



S.A.No.949 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.949 of 2022
and C.M.P.No.17646 of 2023

1. Chitra
2. Jayarani

...Appellants

Vs

1. Kathan Moopar (Died)
2. Ramalingam
3. Chinna Pillai
4. Kowsalya
5. Manju
6. Jayadevi
7. Ramya

Minors represented by the Court Guardian
Meyyanathan

8. Valliyammai
9. A.Mani
10. Selvi
- 11.Amsavalli

...Respondents



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*Memo Recorded.

R1 died. Respondents 2 and 3 already on record are recorded as L.Rs of the deceased R1 and R4 to 7 and 9 are declared as majors and their court guardian Meyyanathan.

Discharged from the guardianship vide Memo dated 06.11.2023

08.01.2024, U.S.R.No.37764 and Court order dated 08.01.2024 made in S.A.No.949 of 2022 and C.M.P.No.17646 of 2023

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated in A.S.No.13 of 2008 dated 17.06.2010 on the file of the Sub Judge, Kallakurichi in confirming the judgment and decree of the II Additional Munsif Court, Kallakurichi in O.S.No.79 of 2004 dated 30.08.2007.

For Appellants : Ms.V.Srimathi

R1 Died

For respondents

2, 3 and 10 : Ms.R.Divya Preathiba
for Mr.R.Bharath Kumar

For Respondent

4 to 7 and 9 : Not ready in notice



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For Respondent-8: Mr.R.Agilesh

JUDGMENT

The plaintiffs are the appellants before this Court challenging the concurrent judgment and decree passed against them in a suit for partition.

2.The facts which have given rise to the above second appeal are herein below set out and the parties are referred to in the same litigative status as before the trial Court.

3.The plaintiffs are the daughters of the second defendant. They have filed the suit for partition in O.S.No/79 of 2004 on the file of the II Additional District Munsif Court, Kallakurichi. It is their contention that the suit properties are the joint family properties of the



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plaintiffs and defendants 1 and 2. It is their further case that from out of the income of the ancestral properties, the properties have been purchased in the name of the defendants 1 to 3. The plaintiffs would submit that they are entitled to $3/8^{\text{th}}$ share, the first defendant is entitled to $1/2$ share and the second defendant is entitled to $1/8^{\text{th}}$ share in the suit properties. The plaintiffs would further submit that they had come to know that the defendants 1 to 3 have tried to create documents in the name of the defendants 4 to 7 who are the daughters of the second defendant as also in the name of the third parties. The 7^{th} item of the suit properties was sold on 03.02.2004 to the 8^{th} defendant by the 3^{rd} defendant. In fact, these properties had been purchased in the name of the third defendant from out of the income from the ancestral properties. On 16.02.2004, the defendants 1 to 3 had sold some items of the suit properties to defendants 9 and 10. The plaintiffs would submit that none of these sales would bind the



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share of the plaintiffs. Therefore, on 02.02.2004, the plaintiffs had issued a legal notice to defendants 1 to 3 and the 8th defendant claiming partition of the suit properties. The defendants 1 to 3 had sent a reply admitting the fact that the properties are joint family properties but denied the right of the plaintiffs to partition. The 8th defendant sent a reply setting forth false statements. Therefore, the plaintiffs have been constrained to move the Court for seeking partition.

4. Defendants 1 to 3 had filed a written statement *inter-alia* denying the right of the plaintiffs to a share in the suit properties. In their written statement, they have denied the contention of the plaintiffs that the suit properties were joint family properties. It is their specific case that the first defendant has no ancestral properties. The first defendant had migrated to Kudiraichandal Village and from



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the income that he had derived by working as a coolie and the second defendant from the income derived from doing coolie work in the Forest Department, purchased the properties in the names of defendants 1 to 3. These properties have been purchased only out of the self-acquired income of the defendants 1 to 3.

5. The defendants would further submit that the plaintiffs' mother, Periyammal is the first wife of the second defendant. The plaintiffs 1 and 2 are the children born to Periyammal and the second defendant. It is their contention that third plaintiff was born out of illicit relationship that Periyammal had. They would further submit that the said Periyammal had left the family nearly 17 years ago and that she had no dealings or contact with the family. They would submit that the plaintiffs are not entitled to any share in the suit schedule properties.



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6. The defendants 4 to 7 were represented by a Court guardian. The court guardian and the 9th defendant had filed a written statement denying the claim of the plaintiffs and stating that they have no share in the suit schedule properties and therefore, the plaintiffs are not entitled to a partition.

7. On the basis of the pleadings, the learned Subordinate Judge, Kallakurichi had framed the following issues:

“1. தாவா சொத்துக்களில் வாதிகளுக்குள்ள 3.8 பாகம் உரிமை உண்டா?

2.தாவா சொத்துக்களில் வழக்கில் வாதிகள் கேட்டபடி பாகம் கிடைக்கக்கூடியதா?

3.வாதிகளுக்கு வழக்கில் கிடைக்கும் பரிகாரம் என்ன?”

8. The first plaintiff had given evidence as P.W1 and had



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examined one Vaiyapuri as P.W2 and Exs.A1 to A6 were marked on the side of the plaintiffs. The first defendant had examined himself as D.W1. The second defendant and third defendant were examined as D.W3 and D.W2 respectively. One Kuppa Moopar, was examined as D.W4. Exs.B1 to B4 were marked on the side of the defendants.

9. The learned Judge had ultimately on perusing the evidence both documentary as well as oral come to the conclusion that that there were no ancestral properties or nucleus and that these suit properties were all purchased by the defendants 1 to 3 from out of their own earnings. The plaintiffs, who had come to Court seeking a partition on the basis that the properties were ancestral properties, have not let in any evidence whatsoever to prove the ancestral nature of the property or that the other properties were purchased out of the



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income derived from these ancestral properties.

10. The plaintiffs 1 to 2 alone had filed an appeal on the file of the Subordinate Judge, Kallakurichi in A.S.No.13 of 2008. The third plaintiff was therefore arrayed as 11th respondent in the appeal. The lower appellate Court, on considering the evidence and the admissions of P.W1 herself, held that the plaintiffs have failed to prove the ancestral nature of the properties. The learned Judge had also observed that those properties which stood in the name of a female Hindu would not come within the umbrella of the joint family and has to be treated only as her own property. Ultimately, the learned Judge dismissed the appeal confirmed the judgment and decree of the trial Court. Challenging the said judgment and decree, the appellants have filed the above second appeal.



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11. This second appeal was admitted by this Court on the following substantial questions of law:

"1. Whether the courts below are justified in dismissing the suit for partition wrongly shifting the burden of proof on the plaintiffs to substantiate the nature of the property as ancestral, especially when the defendants have not shown that they had independent source of income?.

2. Whether the courts below are right in rejecting the suit for partition at the behest of the plaintiffs on a surmise of "admission"?

3. Whether the Courts below are right in ignoring the rights of the plaintiffs to the share in the ancestral properties as per the amendment to the T.Nadu Hindu Succession Act?



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4. Whether the Courts below are right in ignoring the provisions of Sec. 39 of the Transfer of property Act which obligates a duty on the family to maintain the plaintiffs?"

12. The learned counsel for the appellants / plaintiffs would submit that the defendants have themselves admitted the fact that the properties are ancestral properties. He would submit that they had mortgaged the property in which they had also obtained the signature of the plaintiffs and the properties had been described as ancestral properties. Therefore, he would submit that the Courts below have failed to appreciate this piece of evidence which would clinchingly show that the properties are ancestral properties. He would draw the attention of the Court to the evidence of D.W3, the second defendant who is none else than the father of the plaintiffs. He would draw the



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attention of the Court to the admission of D.W3 that in the year 2004, the properties had been sold to one Selvi on 11th February. In the said document, the properties that have been conveyed have been described as ancestral properties available to the plaintiffs and therefore, there is a presumption that the properties have been purchased from out of the joint family property funds.

13. These contentions have been refuted by the learned counsel for defendants 2, 3 and 10. She would contend that nowhere in the plaint have the plaintiffs described as to the extent of ancestral properties that were available, the income that these properties had generated and that the excess income from out of this had been utilized to purchase the properties. Further, the plaintiffs have not filed any documents whatsoever to show that the suit properties were ancestral properties. She would further submit that the plaintiffs



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cannot rely upon some stray statement /admission to persuade this Court to arrive at a conclusion that there was an ancestral nucleus and that this amount has been utilized to purchase the other properties She would further argue that there is no description of the properties that were ancestral and the properties that have been purchased. Therefore, she seeks to have the second appeal dismissed stating that both the Courts below have concurrently and erroneously held against the plaintiffs after considering the evidence on record.

14. Heard the learned counsel on either side and perused the materials available on record.

15. The plaintiffs have come forward with the suit for partition with a plea that the properties are the ancestral properties. In this



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regard, reference can be made to the pleadings.

“இதனடியில் ஷெட்டியூலில் கண்ட சொத்துக்கள்

1 முதல் 2 பிரதிவாதிகளுக்கும், வாதிகளுக்கும்

பாத்தியமான பொதுக் குடும்ப சொத்துகளாகும்.

அவைகள் 1ம் பிரதிவாதிக்கு பூர்வீக பாத்தியமானதும்

பூர்வீக பாத்தியமான சொத்துக்களில் கிடைத்த

வருமானத்தை கொண்டு 1 முதல் 3 பிரதிவாதிகள்

பெயரில் கிரையம் பெறப்பட்ட சொத்துக்கள் ஆகும்.

அடியிற்கண்ட சொத்துக்களின் அவ்வகையில்

வாதிகளுக்கு 3/8 பாகமும் 2ம் பிரதிவாதிக்கு 1/8

பாகம் 1-ம் பிரதிவாதிக்கு 1/2 பாகமும்

பாத்தியமானது. அவ்வாறு இருக்க அடியிற்கண்ட

சொத்துக்களில் வாதிகளின் பாகபாத்தியத்தை



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விரோதமாக 1 முதல் 3 பிரதிவாதிகள் 2ம் பாதியின்
சேர்மான மனைவி செல்வியின் குமாரத்தியான 4
முதல் 7 பிரதிவாதிகளும் மற்றும் முன்றாம்
நபர்களுக்கும் அந்த ஆவணங்கள் மூலம்
அடியிற்கண்ட சொத்துக்களை பொறுத்து வில்லங்கம்
ஏற்படுத்த முயற்சிப்பதாக வாதிகள் அறிகிறார்கள்.
அவ்வாறே பொது குடும்ப வருவாயிலிருந்து 3-ம்
பிரதிவாதி பெயருக்கு பெறப்பட்ட 7வது அயிட்டத்தில்
ஒரு பகுதியை 3ம் பிரதிவாதி யாதொரு உரிமையும்
இல்லாமல் 8ம் பிரதிவாதிக்கு கடந்த 3.2.2004-ல்
கிரையம் கொடுத்து விட்டார். 1 முதல் 3
பிரதிவாதிகள் மீண்டும் கடந்த 16.02.2004-ல் தாவா
சொத்துக்களில் சில இடங்களை 9,10ம்



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பிரதிவாதிகளுக்கும் கிரையம் கொடுத்திருக்கிறார்.

கிரையங்கள் செல்லத்தக்கதல்ல அது வாதிகளின்

பாக பாத்தியத்தையே கட்டுப்படுத்தாது. 1 முதல் 3

பிரதிவாதிகள் வாதிகள் நன்மைக்கும் அக்கறைக்கும்

விரோதமாக நடப்பதால் வாதிகள் தாவா

சொத்துக்களில் தங்களுக்குரிய 3/8 பாகத்தை

பிரித்துக் கொடுக்க 1 முதல் 3 மற்றும் 8-ம்

பிரதிவாதிகளுக்கு கடந்த 2.2.2004-ல் ஒரு அறிவிப்பு

கொடுத்தார்கள். அறிவிப்பை பெற்று கொண்ட 1

முதல் 3 பிரதிவாதிகள் தாவா சொத்துக்கள் பொது

குடும்ப சொத்துக்கள் என்பதை ஒப்புக்

கொண்டிருக்கிறார்கள். ஆனால் எதேச்சையாக பாகம்

கொடுக்க மறுக்கிறார்கள் அறிவிப்பில் கண்ட மற்ற



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அம்சங்களை மறுக்கவில்லை. 8-ம் பிரதிவாதி தப்பும்
பொய்யுமான அம்சங்களை கொண்டு பதிலறிவிப்பை
கொடுத்துள்ளார். ஆகவே வாதிகள் தங்களுக்குறிய 3/
8 பாகத்தை பிரித்து ஒப்புக் கொடுக்க இந்த
தாவாவை தாக்கல் செய்கிறார்கள். இவ்வழக்கில் 4
முதல் 7 பிரதிவாதிகள் அவசியமான பார்ட்டிகளாகும்”.

Except for this bald statement, there is no specific pleading as to what was the extent or which were the ancestral properties. The plaintiffs have also not pleaded that these properties were fetching income and that the income derived from out of these properties had been utilized to purchase the other properties. In fact, the plaint is absolutely



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bereft details as to which of the properties are ancestral properties and which of the suit properties have been purchased in the name of defendants 1 to 3 from out of the ancestral nucleus.

16. Time and again, the Hon'ble Supreme Court and this Court had held that the onus is upon the person claiming a partition to prove (a) the ancestral nature of the properties, (b) that these properties were yielding income and (c) that the income after defraying expenses has contributed to the purchase of the other properties so as to give these properties the character of ancestral properties. The learned counsel relied upon the admission of the second defendant as D.W3 that a sale had taken place in the year 2004 where under the properties were sold by the second defendant to one Selvi where he



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has described the properties as ancestral properties. This admission would not suffice, as the onus rests entirely on a person seeking for a partition of the properties to prove the ancestral nature. It is only when this onus is discharged that the burden shifts to the other party to prove that the properties were purchased out of their self-acquired funds. Admittedly, in the instant case, initially the onus has not been discharged by the plaintiffs. Therefore, the substantial question of law Nos. 1 and 2 are held against the plaintiffs.

17. As regards the third substantial question of law, the plaintiffs would be entitled to claim a right only if the properties are ancestral properties. Admittedly, the first plaintiff as P.W1 has herself admitted the fact that the village in which the suit properties were situate was not the native village of the first defendant or his father. It is the Village into which the first defendant had later



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migrated. Her admission in this regard is extracted herein below.

“என் தாத்தாவின் தகப்பனார் பெயர் பழனி முத்து
மூப்பர். அந்த பழனி முத்து மூப்பரின் பூர்வீகம் எடுத்த
வாய்ந்தம் கிராமம் என்றால் சரிதான். அந்த ஊரில்
இருந்துதான் என் தாத்தா காத்தான் மூப்பர் குதிரைச்சந்தல்
கிராமத்திற்கு வந்தார். குதிரைச் சந்தல் கிராமத்தில்
எங்களுக்கு பூர்வீக சொத்துக்கள் கிடையாது என்றால்
சரிதான்.”

She has also admitted that there are no ancestral properties available
to the plaintiffs' family in her cross examination, which is also
extracted herein below.

“என்னுடைய தாத்தா சொத்து குதிரைச்சந்தல் மற்றும்
நல்லாத்துர் கிராமங்களுக்கு நடுவில் உள்ளது. மேற்படி
சொத்து எனது தாத்தாவின் தந்தை பழனிமுத்து மூப்பர்



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கிரையம் வாங்கிய சொத்து ஆகும்.”

18. On the contrary, the defendants have produced the documents to show the purchases in their respective names. These documents have been marked as Exs.B1 to B5, B7, B8, B10 and B11. All these documents clearly indicate that the properties are all self-acquired properties of defendants 1 to 3. That apart, the third defendant, being a Hindu female member, the properties purchased in her name as her exclusive property and during her life time, the plaintiffs cannot seek a partition of her properties.

19. The fourth substantial question of law has no application to this instant case since no charge has been created on the suit properties in lieu of a right of receiving maintenance, as already



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submitted that the properties are the self-acquired properties of the defendants 1 to 3. Therefore, I see no reason to interfere with the concurrent judgment and decree of the Courts below. Accordingly, the second appeal is dismissed. There shall be no order as to costs. C.M.P is closed.

15.03.2024

Index : Yes/No
Speaking order/non-speaking order
srn
To

1. The Sub Judge, Kallakurichi
2. The II Additional Munsif Court, Kallakurichi
3. The Section Officer, V.R.Section, High Court, Madras.



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srn

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