



A.S.(MD).No.26 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.S(MD)No.26 of 2004
and C.M.P(MD) No.14683 of 2023

1.Narayanasamy

2.Rajendran

3.Mangaleswari

4.Banumathi

5.Gowsalya Devi

... Appellants/ Defendants

-VS-

1.Seethammal

2.Guruvammal

... Respondents/ Plaintiffs

PRAYER: Appeal Suit filed under Section 96 (1) of Civil Procedure Code, to set aside the decree and judgment dated 06.08.2004 made in O.S No.31 of 2004 on the file of the Principal District Judge, Srivilliputhur.

For Appellants : Mr.V.Radha Krishnan, Senior Counsel
for Mr.S.Kadarkarai

For Respondents : Mr.T.Lajapathi Roy, Senior Counsel
for Mr.M.M.Iqbal for R1

: Mr.B.Seenivasan
for Mr.V.Srinivasan for R2



WEB COPY



A.S.(MD).No.26 of 2004

J U D G M E N T

This Appeal Suit has been filed as against the judgment and decree passed in O.S No.31 of 2004 on the file of the Principal District Judge, Srivilliputhur, dated 06.08.2004, wherein, the respondents herein being the plaintiffs have filed the suit for partition against the defendants / appellants herein. The trial Court has decreed the suit and as against the decree and judgment passed by the trial Court, the unsuccessful defendants have filed the present Appeal.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking before the lower Court.

3. The averments of the plaint are as follows:

Originally the suit properties belonged to one Veerappa Naicker. The first defendant is the son of Veerappa Naicker through his first wife and the second and third defendants are sons of the first defendant, the fourth defendant is the wife of first defendant. The defendants 5 and 6 are daughters of first defendant. The plaintiffs are the daughters of Veerappa Naicker



A.S.(MD).No.26 of 2004

WEB COPY

through his second wife. The said Veerappa Naicker died on 23.12.1990, till the demise of Veerappa Naicker, all the properties were enjoyed jointly. However, due to convenience, the said Veerappa Naicker permitted the plaintiffs to enjoy some properties in the houses situated in Aruppukottai Town. In the meantime, there was a dispute between the parties in respect of pathway, which was formed for reaching their respective shares of properties. During the life time of Veerappa Naicker, there was no partition in respect of the properties. Already the first defendant filed a suit in O.S.No.268 of 1996 and in the suit, it is claimed that the properties exclusively belongs to the them and that the properties were undivided properties and the suit was dismissed. In the said suit, the first defendant filed an Appeal in A.S.No.105 of 1998 and the same was also dismissed. Thereafter, the plaintiffs have filed the suit for partition of their 1/3 share over the properties.

4. The brief averments of the written statement filed by the first defendant are as follows:

The averments made in the plaint are false, frivolous and the suit is not maintainable either in law or on facts. The averments made in the plaint that the properties mentioned in the plaint are self acquired property of



A.S.(MD).No.26 of 2004

WEB COPY

Veerappa Naicker, is false. All the properties are ancestral and not self acquired properties of Veerappa Naicker. Already father of the plaintiffs divided the agricultural lands in equal shares and put them in possession and the house properties as they are now in enjoyment. Thus defendants and plaintiffs are in possession as divided by the father. T.S.No.16/2 is the pathway for the plaintiffs and they threatened to encroach on the properties allotted to the defendant in T.S.Nos.29, 30 and 31. The plaintiffs colluded together moved the Survey officials and got registry of their portions in their exclusive names and the portions allotted to this defendants in the name of all parties. The settlement officer, after hearing both the parties, ordered the original registry prior to the order of survey official to be restored. The above said facts have been suppressed by the plaintiffs. Some of the properties, viz., Item Nos.5, 6, 18, 19 and 21, were sold by Veerappa Naicker, and some of the lands, viz., Item Nos.10, 12, 13 and 20, were taken over by the Government under the Land Acquisition Act. But, these properties were also included in the plaint. The said Veerappa Naicker, was in possession and enjoyment only as a co-parcener with this defendant as the Kartha of the family until it was divided by him as shown in schedule shown here under:-



A.S.(MD).No.26 of 2004

WEB COPY

The plaintiffs and the defendants are in enjoyment of different portions of the lands, as per the partition earlier and that there is no question of joint ownership, since the property already partitioned between the parties, the suit is unsustainable in law and is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides, the trial Court has framed the following issues:

I) Whether the properties of Veerappa Naicker, were partitioned between the parties ?

II) Whether the plaintiffs are entitled to get share over the properties? if so, what is the share?

III) To what relief, the parties are entitled to?

6. In order to prove the case, before the trial Court, on the side of the plaintiffs, they have examined P.W.1 and P.W.2 and marked Exs.A1 to A7 and on the side of the defendants, no witness was examined and document Ex.B.1 was marked. Apart from these documents, Court documents Ex.C1 to C3 were also marked.



A.S.(MD).No.26 of 2004

WEB COPY

7. After analysing the evidence adduced on both sides, the trial Court dismissed the suit in respect of item Nos.5, 10, 12, 13, 18 to 21 and granted preliminary decree by declaring the share of the plaintiffs by 7/27.

8. Aggrieved by the above said decree and judgment the first defendants have preferred this appeal on the following grounds:

i) the lower Court erred in relying on the findings in O.S.No.268 of 1996 on the file of the Subordinate Judge, Virudhunagar and the judgment in A.S.No.105 of 1998 on the file of the District Judge, Srivilliputhur, forgetting the fact that the said decree and judgment is under challenge in Second Appeal No.994 of 1999 before this Court.

(ii) the lower Court failed to note that the plaintiffs have claimed the suit properties as their self acquired properties of their father Veerappa Naicker,

(iii) the lower Court failed to note that the plaintiffs cannot amend the plaint claiming the suit properties as ancestral property of their father and erred in holding that they have accepted the property as ancestral property forgetting the fact that only on the proof by the appellants the lower



A.S.(MD).No.26 of 2004

Court came to the finding that the properties are ancestral properties of the deceased Veerappa Naicker.

(iv) the lower Court miserably failed to note that P.W.1 has executed a gift deed in favour of her daughter in view of the said oral partition.

(v) the lower Court failed to note that P.W.2 has also admitted that there was an oral partition.

(vi) The lower Court failed to note that P.W.2 has constructed two buildings at their cost in the property allotted to her.

(vii) the lower Court miserably failed to note that the appellants clearly and categorically stated in their written statement made of partition of each and every property and the same has not been denied by the plaintiffs by filing reply statement.

(viii) the lower Court failed to note that the property under Ex.B1 is not included in the suit property which shows that there was a partition.

(ix) the lower Court failed to note that the settlement Ex.B1 is not a party to the suit and as such the suit is bad for non joinder of necessary parties.



A.S.(MD).No.26 of 2004

WEB COPY

9. In this case already this Court passed judgment along with S.A.No.994 of 1999 and the same was challenged through S.L.P Civil Appeal No.6300-6301 of 2016 before the Hon'ble Apex Court and the Hon'ble Supreme Court in the order dated 12.04.2023 set aside the judgments and all the contentions of the parties on merits are left open, and also directed to refer the parties for mediation but mediation did not fructify, then this Court heard the case on merits.

10. During the pendency of the Appeal, the appellants have filed a petition, in C.M.P.(MD)No.14683 of 2023, under Order -41 Rule 27 read with Section 151 of the Code of Civil Procedure, to receive additional documents.

11. The appellants / petitioners in C.M.P.(MD)No.14683 of 2023 filed petition stating that the petition mentioned documents are very important and they were omitted to be marked in the trial Court. In order to establish that the suit properties had already been partitioned between the parties the said documents are very essential. Therefore, the documents, deposition of P.W.2 and the revenue records issued by the revenue authorities are to be



A.S.(MD).No.26 of 2004

received as additional evidence. The respondents submitted that those documents are not essential to decide the case and analysing both sides have adduced sufficient evidences. Hence, the petition is liable to be dismissed. The said evidence adduced in earlier suit was in respect of exclusive right over the pathway and the present suit is filed for partition and that both the suit properties are different. There was no oral partition earlier and there is no whisper about the date of oral partition in the written statement. Hence, the Civil Miscellaneous Petition is liable to be dismissed.

12. The learned counsel for the appellants would contend that the plaintiffs have filed the suit for a relief of partition and separate possession by claiming that the properties are absolute, properties of their father - Veerappa Naicker. The properties are under common possession and enjoyment and the appellants are entitled to 2/3 shares of the properties. In fact already the properties of Veerappa Naicker were partitioned between the parties and the appellants / defendants categorically stated in the written statement about the properties allotted to the respective parties and the respondents / plaintiffs have also categorically admitted in the cross examination before the trial Court that already they sold some of the properties and the settlement deed is



A.S.(MD).No.26 of 2004

also executed through Ex.B1, separate pattas were also granted for some of the properties. Therefore, the defendants proved that they have partitioned in respect of the properties of Veerappa Naicker. But, the trial Court, without considering the evidence adduced on the defence side, based on the findings of A.S.No.105 of 1998 erroneously decreed the suit and therefore, the decree and judgment of Trial Court are liable to be set aside. During the pendency of the appeal, the petitioners / appellants have filed a petition under Order 41 Rule 27 C.P.C, to receive the additional documents. The documents are deposition of D.W.2 in the connected suit in O.S.No.268 of 1996, on the file of the Subordinate Judge, Virudhunagar and other documents are pattas in respect of the properties. Those documents are essential to prove that already the partition was effected between them, therefore, the said documents are to be received and the decree and judgment passed by the trial Court is liable to be set aside by allowing the Appeal.

13. The learned counsel for the respondents would contend that the properties are self acquired properties of the Veerappa Naicker. The respondents are daughters of Veerappa Naicker and the first appellant is son of Veerappa Naicker. During life time of Veerappa Naicker, he enjoyed the



A.S.(MD).No.26 of 2004

properties and after the demise of Veerappa Naicker, the respondents/ plaintiffs are entitled to 2/3 share of the suit properties and the 1st appellant / 2nd defendant is entitled to 2/3 share over the suit properties. Before the trial Court, they have examined P.W.1 and 2 and marked Ex.A1 to Ex.A7. Some of the properties were enjoyed by the plaintiffs for their convenience and no partition was effected between the parties by metes and bounds. The defendant has pleaded oral partition and the same is not proved through sufficient evidence. Therefore, the trial Court after taking into consideration, of all the aspects and that already in the connected Appeal Suit in A.S.No.105 of 1998, this Court decided that the suit properties are undivided properties and correctly decreed the suit and thereby, the decree passed by the trial Court in order and the present Appeal is liable to be dismissed.

14. As far as Petition filed under Order 41 Rule 27 C.P.C, to receive the additional document is concerned, the document sought to be is in respect of deposition of witness D.W.2 in another suit and the same cannot be received as an evidence. The above said deposition is with respect of the suit in O.S.No.268 of 1996. In that suit, the properties are not one and the same properties and the parties are also not one and the same. Therefore, the above



A.S.(MD).No.26 of 2004

deposition cannot be marked as document and the other documents are pattas and the petitioners have not satisfied the conditions mentioned under Order 41 Rule 27 C.P.C. and thereby, the said documents cannot be received as an additional evidence and the Petition is liable to be dismissed.

15. This Court heard both sides and perused the records and upon hearing both sides perusing the records and judgment of the trial Court the points for determination in this appeal are as follows:

i) Whether the suit properties are joint family properties of Veerappa Naicker and the plaintiffs and 1st defendant are in joint possession of the suit property?

(II) Whether already partition was effected between the parties as held by the defendants?

(III) Whether the plaintiffs are entitled to partition over the properties, if so, what is the quantum of their share?

(IV). Whether C.M.P.(MD)No.14683 of 2023 is liable to be allowed or not?

(V). Whether this Appeal is liable to be allowed or not?



A.S.(MD).No.26 of 2004

WEB COPY

Point No.I:

16. The plaintiffs have filed the main suit for the relief of partition and separate possession. According to the plaintiffs, the properties belonged to their father and the properties are his self acquired properties. The plaintiffs are daughters of their father through 2nd wife and the 1st defendant is son born to their father through 1st wife. According to the 1st defendant, the relationship is admitted, but he denied that the properties are not self acquired properties of Veerappa Naicker and they are ancestral properties of the said Veerappa Naicker. Therefore, this Court has to decide whether the said properties are ancestral properties or self acquired property of Veerappa Naicker. In this context, P.W.1 and P.W.2 were examined and the defendants not entered into witness box. P.W.1 and P.W.2 in their evidences stated that the properties are self acquired properties of their father Veerappa Naicker, but they have not produced any sale deeds in the name of their father Veerappa Naicker. Per contra, the defendants produced Ex.B1 settlement deed executed by 2nd plaintiff in favour of her own daughter, namely, Krishnaveni, in that deed, she stated that the property belongs to her through ancestrally. Further, while filing proof affidavit, P.W.1, admitted that the



A.S.(MD).No.26 of 2004

properties are ancestral properties of her father and they now only have knowledge about the same. Therefore, she herself admitted that the properties are ancestral properties. Though the defendants have not adduced any oral evidence Ex.B1 shows that the property is ancestral property of the Veerappa Naicker. As far as joint possession is concerned, P.W.1 and P.W.2 have admitted in their evidences that they separately enjoying the the properties and they also got separate pattas to their shares. Further, P.W.1, in her cross examination admitted that she got separate patta to her properties and she has been paying separate tax to the properties. Seethammal her sister also constructed separate house before 30 years and she got separate patta and paid tax separately. Further, she admitted that she does not know for how many properties she sought for partition and who are all the share holders in 1st item of the property and she is not in a position to speak about the joint possession of the properties. P.W.2 also admitted that she cannot say about the portion of the properties mentioned in the written statement and her mother only can say about the same. Therefore, from the above, it is clear that the plaintiffs failed to prove the joint possession.



A.S.(MD).No.26 of 2004

Point No.II :

WEB COPY

17. There is no dispute in respect of relationship of the parties and the nature of the property. It is admitted that the properties are belonged to Veerappa Naicker and the said Veerappa Naicker died intestate leaving behind the plaintiffs and the defendants, as legal heirs to succeed his estate.

18. According to the plaintiffs, the properties of Veerappa Naicker are under the common and joint possession of the plaintiffs and the defendants. They are jointly entitled to 2/3 shares and the first defendant is entitled to 1/3 share of the properties. According to the defendants, the properties already partitioned between the parties, hence, the shares were allotted as shown in the written statement. On the side of the plaintiffs, they examined P.W.1 and P.W.2 and marked Ex.A1 to Ex.A7 and no witnesses were examined on defendants' side and only marked Ex.B1 and also Ex.C1 to Ex.C3 were marked. In this context, P.W.1 in his evidence deposed that the properties are under the common enjoyment and there was no partition between the parties. When the defendants are partitioned, the defendants not amendable for partition, thereby, already there was a dispute pending between them in respect of pathway and suit in O.S.No.268 of 1996 was filed by the



A.S.(MD).No.26 of 2004

first defendant. The suit is filed after the suit in O.S.No.268 of 1996. P.W.1 in his evidence during cross examination admitted that "சீத்தம்மாள் ராமராஜன் உள்ளார். அவருக்கு வேறு வேலை கிடையாது. சீத்தம்மாள் என்பவருக்கு சாத்தாருக்கு மேற்கே உள்ள சல்வார்பட்டியாகும். அவருடைய பூர்வீக சொத்துக்கள் அங்கு தான் உள்ளது. சீத்தம்மாள் என்பவருக்கு என் தகப்பனார் உயிருடன் இருக்கும் போதே பிரித்துக் கொடுத்து விட்டார்கள். சிறிது சிறிதாக பிரித்துக் கொடுத்துவிட்டார்கள். அந்த மாதிரி வீரப்ப நாயக்கர் பிரித்துக் கொடுக்கையில் எனக்கு 21 வயது இருக்கும். வீரப்ப நாயக்கர் சொத்துக்களை பிரித்துக் கொடுக்கையில் எனக்கு நேரடியாக தெரியும்."

19. Therefore, P.W.1 admitted the partition of properties by her father Veerappa Naciker, during his life time. Further she admitted in her evidence that அ.வ.எண்.268/1996 என்னை சாட்சியாக விசாரித்தார்கள். அதில் என் அப்பா வீரப்பநாயக்கர் உயிருடன் இருந்த போதே அவருக்குப் பாத்தியப்பட்ட சொத்தை ஆளுக்கு இவ்வளவு வைத்துக்கொள்ள வாய்மொழியாக சொன்னதாகக் கூறியுள்ளேன். எனக்குக் கொடுத்தது போல் எனது தகப்பனார் 1-வது வாதி ராமசாமிக்கு கொடுத்தார் எனக் கூறியுள்ளேன்.

Therefore, from the evidence of P.W.1, it is clear that she admitted the oral partition even in the previous suit in O.S.No.268 of 1996. Therefore, P.W.1 clearly admitted the oral partition during the life time of her father.



A.S.(MD).No.26 of 2004

WEB COPY

20. Further, she stated that "வீரப்ப நாயக்கர் உயிருடன் இருந்த காலத்தில் ராமசாமி நாயக்கருக்கு நஞ்சை / புஞ்சையில் கொஞ்சம் விட்டுக்கொடுத்தார்கள். வீட்டிலும் கொஞ்சம் கொடுத்தார்கள். பெருமாள்சாமிக்கும் கொஞ்சம் கொடுத்தார். வீரப்ப நாயக்கரும் கொஞ்சம் வைத்துக்கொண்டார். என் அம்மா இருந்தபோது எனக்கும் சீத்தம்மாளுக்கும் கொஞ்சம் சொத்து கொடுத்தார். அந்த காலியிடத்தில் என்கு கிழக்கு பாகம். சீத்தம்மாளுக்கு மேற்குப் பாகம். எனக்கு கிடைத்த பாகத்தை நான் 23.2.94 என் மகள் கிருஷ்ணவேணிக்கு இனாம் செட்டில்மெண்டாக பாத்தியப்படுத்தி கொடுத்துள்ளேன். அந்த பத்திரத்தில் கிழக்குமாலாக பிரதிவாதியின் வீடு இருப்பதாகவும், மேற்குமாலாக சீத்தம்மாள் காலியிடம் என்றும் சாட்டப்பட்டுள்ளது. இதுபோக மற்ற சொத்துக்களை நான் தான் அனுபவித்து வருகிறேன். அந்த சொத்துக்களுக்கு தனிப்பட்டா கொடுத்துள்ளார்கள் அவ்வாறு கொடுத்து புதிதாக சட்டம் வந்தபோது கொடுத்தார்கள். அது முதல் என் பாகத்திற்கு நானே அனுபவித்து வரி செலுத்தி வருகிறேன். எனக்கு 4, 5 மரைக்கால் இடம் நஞ்சையில் கொடுத்தார்கள். புஞ்சையில் 14 ஏக்கர் எனக்குக் கொடுத்தார்கள். சீத்தம்மாளுக்கும் எனக்கும் சேர்த்து கொடுத்ததை நான் கூறி உள்ளேன்." Further, she stated that "நான் மகனுக்கு எழுதிக்கொடுத்த காலியிடத்திற்கு மேற்கே சீத்தம்மாள் 3 வீடு கட்டியிருக்கிறார்கள். அதை அவர் எவ்வளவு செலவழித்து கட்டியவிபரம் எனக்குத் தெரியாது. அந்த வீடுகளை கட்டி சுமார் 30 வருடம் இருக்கும்."

21. Therefore, from the evidence of P.W.1, it reveals that already properties were allotted to P.W.1 and Seethammal was also allotted some properties. It shows that already properties were partitioned between the



A.S.(MD).No.26 of 2004

parties. Yet another evidence is P.W.2 and he has in his evidence in the cross examination stated that the suit properties self acquired properties of Veerappa Naicker, already he allotted some properties to his wives and he retained some properties. After demise of his grand father, Veerappa Naicker, the properties are enjoyed by the first defendant. The plaintiffs demanded partitioned, but he refused. P.W.2 in his cross examination stated that "என் அம்மாவுக்கும் சித்திக்கும் பாகம் கொடுக்கப்பட்டு பிறகு எடுத்துக்கொள்வதாக ஒப்பந்தம் ஏற்பட்டதாக கூறியிருக்கிறார். நில உச்ச வரம்பு சட்டத்தில் என் தாத்தாவுக்கு பாத்தியப்பட்ட சொத்துக்களை எடுத்துள்ளார்கள். பிரிக்கப்படாமல் இருந்த காரணத்தினால் எடுத்திருக்கிறார்கள். இந்த சொத்துக்கள் தவிர என் தாத்தா ராமலிங்கா மில்லில் ஒரு டெபாசிட் வைத்திருந்தார். என் தாத்தா காலத்தில் விற்ற சொத்துக்களில் பாகம் வேண்டாம். என் தாத்தா இறந்தபிறகு பாகம் பிரித்துக் கொடுக்கவில்லை. என் தாத்தா 1990-ல் இறந்தார். 1990-க்குப் பிறகு பாகம் கேட்டுக்கொண்டே இருந்தோம். பிரதிவாதிகள் அப்புறம் பார்க்கலாம் என்று கூறிக்கொண்டேயிருந்தார்கள். பாகம் கோரி வழக்கு தாக்கல் செய்யவில்லை 1990 □ 1992-ல் பெரியவர் முன்னிலையில் பேசினோம். அதன்பிறகும் பாகப்பிரிவினை வழக்கு போட உடனே நடவடிக்கை எடுக்கவில்லை.

22. Therefore, from the evidence of P.W.3, it reveals that father of the plaintiffs, died in the year 1990. Thereafter, the defendants filed suit in the year 1996 and thereafter they filed this suit in the year 2001 for seeking



A.S.(MD).No.26 of 2004

partition. The plaintiffs have filed a suit immediately after the demise of their father and even after filing of the suit in 1996 by the defendants, the plaintiffs have not chosen to file a suit immediately. Further P.W.2 in his cross examination admitted that "கிருஷ்ணம்மாள் தாவாச் சொத்துக்களில் சில சொத்துக்களை தனித்து அனுபவித்து வந்ததார். வீரப்ப நாயக்கரின் முதல் மனைவி தாவாச் சொத்துக்களில் எந்த எந்த சொத்துக்களை அனுபவித்து வந்தார்கள் என்பது தெரியாது.". Further, he admitted that "கதவு எண். 97 பி ஆதியில் மாட்டுக்கொட்டமாக இருந்தது. அந்த இடத்தின் கிழக்கே குருவம்மாளுக்கும் மேற்கே சீத்தம்மாளுக்கும் ஒதுக்கப்பட்டது. குருவம்மாள் மகளின் பெயர் கிருஷ்ணவேணி. குருவம்மாள் அவர் பாக இடத்தை அவரது மகள் கிருஷ்ணவேணி பெயருக்கு 23.2.94ல் செட்டில்மெண்ட் எழுதி வைத்துள்ளார்." Therefore, he admitted that already properties were allotted to the plaintiffs, Guruvammal and Seethammal, the said Guruvammal settled her share to her daughter Krishnaveni. Further, he admitted that "என் தாயார் மற்றும் சித்தி ஆகியோருக்கு கிடைத்த பாகத்திற்கு தனியாக பட்டா வேண்டுமென்று மனுக்கொடுத்திருக்கிறார்கள்." Therefore, P.W.1 and P.W.2, during the cross examination they categorically admitted that already properties were allotted to them and there by the defendants have probablised their defence that already properties were partitioned between the parties.

23. The learned counsel for the respondent has drawn the



A.S.(MD).No.26 of 2004

WEB COPY

attention of this Court that the defendants have not entered into the witness box and cannot say that exact month of partition in the written statement. They only stated that the properties are partitioned and they did not mention that the year and date. Therefore, though the properties were enjoyed by the plaintiffs separately, that is only for the convenient enjoyment of the parties and the partition was not effected between the parties by metes and bounds. It is true that the defendants have not stated the exact year of partition of the properties. But at the same time, the plaintiffs categorically admitted in the evidence that already properties were allotted to them during the life time of their father and the same also separately enjoyed by them. The defendants have also produced Ex.B1. On perusal of Ex.B1, it reveals that the second plaintiff executed a settlement deed in favour of her daughter in respect of the her portion of the property. In that deed, she had categorically stated that the property is her absolute property and she was in separate possession and enjoyment of the property. Further, in the description of property while mentioning four boundaries also they referred the properties of first defendant and one of the boundaries was mentioned as first defendant and the properties were partitioned between the parties. Therefore, non examination of defendants as witness will not affect the case of the defendants.



A.S.(MD).No.26 of 2004

WEB COPY

24. The plaintiffs have produced documents Ex.A1 and Ex.A2, those documents are in respect of one portion of property. As far as the documents Ex.A3 and Ex.A4 are concerned, already the plaintiffs have given a request for separate patta to the properties and the same was objected by the first defendant. Those documents are in the year 1994 and 1996. in the documents, the plaintiffs have admitted in the petition that the properties are belong to them. Therefore, the plaintiffs admitted their separate properties.

More over, P.W.1 in her cross examination said that வீரப்ப நாயக்கர் உயிருடன் இருந்த காலத்தில் ராமசாமி நாயக்கருக்கு நஞ்சை, புஞ்சையில் கொஞ்சம் கொடுத்தார்கள். வீட்டிலும் கொஞ்சம் கொடுத்தார்கள். பெருமாளுக்கும் கொஞ்சம் கொடுத்தார். வீரப்ப நாயக்கர் கொஞ்சம் வைத்துக்கொண்டார். என் அம்மா இருக்கும் போது எனக்கும் சீதம்மாளுக்கும் கொஞ்சம் சொத்து கொடுத்தார். பிரதிவாதிகள் வீடுகட்டியுள்ள இடத்திற்கு மேற்கு சீதம்மாளுக்கும் எனக்கும் என் அப்பா பாகமாகக் கொடுத்தார். அந்த காலி இடத்தில் எனக்கு கிழக்கு பாகம், சீதம்மாளுக்கு மேற்கு பாகம். எனக்கு கிடைத்த பாகத்தை நான் 23.02.1994-ல் என் மகள் கிருஷ்ணவேணிக்கு இனாம் செட்டில்மென்மாக பாத்தியப்படுத்திக் கொடுத்தேன். அந்தப்பத்திரத்தில் கிழக்கு மாலாக பிரதிவாதி வீடு இருப்பதாகவும், மேற்கு மாலாக சீதம்மாள் காலியிடம் என்றும் காட்டப்பட்டுள்ளது. இது போக மற்ற சொத்துக்களை நான் தான் அனுபவித்து வருகிறேன். அந்த சொத்துக்களுக்கு தனிப்பட்டா கொடுத்துள்ளார்கள். அது முதல் என் பாகத்தை நானே அனுபவித்து வரி செலுத்தி வருகிறேன். In view of the above evidence, it is



A.S.(MD).No.26 of 2004

WEB COPY

clear that already properties were orally partitioned during life time of Veerappa Naicker and all the sons and daughters of Veerappa Naicker were allotted shares and they enjoyed separately. It is not the case of the plaintiffs for the share allotted to Veerappa Naicker, but, the suit is for entire properties. Therefore, on careful perusal of the entire evidence adduced by the parties, it is clear that the properties were already partitioned between the parties.

25. It is well settled law that admission is the best evidence and hence admitted facts need not be proved under Section 58 of the Indian Evidence Act. In this case also, the plaintiffs' side witnesses categorically admitted the allotment of properties and their separate enjoyment of the properties and some of the properties were settled by the second plaintiff to her daughter, but her daughter was not added in this case as party and the property settled to her was included, in this suit, thereby, also the suit is not maintainable without including Krishnaveni in who's favour settlement deed was executed. Further, according to the defendants, the plaintiffs have got separate patta for some of the properties allotted to them and for some of the properties the defendants objected and hence, joint patta issued.



A.S.(MD).No.26 of 2004

WEB COPY

26. In that context, the learned counsel for the appellants has relied on the judgment of the Hon'ble Supreme Court reported in **2020-9-SCC-1 (Vineeta Sharma V. Rakesh Sharma)**, wherein, it is held as follows:-

"137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

137.4. The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of



WEB COPY



A.S.(MD).No.26 of 2004

ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

27. Therefore, from these judgment, it is clear that oral partition can be accepted in an exceptional cases, where plea of oral partition is supported by public documents and partition is finally evinced in the same



A.S.(MD).No.26 of 2004

WEB COPY

manner as it had been effected by a decree of a Court, it may be accepted.

The defendants proved the case that already properties were partitioned through the oral partition and the properties were allotted to the plaintiffs and defendants and they have been in separate possession and enjoyment of the properties of their respective shares and the plaintiffs also alienated some properties through Ex.B1 registered settlement deed. Therefore, the case law squarely applicable to the present facts of the case.

28. The learned counsel for the respondents also relied on the same judgment of *Vineeth Sharma* by stating that the plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the Registration Act or effected by a decree of Court, in view of explanation to Section 6(5) of 1956 Act. In this case, though the properties are enjoyed for convenience no partition was effected. But, the plaintiffs themselves admitted the oral partition and their separate allotments of shares through cross examination. Therefore, non examination of the defendants as witnesses is no way affected the case of the defendants. In view of the admissions made by the plaintiffs, the defendants proved their case of oral partition. Further, the learned counsel appearing for



A.S.(MD).No.26 of 2004

WEB COPY

the respondents would contend that as per Ex.A3 and Ex.A4, the patta is in the name of the plaintiffs and the 1st defendant and thereby the properties were not partitioned, but in the said Ex.A3 itself, the plaintiffs claimed that the separate patta for their properties and the same was objected by the 1st defendant, it is admitted fact that at that time there was a dispute pending between the parties in respect of pathway and moreover, there is no whisper in the Ex.A3 and Ex.A4, for which reason the 1st respondent objected for sub division, therefore, mere objection raised by the 1st respondent is not sufficient to hold that the properties were not partitioned between the parties. Per contra, the plaintiffs admitted the partition through Ex.A3 by seeking sub division. Further, the learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court reported in **2023-2-CTC-755 (Prasanta Kumar Sahoo V. Charulata Sahu)**. On careful consideration of the said judgment, it will not be applicable to the present facts of the case, since the facts of the case are distinguishable.

29. In view of the above said discussion, this Court is of the considered opinion that the plaintiffs failed to prove their case, per contra the defendants proved the oral partition. The trial Court, without considering the



A.S.(MD).No.26 of 2004

above said aspects, came to the conclusion that the properties were undivided properties and thereby the plaintiffs are entitled to 7/27 shares of the properties. Thus, the Point No.II is answered, accordingly.

Point No. III:

30. The plaintiffs have filed this suit for partition of their 2/3 shares, but the defendants have taken plea that already oral partition was effected and properties are under separate and enjoyment of the parties concerned. This Court has already decided in the previous point that the properties were already partitioned between the parties and they are under separate possession and enjoyment over their respective shares of the properties and thereby, the plaintiffs are not entitled to share over the suit property. Moreover, the plaintiffs admitted that some of the suit properties were sold by their father Veerappa Naicker during his life time itself and the P.W.1 has no knowledge of all the properties of Veerappa Naicker and the properties already sold by the Veerappa Naicker also included in the suit schedule but, those purchasers are not parties to the suit. The plaintiffs are not in a position to say what are all the properties are available for partition and without any correct particulars, they filed the suit. Therefore, the



A.S.(MD).No.26 of 2004

plaintiffs are not entitled for the relief of partition. Thus, Point No. III is answered, accordingly.

Point No.IV:

31. During pendency of the appeal, the appellants/ petitioners have filed the petition to receive additional documents.

32. According to the petitioner, he filed to receive the documents of deposition of D.W.2 herein, who deposed in the pending suit. The petitioner has not stated valid reasons for non production of the documents before the trial Court, and the previous suit is only for particular portion of the property, but the present suit is for several properties. The respondents also strongly opposed to receive those documents stating that they are not comes under the purview of Order 41 Rule 27 of C.P.C.

33. This Court carefully perused the records and it appears that the properties in both suits are not one and the same and the document that is deposition is not come under the purview of Section 33 of the Indian Evidence Act. The other two documents are new records, those pattas are in



A.S.(MD).No.26 of 2004

respect of individual properties. The available documents and evidence are sufficient to decide the case effectively and thereby, the additional document filed by the petitioners/ appellants are no way helpful to decide the case. Thereby, the Petition is liable to be dismissed and the Petition is dismissed. Accordingly, this Petition in ***C.M.P.(MD)No.14683 of 2023 is dismissed.*** Thus, Point No. IV is answered.

Point No.V:

34. The plaintiffs have filed the suit for partition before the trial Court and the trial Court after considering the evidences, decreed the suit. This Court in the previous points after analysing the evidences decided that already the properties were partitioned and the same was also admitted by the plaintiffs and the plaintiffs have failed to prove their case. The trial Court came to the conclusion that even though there was a separate enjoyment of the portions, the properties were not partitioned between the parties by metes and bounds and only for convenience and enjoyment, the properties were allotted. If so, settlement deed executed in favour of the daughter of second defendant, viz., Krishnaveni is also a necessary party to the suit. But, the trial Court has failed to consider that the plaintiffs in their evidence categorically admitted the partition through allotment of shares and their



A.S.(MD).No.26 of 2004

separate enjoyment and separate pattas also granted to the plaintiffs and the 2nd defendant settled the property to her daughter by admitting her separate possession and enjoyment with specific four boundaries, but the said aspects have not been considered by the trial Court. The trial Court relied the joint patta and the orders passed by the revenue authorities, but failed to consider that the plaintiffs themselves admitted partition and thereby applied for the division of the properties. P.W.1 and P.W.2 admitted their separate enjoyment and allotment of shares and the same was not considered by the trial Court, thereby the decree and judgment passed by the trial Court are unsustainable and the same are liable to be set aside.

35. In the result, the Civil Miscellaneous Petition in C.M.P. (MD)No.14683 of 2023 is dismissed.

36. In the result, this ***Appeal is allowed*** and the decree and judgment dated 06.08.2004 made in O.S.No.31 of 2004 on the file of the Principal District Judge, Srivilliputhur, is set aside and the suit in O.S.No.31 of 2004 is dismissed. Considering the partition and relationship of the parties, there is no order as to costs.

23.02.2024

NCC : Yes/No

30/32



A.S.(MD).No.26 of 2004

Index : Yes / No
Internet : Yes / No
LS

Note: Registry is directed to return the original document,
by replacing the same with xerox copy.

To

1. The Principal District Judge,
Srivilliputhur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD).No.26 of 2004

P.DHANABAL,J.

LS

A.S(MD)No.26 of 2004

23.02.2024