



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 424 of 2018

and

C.M.P.No.11140 of 2018

1. S.Sukumar (died)

2. Latha

3. Manimozhi

1st appellant died, A3 is brought on record as
LRs of deceased first appellant vide order of
court dated 04/06/2024 made in CMP.No.11588
of 2024

..Appellants

Vs

1. Gowri

2. P.Krishnamoorthy

3. D.Subramanaian

4. K.Duraisamy

5. C.Bhaskar

6. M.Venkatraman

7. N.Balusamy

8. N.Sivakumar

9. C.Palanisamy

10.D.Eswaramoorthi

11.B.Kesavamoorthy

..Respondents

Appeal Suit filed under Section 96 of CPC read with Order 41 Rule 1 of CPC seeking to set aside the Judgement and Decree dated 21.12.2017 passed in O.S.No.170/2012 on the file of on the file of I Additional District Judge, Erode and decree the suit in O.S.No 170/2012 on the file of on the file of I Additional District Judge, Erode.



For Appellants:

Mr.P.Valliappan, Senior Counsel for
Mr.Sithirai Anandam

For Respondents:

Mr.A.Sundaravadhanan for R1 and R2

Mr.C.Ramaraj for
Mr.M.Guruprasad for R3 and R4

Mr.V.S.Kesavan for R5

Mr.V.Sekar for R6

No appearance for R7 to R11

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

Plaintiffs in O.S.No.170 of 2012 on the file of the I Additional District Court Erode, aggrieved by the dismissal of the suit by judgment dated 21.12.2017, had filed the present Appeal.

2. The suit in O.S.No.170 of 2012 had been filed seeking partition and separate possession of the properties described in the schedule to the plaint. There were totally seven items in the properties, which had been described in the plaint. It is to be noted that as on date items 1 to 4 have been sold and the purchasers have also been impleaded as parties. However, learned Senior Counsel appearing for the appellants very fairly submitted that the Appeal is not pressed as against such sale with respect to items 1 to 4. The learned Senior Counsel further contended that items 5 and 7 are available for partition and



separate possession. It is, however, contended on behalf of respondents that item 5 had been purchased in the name of the first defendant Palaniyathal alias Palaniammal, who had executed a settlement deed in favour of the third defendant P.Krishnamoorthy and the said P.Krishnamoorthy had executed a sale deed with respect to item 5 and that therefore, item 5 is also not, as on date, available. The contention as to whether Palanimmal had any right to execute the settlement deed is one of the issues raised by the learned Senior Counsel appearing for the appellants. It is further contended that item 7 had also been sold and it is very fairly contended by the learned Senior Counsel appearing for the appellants that the appeal is not pressed as against such sale of item 7. Therefore, the appeal is confined to items 5 and 6 of the suit properties alone.

3. Even before proceeding further, it would only be appropriate if the relationship among the parties are stated. The first defendant Palaniyathal @ Palaniammal was married to one Sengottaiyan. The properties, which are the subject matter of the suit were allotted to Sengottaiyan in a partition deed entered into between him and his three brothers, Thangamuthu, Palanisamy and Nallasamy and also his father Chennimalai Gounder. In that partition deed, which had been marked as Ex.A3 dated 23.8.1976, 'C' schedule property had been allotted to Sengottaiyan. Sengottaiyan died in the year 1990, and, according to the plaintiffs, intestate. The first plaintiff Sukumar is the son of Sengottaiyan. The second defendant Gowri is the daughter of Sengottaiyan. The third defendant P.Krishnamoorthy is the son of the second defendant



Gowri. The other defendants in the suit are subsequent purchasers of the suit properties which had been, according to the plaintiff, dealt with by Sengottaiyan. without any right to execute any sale or to bequeath the property. It is contended that Sengottaiyan had executed a Will, which had been produced during trial as Ex.B6 dated 13.05.1986. The right of Sengottaiyan to bequeath the properties under the Will was put to serious challenge by the plaintiff and again put to challenge in this Appeal.

4. In the Will, it had been mentioned that the properties, which he had bequeathed, had been allotted to him in the partition deed dated 03.08.1976 entered into by him on the one hand and his brothers and father on the other hand. He had also stated in the Will that he was working as a Document Writer and owing to the advancement of his age, he was executing the Will. He had very clearly given the flow of title with respect to each property, which he had mentioned in the Will. He had stated that with the monies available with him and with his wife, the first defendant Palaniyathal alias Palaniammal, each one of them had purchased separate houses and since they were adjacent houses, it would only be appropriate that such houses are bequeathed to his wife. He had very clearly stated that the 'A' schedule property is bequeathed to his wife Palaniyathal alias Palaniammal for her to enjoy the same. With respect to his daughter Gowri, he had also similarly stated that 'B' schedule property could be bequeathed to her. With respect to the first plaintiff Sukumar, his son, he had also stated that the first plaintiff did not complete his education and he had been



married on 7.12.1970 and that he had separated from him and is living with his in laws and also was a Railway Contractor. After mentioning about the jewellery, which had been given at the time of his marriage, he had further stated the properties which could be bequeathed to the said Sukumar. He had also provided for the second plaintiff/daughter of the first plaintiff. He had bequeathed 'C' schedule property to his son Sukumar/first plaintiff.

5. Even before proceeding further, it must also be stated that during the pendency of the suit or even prior to the institution and during the pendency of the Appeal, both Sukumar-the first plaintiff and Gowri-the second defendant either individually or jointly had dealt with and conveyed the properties, which had been bequeathed to them. This fact had been pointed by the learned counsel for the first respondent who contended that the first plaintiff had acted under the Will and having acted in terms of the Will and taken benefit under the Will, cannot turn around and question the right to execute the said Will.

6. The learned Senior Counsel for the appellants pointed out that Sengottaiyan and his wife Palaniyathal alias Palaniammal did not have any independent income and that the only property, which had yielded income is the properties, which was allotted under the partition deed, Ex.A3 dated 23.08.1976 and therefore, such properties had been characterized as ancestral in nature. It had been stated that in the partition deed, Ex.A3, the properties are described as ancestral properties (pithurarjithya) and therefore, if at all, Sengottaiyan could execute a Will, it could be only in respect of his share. It had been stated that



even though the properties are to be considered as ancestral, then on the birth of Sukumar, he would get a share over the same and therefore, the entire properties could not be bequeathed by Sengottaiyan.

7. Further, a perusal of the Will, Ex.B6 shows that Sengottaiyan was working as Document Writer and had income and he had stated that with his income, he had purchased the 5th item of suit property in the name of his wife Palaniyathal alias Palaniyammal. It is also contended that in the evidence of DW1/the second defendant Gowri had deposed that the properties are ancestral in nature and items 1 to 3 of properties had been allotted to Sengottaiyan in the partition deed and that she had also sold an extent of 1000 sqft, which had been allotted to her and that the first plaintiff and her mother had also attested the said sale. Such version of the deposition of DW1 was relied on by the learned Senior Counsel for the appellants to point out that the properties had been acquired from ancestral income and therefore, Sengottaiyan could not have executed the Will for the entire properties. But, the onus lies on the plaintiffs/appellants herein to first establish this fact. The first plaintiff did not graze the witness box and it was only the second plaintiff, who had adduced evidence as PW1. She was 9 years old at the time of partition. Therefore, she would not have direct knowledge about the partition deed executed or about the flow of title. There is no reason why the first plaintiff had not chosen to tender evidence. The burden is heavily on the plaintiffs to establish that the entire properties bequeathed in the Will, Ex.B6 were procured from and out of the



money yielded from the portion of the ancestral property allotted to Sengottaiyan.

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8. The second plaintiff, in her evidence had stated as follows:-

"8. இந்த வழக்கில் கண்டுள்ள 5-வது அயிட்ட சொத்தை எனது தாத்தா செங்கோட்டையன் பூர்வீக சொத்துக்களில் வந்த வருமானத்தைக் கொண்டும், சில பூர்வீக சொத்துக்களை விற்பதற்கு முன்பு, 1984-ம் வருடம் ஏற்படுத்தப்பட்ட 3 அக்ரிமெண்ட ஒப்பந்தம் மூலம் கிடைத்த தொகைகளைக் கொண்டும் 1ம் பிரதிவாதி பழனியம்மாள் பெயரில் எனது தாத்தா செங்கோட்டையன் பணம் கொடுத்து வாங்கினார். இதில் 1-ம் பிரதிவாதி பினாமி ஆவார். பின்பு எனது தாத்தா செங்கோட்டையன் சிறுசிறு பகுதிகளாக பலருக்கு 1990-ம் வருடத்திற்கு முன்பு விற்றுவிட்டார். அவரும் 1990-ம் வருடம் இறந்து விட்டார். மீதமுள்ள சொத்து இந்த வழக்கில் 5-வது அயிட்ட சொத்தாக காண்பிக்கப்பட்டுள்ளது. 5-வது அயிட்ட சொத்து 6.2.1984-ம் தேதியில் எனது தாத்தா



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செங்கோட்டையன் பணம் கொடுத்து (ரூபாய் 5000) வாங்கினார். 1984-ம் வருடத்திய 3 கிரைய பத்திரங்கள் மூலம் விற்ற தொகை ரூபாய் 34,869 ஆகும். மேற்படி கிரைய பத்திரங்களின் சான்று நகல்களை தாக்கல் செய்து உள்ளேன். 6ம் பிரதிவாதி பாஸ்கர் அவரது எதிர் வழக்குரையில் 6வது பாராவில் தாவா 5வது அயிட்ட சொத்தை 16.2.1984ம் தேதியில் செங்கோட்டையன் வாங்கியுள்ளார் என உண்மையை ஒப்புக்கொண்டு சொல்லியுள்ளார். 1ம் பிரதிவாதி பழனியம்மாள் மற்றும் அவரது கணவர் செங்கோட்டையன் ஆகியோர்களுக்கு தனிப்பட்ட வருமானம் எதுவும் கிடையாது என்பதை பணிவுடன் தெரிவித்துக் கொள்கிறேன்.

9. இந்த வழக்கில் கண்டுள்ள 6வது அயிட்ட சொத்தை எனது தாத்தா செங்கோட்டையன் 2.3.1988ம் தேதி சென்னிமலை சார்பதிவாளர் அலுவலகத்தில் ஆவண எண் 173.1988 ஆக பதிவு, செய்து அவரது பெயரில் கிரையம் வாங்கினார். அதன் பதிவு சான்று நகல்களை



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நான் தற்போது தாக்கல் செய்து உள்ளேன்.
வாதிகளை ஏமாற்ற வேண்டும் என்கிற கெட்ட
எண்ணத்தில் 1ம் பிரதிவாதி பழனியம்மாள் 2ம்
பிரதிவாதி கௌரி பெயருக்கு தான கிரைய
பத்திரம் மூலம் மோசடியாக 9.6.2004ம் தேதியில்
எழுதிக்கொடுத்து விட்டார். மேற்படி தான
கிரைய பத்திரத்தின் பதிவு, சான்று நகல்-ஐ
தாக்கல் செய்து உள்ளேன். அதில்
கண்டுள்ளவாறு சொத்து விவரம்
குறிப்பிடப்பட்டுள்ளது."

9. This is the evidence relating to items 5 and 6 of the plaint schedule properties, which are now pressed as available for partition and separate possession. But, however, what is stated is only a mere statement that 5th item of property was purchased from the income obtained from the ancestral property and upon the agreement, which had been entered prior to 1984 and the income obtained therein, in the name of the first defendant. But, however, this statement has not been proved in the manner known to law. It must be very clearly established that income yielded from the ancestral property was surplus and only with such surplus income the properties were purchased. Mere statement that ancestral property had yielded income is not sufficient. The



evidence will have to travel further to prove that the properties yielded income, there was surplus after meeting the family expenses and from and out of such surplus income the properties were purchased. In the absence of such evidence, we are not able to accept the contention that the properties had the character of ancestral property and that therefore, Sengottaiyan did not have any right to execute the Will.

10. As stated by us earlier, the Will Ex.B6 had been acted upon by the first plaintiff and the second defendant Gowri. The first plaintiff and the second defendant Gowri had dealt with the properties allotted to them individually and jointly. The first plaintiff, having done so, cannot question the right of Sengottaiyan to execute the Will. Therefore, we are of the opinion that the plaintiffs cannot sustain the suit for partition and separate possession claiming that the properties are ancestral in nature. We find no reason to interfere with the judgment of the Trial Court dismissing the suit. The Appeal Suit is dismissed. No costs. The connected Miscellaneous Petition is closed.

(C.V.K.,J.) (K.R.S.,J.)
07-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ssk

To
I Additional District Judge,
Erode.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

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