it has been stated as follows:

“எனக்குச் சொந்தமானதும்
பிதுராஜ்ஜீயதமானதும் என்னுடைய பாகப்
பிரிவினைக்கு இதுவரை நான் அனுபவித்து வந்த
கீழ்க்கண்ட நிலங்களை உமக்கு ரூ.2400 எழுத்தால் ரூ.
இரண்டாயிரத்து நானூறுக்கு கிரயம் தீர்த்துப்பேசி
கிரயத்தொகை முழுவதும் இன்று தேதியில் நான்



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தங்களிடம் ரொக்கமாகப் பொருளரப் பெற்றுக்

கொண்டேன். . . ”

20.From the above extract, it can be concluded that the properties covered under Ex-A.10 were ancestral properties, but the said ancestral properties were sold for a sum of Rs.2,400/- on August 9, 1979. The second item of Suit properties were purchased on the same day i.e., August 9, 1979 for a sale consideration of Rs.12,000/-. It is not possible to purchase the second item of property worth about Rs.12,000/- with the sale proceeds of Ex-A.10. Hence, this Court comes to the conclusion that the second item of Suit property was purchased by Kannan as his separate property.

21.As regards the item No.1 of the Suit properties, as already stated *supra*, item No.1 of the Suit properties and other properties were purchased by Kannan vide Ex-B.1–Sale Deed from his mother Kullammal.

In Ex-B.1 it has been stated that the first item mentioned therein (an extent



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of 29 ½ Cents in Survey No.44 of Veppur Village) was obtained by

Kullammal through a Decree of Court in the year 1962. In view of Section

14 of the Hindu Succession Act, 1956, the properties could only be

absolute properties of Kullammal. Kullammal executed Ex-B.1 Sale Deed

in favour of Kannan for a sale consideration of Rs.2,895/-. It is apposite to

extract the relevant portion of Ex-B.1, which reads as follows:

“ . . . வேப்பூர் கிராமத்தில் நான் 2.4.1962ந்
தேதி இராணிப்பேட்டை டிமு கோர்ட் O.S.421/60
கேஸில் E.P.215/62 நெம்பர்படி ஷை கோர்ட்டாரால்
சுவாதீனம் செய்துக் கொண்டு என் சுவாதீனத்தில்
வந்து நான் அனுபவித்து வரும் அயன் நஞ்செய்
சர்வே எண் 44ல்0.59 செண்டில் மேல்பக்கம் 0.29 1/2
செண்டுக்கு தீர்வை ரூ. 1.75 NP' ம் அயன் நஞ்செய்
சர்வே எண் 145/2Bல் 0.25 செண்டில் வடபக்கம்
ஹைவேஸ் ரோடுக்குப் போக மீதி என் பாகம் 0.06
செண்டுக்கு தீர்வை ரூ. 0.36 NPம் உள்ள நிலமும்
என் கணவர் பாகம் அவர் காலமானதுக்குப்பின்
என் அனுபவத்தில் வந்து நான் அனுபவித்து வரும்
ஷை வேப்பூர் கிராமத்தில் அயன் நஞ்செய் சர்வே
எண் 204/1ல் 0.14 செண்டுக்கு தீர்வை ரூ. 0.83 NPம்
அயன் நஞ்செய் சர்வே எண் 204/6ல் 0.12 செண்டுக்கு



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தீர்வை ரூ.0.71 NPம் உள்ள நிலமும் ஷை வாலாஜா
தாலுக்கா இராசத்துபுரம் கிராமத்தில் இருக்கும்
அயன் நஞ்செய் சர்வே எண் 24/2Bல் 0.06 செண்டில்
0.02 செண்டுக்கு தீர்வை ரூ. 0.12 NPம் உள்ள
நிலமும் ஷை நிலங்களுக்குண்டான ஆத்துக்கால்வாய்
அருநீர்முறை நீர் ஜலபாத்தியத்தியத்தையும் சேர்த்து
மேல்கண்ட ரூபாயிக்கு உமக்கு சுத்த
அருதிவிக்கிரையம் செய்துக் கொடுத்து விட்டேன். . .”

21.1.From the above, it is clear that the properties covered
under Ex-B.2 Sale Deed are self-acquired properties of Kannan. Hence, the
first item of Suit property is also self-acquired property of Kannan.

22.As far as the third item of Suit properties is concerned, it is
a house property situated in Natham land. The defendants themselves
admitted in their written statement that Item No.3 is ancestral property. A
portion of paragraph six (6) of the written statement reads thus:

*“6)Ever since the date of purchase and during the life-
time late Kannan was in possession and enjoyment in all the*



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schedule mentioned properties. No.1, 2 & 4 plaintiffs after their marriage left their parents house and lived in their matrimonial home with their husbands. No.3 of the plaintiff is being the younger brother to 1st defendant allowed 3rd plaintiff to reside in the ancestral house...

Emphasis supplied

22.1.In view of the above admission, which is admissible under Section 58 of the Indian Evidence Act, 1872, the plaintiffs have established that Item No.3 is an ancestral property.

23.Further, D.W.1 in his evidence has deposed as hereunder:

“ . . . முன்றாவது அயிட்ட சொத்தான வீடு பிதுராஜித சொத்தா என்றால் அது பிதுராஜித சொத்துதான். ஆனால் என் அப்பாவிற்கு சொத்து ஒதுக்கும்போது ரூபாய் 500 பணம் கொடுத்து தான் வாங்கினார். அவ்வாறு பணம் கொடுத்து வாங்கியதை நீங்கள் பதிலுரையில் சொல்லவில்லை என்றும் அது பொய்யானவை என்று சொன்னால் சரியல்ல. . . ”

23.1.The defendants have not established that the third item of Suit properties is self-acquired or separate property of Kannan. Hence, the third item of Suit property is ancestral in character.



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24. According to the defendants, the father of the plaintiffs and

the first defendant, Kannan, executed Ex-B.3-Registered WILL dated November 20, 1996. The plaintiffs have denied the execution of the WILL.

This Court has perused Ex-B.3 – WILL. Ex-B.3 is a registered WILL. The scribe and one of the attestor of the WILL were examined as D.W.2 and

D.W.3 respectively. This Court has carefully considered the evidence of

D.W.2 and D.W.3. D.W.2 and D.W.3 deposed that the testator-Kannan

executed Ex-B.3-WILL. They further deposed that the testator-Kannan

signed the WILL in their presence and they have also signed the WILL.

Hence, the evidence of D.W.2 and D.W.3 proves the execution of the

WILL in a sound and disposing state of mind of the testator.

25. Ex-B.3-WILL is proved as per law. As already decided supra, Item Nos.1 and 2 of the suit properties are self-acquired properties,

while Item No.3 is ancestral property. The WILL is absolutely valid in respect of Item 1 and 2 of the suit properties as they are separate properties

of the Testator.



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26.However, the testator has no power to execute the WILL in

respect of entirety of Item No.3 of the suit property which is ancestral property. As per Section 30 of the Hindu Succession Act, 1956, a coparcener can execute a WILL in respect of his interest alone in the coparcenary property. As per Section 6 of the Hindu Succession Act, 1956 as amended by Act 39 of 2005, the daughters are entitled to equal share on par with the sons. Hence, the plaintiffs, the first defendant and their father-Kannan are entitled each 1/6 share. Therefore, as far as Item No.3 is concerned, Kannan had power to execute WILL in respect of his 1/6 share therein alone. Hence, as far as Suit Item No.(3) is concerned, the WILL is valid in respect of Kannan's 1/6 share.

27.In a nutshell, the WILL dated November 26, 1996 is valid in respect of entirety of the Item No.1 and 2 of the suit properties and in respect of Kannan's 1/6 share in Item No.3 of the suit property. Thus, the plaintiffs are entitled to 1/6 share each (totally 4/6 share) in Item No.3 of the suit properties. The first defendant is entitled to 1/6th share therein, and



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the first and second defendants are jointly entitled to Kannan's 1/6th share

as life estate.

28.It is apposite to mention here the recitals of the Ex.B.3

WILL :

“என் வாழ்நாளுக்கு பின் நான்
சுயார்ஜிதமாய் ஆண்டு அனுபவித்து வரும்
இதனடியில் கண்ட சொத்துக்களை என்
ஆயுளுக்குப்பின் என்னுடைய மூத்த மகன்
ஜானகிராமனும், அவரது மனைவியுமான
தேவிகா அம்மாள் என்பவரும் கைப்பற்றி,
எந்தவிதமான வில்லங்கம் பராதீனம்
செய்யாமல் மகதூலை மட்டும் அனுபவித்து
பின் இவர்களுக்கு பிறக்கும் சந்ததிகள்
சர்வ சுதந்திரமாய் அடையவேண்டியது.”

(Emphasis supplied)

29.In view of the above recitals, during the lifetime of
defendants 1 and 2, the plaintiffs have no right to claim or seek partition
over the Item Nos.1 and 2 of the Suit properties and over Kannan's 1/6th
share in the Suit Item No.3. If the defendants 1 and 2, do not have any



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child born to them, after the life time of defendants 1 and 2, the properties will revert to the heirs of the testator.

30.The findings of the Trial Court that the properties obtained by Kannan through Oral Partition ceased to retain the character of ancestral properties upon such Oral Partition is incorrect. The Trial Court's findings that the WILL – Ex-B.3 is proved as per law and that the plaintiffs have no right to claim partition over Item Nos.1 and 2 of the Suit properties is correct. But, the findings that the plaintiffs have no right over Item No.(3) of the Suit property is incorrect and is to be interfered by this Court. Point Nos.(i) and (vi) are answered accordingly.

31.In the result, the Appeal Suit is partly allowed in the following terms:

(i)Suit Item Nos.(1) and (2) are self-acquired properties of Kannan and the WILL dated November 20, 1996, is valid in respect of entirety of Suit Item Nos.(1) and (2).



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(ii) Suit Item No.(3) is ancestral property and the WILL dated November 20, 1996 is valid in respect of Kannan's 1/6 share alone. Thus, as far as Suit Item No.(3) is concerned, the plaintiffs are entitled to 1/6 share each (Totally 4/6 share) and the first defendant is entitled 1/6 share while first and second defendants are jointly entitled to Kannan's 1/6 share as life estate.

(iii) The plaintiffs have no right to claim partition over Suit Item Nos.(1) and (2) as well as Kannan's 1/6 share in Suit Item No.(3) at present.

(iv) To that effect, a preliminary decree is passed.

(v) There shall be no order as to costs.

[R.S.M., J.]

[R.S.V., J.]

02 / 08 / 2024

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order

TK



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To

The II Additional District Judge
Ranipet,
Vellore District.



WEB COPY



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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN

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