

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.04.2015

Delivered on : 26.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

A.S.No.255 of 2013

and

M.P.Nos.1 of 2013 and 1 of 2014

1.Lakshmi

2.M.T.Thangamani

.. Appellants/plaintiffs

-Vs-

1.Somasundaramoorthy

2.K.P.Palanisamy

3.Jeyapriya

4.P.Krishna Prabu

5.Sivakami

.. Respondents/Defendants.

Appeal filed under Order 41 Rule 1 r/w Section 96 of the Civil Procedure Code against the judgment and decree dated 15.02.2013 in O.S.No.35 of 2004 on the file of IV Additional District Judge, Erode District at Bhavani.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.V.Raghavachari
for Mr.V.K.Gowtham for R1
Mr.S.Dinesh for R2 to R5

JUDGMENT

This appeal has been preferred against the decree of the trial court (IV Additional District Judge, Erode District at Bhavani) made in O.S.No.35 of 2004. The said suit came to be filed by the appellants herein against the defendants therein; (a) for cancellation of the partition deed dated 28.01.2002 registered as document No.3789/2002 in the office of the Sub Registrar, Sathyamangalam in respect of the shares of the appellants/plaintiffs; (b) for a declaration of the title of the appellants/plaintiffs in respect of their 1/3rd share in the suit properties; c) for partition directing division of the suit properties and separation of the 1/3rd

share of the appellants/plaintiffs from the rest of the shares; (d) for direction against the defendants to pay mesne profits at the rate of Rs.66,666/- per annum and (e) for cost.

2. The trial court, after trial, dismissed the suit by a judgment and decree dated 15.02.2013. Questioning the correctness of the said decree and challenging the same as erroneous, the appellants/plaintiffs have brought forth the present appeal under Order XLI Rule 1 r/w Section 96 of the Code of Civil Procedure.

3. Some of the parties died during the pendency of the suit and their legal representatives came to be impleaded. Hence the ranks of the parties in the appeal slightly vary from the same in the suit. For the sake of convenience, the parties are referred to in accordance with their ranks in the suit and at appropriate places their ranks in the appeal shall also be given.

4. The averments made by the appellants/plaintiffs in their plaint, in brief, are as follows:

The first defendant Chinnammal @ Rayyammal was the widow of Late Nachimuthu Gounder. Deceased S.N.Duraisami and the second defendant Thulasiammal were their son and daughter respectively. The first plaintiff Lakshmi, second plaintiff Thangamani and third defendant Somasundaramoorthy are respectively the widow daughter and the son of Late S.N.Duraisamy. The second defendant Thulasiammal died during the pendency of the suit and defendants 4 to 7 are the legal heirs of the second defendant. Nachimuthu Gounder, his son S.N.Duraisamy and Somasundaramoorthy (D3) constituted a Hindu Undivided Family which possessed substantial ancestral properties yielding surplus income with which other properties were purchased in the name of Nachimuthu Gounder and also in the name of S.N.Duraisamy under nine sale deeds from 1968 to 1982. All those properties were treated and enjoyed as joint family properties. In addition, there were also other ancestral properties owned by Nachimuthu Gounder and his brothers. Nachimuthu Gounder died intestate on 12.08.1992. After his death, a partition was effected in respect of the said ancestral properties held by Nachimuthu Gounder and his brothers under a registered partition deed dated 30.11.1994. In the said partition, share of Nachimuthu Gounder was allotted to the members of the branch of Nachimuthu Gounder. The said properties obtained under the partition deed dated 30.11.1994 the properties purchased under the above said nine sale deeds and other ancestral properties were treated by the members of the branch of Nachimuthu Gounder as their joint family properties. Till the death of Nachimuthu Gounder intestate on 12.08.1992, the second plaintiff Thangamani remained unmarried. Meanwhile the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Act 1 of 1990) came into force with effect from 25.03.1989. Thus the second plaintiff Thangamani became a coparcener along with her father S.N.Duraisamy and brother Somasundaramurthy (D3). Nachimuthu Gounder and S.N.Duraisamy had half share each in the joint family properties as coparceners. On the death of Nachimuthu Gounder,

his half share devolved equally on : (I) the first defendant Chinnammal @ Rayammal (widow), (ii) S.N.Duraisamy (son) and (iii) second defendant Thulasiammal (daughter). Thus each one of the first and second defendants became entitled to $\frac{1}{2} \times \frac{1}{3} = \frac{1}{6}$ share in the suit properties. S.N.Duraisamy got $\frac{1}{2}$ share as coparcener and $\frac{1}{6}^{\text{th}}$ share as legal heir of Nachimuthu Gounder, thus making the total tally of his share in the suit properties to $\frac{1}{2} + \frac{1}{6} = \frac{4}{6} = \frac{2}{3}$. On the advent of Hindu Succession (Tamil Nadu Amendment) Act, 1989, the second plaintiff Thangamani became entitled to $\frac{1}{3}^{\text{rd}}$ of Duraisamy's $\frac{2}{3}^{\text{rd}}$ share as coparcener. Thus she became entitled to $\frac{2}{9} = \frac{4}{18}$ share. Similarly, Somasundaramoorthy, the third defendant became entitled to $\frac{4}{18}$ share as coparcener. On the death of Duraisamy intestate on 06.09.1994, his $\frac{4}{18}$ share devolved upon the third defendant (son), second plaintiff (daughter), first plaintiff Lakshmi (widow) and the first defendant (mother) in equal shares. Each one of them became entitled to $\frac{1}{18}$ share as per rule of succession as the legal heirs of S.N.Duraisamy. Thus the second plaintiff Thangamani in all became entitled to $\frac{5}{18}$ and the third defendant Somasundaramurthy became in all entitled to $\frac{5}{18}$. The first defendant Chinnammal @ Rayammal became entitled to $\frac{1}{6} + \frac{1}{18} = \frac{4}{18}$. The first plaintiff Lakshmi became entitled to $\frac{1}{18}$. The remaining $\frac{3}{18}$ shall belong to Thulasiammal, the second defendant. Thus the parties got the following shares:

1 st Plaintiff Lakshmi	$\frac{1}{18}$	=	$\frac{3}{54}$
2 nd Plaintiff Thangamani	$\frac{5}{18}$	=	$\frac{15}{54}$
1 st Defendant Chinnammal @ Rayammal	$\frac{4}{18}$	=	$\frac{12}{54}$
2 nd Defendant Thulasiammal	$\frac{3}{18}$	=	$\frac{9}{54}$
3 rd Defendant Somasundaramoorthy	$\frac{5}{18}$	=	$\frac{15}{54}$

As the defendants 1 to 3 joined together and began to act against the interest of the plaintiffs, the plaintiffs were constrained to seek partition. But the defendants 1 to 3 refused to agree for an amicable partition. On the other hand, the third defendant Somasundaramoorthy along with his associates Ravikumar, Natarajan, Muthusamy and others caused a threat to the plaintiffs stating that they would be done away with in case they insisted upon a partition. They also warned the plaintiffs not to go to the court or police claiming any right in the suit properties. Thereafter, the plaintiffs made enquiries and they were given to understand that the defendants 1 to 3 had brought into existence a registered partition deed dated 28.11.2002 showing the plaintiffs also as parties to the said partition by arranging other persons to impersonate the plaintiffs for the execution and registration of the said document. It has been wrongly recited in the said document as if the plaintiffs got a sum of Rs.75,000/- in lieu of their shares in the immovable properties. The said document is a forged one, registration of which was secured by playing fraud and impersonation. The plaintiffs never signed the said partition deed; nor did they appear before the Registering Authority to register the

same. The registration should have been secured by impersonation. On a complaint lodged by the second plaintiff Thangamani, a case was registered on the file of Sathyamangalam Police Station as Crime No.699/2010 against the defendants and their associates. Some of them were arrested and thereafter released on bail, whereas some of them got anticipatory bail. The value of the suit properties would be Rs.30,00,000/- and the share of the plaintiffs would not be less than Rs.10,00,000/-. The properties yield an annual income of Rs.2,00,000/- and the plaintiffs are entitled to Rs.66,666/- per annum towards their share in the income from November 2002, which they claim as mesne profits. Hence the suit for the above said reliefs.

5. Except the first and third defendants, other defendants have not filed written statements. The third defendant Somasundaramoorthy filed a written statement and the same was adopted by the first defendant Chinnammal @ Rayyammal. The averments made in the written statement of the third defendant adopted by the first defendant are in brief as follows:

Even though the law permits a share to the female members of the family in the community of the parties to the suit, they rarely assert their rights to a share especially in the landed properties when they go to a different family. This is because daughters are given cash and jewels of considerable value at the time of their marriage and more gifts on various occasions subsequent to marriage. When the plaintiffs demanded partition, close relatives and well-wishers viz. Ramasamy Gounder, Kothamangalam N.Samiappan and Gopalsamy intervened. On their advice pointing out that the second plaintiff Thangamani had been given 100 sovereigns of gold jewels and a cash of Rs.1,00,000/- at the time of her marriage, the plaintiffs agreed to receive a nominal amount in cash in lieu of a share in the immovable properties. Accordingly a sum of Rs.75,000/- was paid and the plaintiffs received the same in lieu of their shares in the suit properties and joined in the execution and registration of the partition deed dated 28.11.2002. The allegation made in the plaint to the contrary are false. The plaint averments regarding the income derived from the suit properties are not correct and the figures are exaggerated. The income derived from the suit properties would be about Rs.50,000/- per annum. Since partition was already effected under the document dated 28.11.2002, the plaintiffs are not entitled to a decree for partition or for mesne profits. The prayer for cancellation of the partition deed is also unsustainable either in law or on facts and hence the suit should be dismissed with cost.

6. Based on the above said averments, the trial court framed the following issues:

1. Whether the partition deed dated 28.11.2002 is to be cancelled as prayed for by the plaintiffs?
2. Whether the prayer of partition and separate

possession could be given as a relief to the plaintiffs?

3. Whether the plaintiffs are entitled for mesne profit?

4. Whether the plaintiffs have (sic been) given Rs.75,000/- for other (sic their share in the) properties and release deed obtained from them as pleaded by the defendants is true?

5. To what other relief?

7. Based on the issues, the parties went for trial and in the trial, four witnesses were examined as PWS.1 to 4 and 37 documents were marked as Exs.A1 to A37 on the side of the plaintiffs. On the side of the defendants six witnesses were examined as DWs.1 to 6 and 16 documents were marked as Exs.B1 to B16. Two court documents were marked as Exs.X1 and X2. At the conclusion of trial, the learned trial judge declined the reliefs sought for by the plaintiffs and dismissed the suit without cost. Aggrieved by the same, the present appeal has been filed on various grounds set out in the memorandum of grounds of appeal.

8. The Points that arise for consideration in the appeal are :

1. Whether the appellants/plaintiffs are entitled to partition? If so what shall be their respective shares?

2. Whether the finding of the court below that the alleged forgery of the signatures and thumb impressions of the appellants/plaintiffs in bringing the partition deed dated 28.11.2002 registered as document No.3789/2002 on the file of Sub Registrar, Sathyamangalam into existence has not been proved and on the other hand the same has been proved to be genuine is erroneous and liable to be set aside?

3. Whether the appellants/plaintiffs are entitled to the relief of cancellation of the document?

4.To what relief the parties are entitled?

9.The arguments advanced by Mr.N.Manokaran, learned counsel for the appellants, by Mr.V.Raghavachari, learned counsel appearing for Mr.V.K.Gowtham, counsel on record for the first respondent and by Mr.S.Dinesh, learned counsel appearing for the respondents 2 to 5 were heard. The judgment and decree of the trial court and other materials available on record were also perused.

Points 1 to 3:-

10. There is no dispute regarding the relationship among the parties. It is also not in dispute that the suit properties were the ancestral properties of Nachimuthu Gounder and properties purchased in the names of Nachimuthu Gounder and S.N.Duraisamy between 1968 and 1982 using the surplus income derived from the ancestral joint family properties. Exs.A5 to A9 are certified copies of the sale deeds under which some of the suit properties were purchased in the name of Nachimuthu Gounder. Exs.A10 to A14 are certified copies of the sale deeds under which some of the suit properties were purchased in the name of S.N.Duraisamy. It is not in dispute and on the other hand, it has been admitted that all the properties purchased under the above said nine sale deeds were the purchases made out of the income derived from the joint family properties and hence they were the properties belonging to the Hindu Undivided Family consisting of Nachimuthu Gounder, his son S.N.Duraisamy and the third defendant Somasundaramoorthy as coparceners. It is also not in dispute that the above said three persons constituted a Hindu Mitakshara Coparcenary and they remained undivided till the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Act 1 of 1990) came into force. It is also an admitted fact that on 25.03.1989, the date from which the said amendment was given effect to, the second plaintiff Thangamani was unmarried and her father S.N.Duraisamy was alive and hence the coparcenary became enlarged by the inclusion of the second plaintiff Thangamani also as a coparcener entitled to a share equal to that of her father S.N.Duraisamy.

11. Nachimuthu Gounder died on 12.08.1992 and it stands confirmed by Ex.A3-Death Certificate. Admittedly, Nachimuthu Gounder died intestate leaving behind him his widow Chinnammal @ Rayyammal, son S.N.Duraisamy and daughter Thulasiammal as his legal heirs. Besides admission, it is also borne out by the Legal Heir Certificate marked as Ex.A4. On the date of death of Nachimuthu Gounder, the first defendant and the second defendant were the Class I female heirs. Accordingly, Nachimuthu Gounder's undivided interest, namely half share in the joint family property devolved equally 1) on his son S.N.Duraisamy; 2) widow Chinnammal @ Rayyammal (first defendant) and 3) his daughter Thulasiammal, the second defendant. Thus the first defendant and the second defendant became entitled to $\frac{1}{2} \times \frac{1}{3} = \frac{1}{6}^{\text{th}}$ share each. The third defendant, who had an undivided half share as coparcener, became entitled to an additional $\frac{1}{6}^{\text{th}}$ share by way of succession from his father Nachimuthu Gounder. In respect of the half share of S.N.Duraisamy as coparcener, his daughter, his son and himself constituted an inner coparcenary and each one of them were entitled to $\frac{1}{2} \times \frac{1}{3} = \frac{1}{6}^{\text{th}}$ share. Thus S.N.Duraisamy was in all entitled to $\frac{1}{6} + \frac{1}{6} = \frac{2}{6} = \frac{1}{3}^{\text{rd}}$ share.

12. Admittedly, S.N.Duraisamy died intestate on 06.08.1994. It also stands confirmed by the death certificate produced as Ex.A1. As he had Class 1 female legal heirs, his undivided interest in the coparcenary devolved equally upon his Class 1 heirs, namely widow,

daughter, son and mother. Thus the first defendant became entitled to $1/3 \times \frac{1}{4} = 1/12$. Already she was entitled to $1/6^{\text{th}}$ share as the legal heir of her husband. Thus she became entitled to a total share of $1/6 + 1/12 = 3/12 = \frac{1}{4}$. Thulasiammal, the second defendant had got $1/6^{\text{th}}$ share equivalent to $2/12 = 1/6$. The second defendant also died on 08.01.2002. Her share devolved on her daughters, namely defendants 4 and 7. Fourth defendant's share devolved on defendants 5 and 6. Thus the 7^{th} defendant was entitled to $1/6 \times \frac{1}{2} = 1/12$. Fourth defendant was entitled to $1/12$ and it got distributed to the defendants 5 and 6 as $1/24$ and $1/24$ (the second defendant being female in the presence of daughters her mother would not have been a legal heir as per Section 15 of the Hindu Succession Act, 1956).

13. After the death of the second defendant, the first defendant Chinnammal @ Rayyammal died intestate on 22.04.2004. There is no plea by either of the defendants that she died leaving any Will. The first defendant's $1/4^{\text{th}}$ share got devolved on the second plaintiff and the third defendant (both together getting one share) and 7^{th} defendant alone getting one share. Defendants 5 and 6 stand excluded as they are the great grandchildren. Thus from the share of the first defendant, the second plaintiff would get $\frac{1}{4}$, 2^{nd} defendant would get $\frac{1}{4}$ and the 7^{th} defendant would get $\frac{1}{2}$ share. Thus the share of the second plaintiff got enhanced by $\frac{1}{4} \times \frac{1}{4} = 1/16$. Similarly, the third defendant's share also got increased by $1/16$ making the share of each one of them viz., second plaintiff and the third defendant to $\frac{1}{4} + 1/16 = 5/16 = 15/48$. The final tally of the shares can be stated as follows:

1^{st} plaintiff share = $1/12 = 4/48$
 2^{nd} plaintiff share = $5/16 = 15/48$
 3^{rd} defendant share = $5/16 = 15/48$
The share of defendants 5 and 6 = $1/12 = 4/48$
 7^{th} defendant's share = $1/12 + 1/8 = 10/48$

(Defendants 1, 2 and 4 are no more)

14. The plaintiffs made a claim that both the plaintiffs put together were entitled to $1/3^{\text{rd}}$ share in accordance with the sharing position that prevailed at the time of filing of the suit, since the first defendant was alive. While calculating the shares consequent to the death of the first defendant, some mistake has been committed and prayer No.(c) has been couched in such terms, which admit ambiguity and lack clarity. However, the parties to the appeal do admit the correctness of the shares calculated above. There is no dispute as to the shares to which the parties would have become entitled to. On the other hand, the contesting respondent in the appeal, namely Somasundaramoorthy (first respondent in the appeal/third defendant) contends that the appellants shall not be entitled to the relief of

either partition or mesne profits, since they got cash in lieu of shares in the immovable properties and joined in the execution of the partition deed dated 28.11.2002. A certified copy of the said partition deed has been marked as Ex.B14 and the original partition deed has been marked as Ex.B15. Of course it is registered as Document No.3789/2002 on the file of the Sub Registrar Sathyamangalam. It is the contention of the appellants/defendants that the said document is a forged one and that the execution and registration of the same were secured by making two other persons impersonate the appellants/plaintiffs and forge their signatures and thumb impressions. On the other hand, it is the contention of the first respondent/third defendant that the said partition deed is a genuine one and the plaintiffs having joined in the execution and registration of the document, falsely claim that it has been forged by impersonation.

15.The question of grant of the relief of partition and direction to pay mesne profits depends upon the resolution of the question as to whether Ex.B15 is a genuine as contended by the first defendant or a forged one as contended by the plaintiffs. In this regard, the second plaintiff Thangamani figured as PW1 and denied the signatures found in Ex.B15 and thumb impressions found in the registration endorsements. It is her further assertion that neither she nor her mother signed the said document and they did not go to the office of the Sub Registrar for registering the said document. It is also her assertion that the signatures and the thumb impressions would have been forged by impersonation. Her husband who figured as PW2 supports the evidence of PW1. The finger print expert and handwriting experts have been examined as PWs.3 and 4. The report submitted by handwriting expert has been marked as Ex.X2. The report submitted by the finger print expert has been marked as Ex.X1.

16.It is seen from Ex.X1 that the specimen signatures of one Ramayal wife of Easwaramoorthi obtained in three sheets and specimen signatures of Kavitha @ Myvizhiselvi wife of Somasundaramoorthy (third defendant) obtained in three sheets along with the specimen handwriting of the Kavitha @ Myvizhiselvi and Finger Print slips of Ramayal were sent to the Superintendent of Police, Tamil Nadu Fingerprint Bureau, Chennai-4 through the Judicial Magistrate, Sathayamangalam, Erode District for being compared with the signatures and thumb impressions found in Ex.B15-registered partition deed. On such comparison, PW3 gave an opinion to the effect that the disputed finger prints of Lakshmi (first plaintiff) found in the partition deed marked by the expert as D1 is not identical with any of the finger impressions of Lakshmi including the left thumb impression marked by expert as S1 and on the other hand, the disputed impression marked as D1 was identical with the admitted left thumb impression of Ramayal wife of Easwaramoorthi marked as S2 by the expert. Similarly, the disputed thumb impression of the second plaintiff marked as D2 by the expert was found to be not identical with any of the finger impressions of the second plaintiff

Thangamani, including the admitted left thumb impression marked by the expert as S3. The left thumb impression found against the name of Thangamani in the Thumb Impression Register of the office of the Sub-Registrar, Sathyamangalam bearing Volume No.354 marked as D3 by the expert was identical with D2 but it was not identical with any of the finger print impressions of Thangamani including her admitted left thumb impression marked by the expert as S3. On the other hand, the left thumb impressions marked as D2 and D3 were found to be identical with the left thumb impression of Kavitha @ Myvizhiselvi wife of Sundaramoorthi marked by the expert as S4. The admitted signatures of the plaintiffs were found not to tally by the handwriting expert to be at variance with the disputed signatures in the partition deed and the registration endorsements.

17. On the other hand, Somasundaramurthy (D3), Sivakami (D7) and Thulasiammal (D2) were examined as DWs.1, 3 and 4 respectively. Meganathan, Balarajan and Balasubramaniam were examined as DWs.2, 5 and 6 on the side of the contesting defendants. The third defendant Somasundaramoorthy figured as DW1. In his chief examination he deposed about the alleged practice of giving jewels and cash as seers to the female members of the family and in view of the same, the female members giving up their shares in the immovable properties in order to avoid fragmentation of the same. He stated further that when the second plaintiff demanded partition in the year 2002 Kothamangalam Ramasamy Gounder, T.N.Pudur Samiappan, Tirupur Gopalsamy and others intervened, appraised the second plaintiff of the fact that she was given 100 sovereigns of gold jewels and cash of Rs.1,00,000/- at the time of her marriage, besides spending a sum of Rs.2,00,000/- for her marriage and that on their advice, the second plaintiff agreed to give up her claim to share in the immovable properties on getting a cash of Rs.65,000/- besides a sum of Rs.25,000/- to the first plaintiff towards maintenance. It was also stated by him in the chief examination that it was agreed that the first defendant would be given Rs.10,000/- towards maintenance and on that basis the partition deed dated 28.11.2002 came to be executed and registered. He also denied the plaint averment that the second plaintiff gave a complaint regarding the alleged unlawful activities of the third defendant and his associates with the Inspector of Police, Sathyamangalam. During cross examination it was suggested that no partition deed would be executed in Ashtami Thidhi and the partition deed relied on by him produced as Ex.B15, a certified copy of which has been produced as Ex.A14 was executed on the day of Ashtami Thidhi. The third defendant (DW1) pleaded absence of knowledge.

18. D.W.1 has admitted that the 4th item of the suit properties had been purchased by his father, but the same had not been included in the above said partition. Even though it was admitted that S.N.Duraisamy died intestate, DW1 would venture to state that his father had left a will. At the same time he would

admit that he had not stated anything about the will in his written statement and he has not produced such will. In addition, he pleaded absence of knowledge as to the date of execution of such will by his father and the persons who attested the same. Though he has stated in his chief examination that the plaint averments regarding the lodging of the complaint on him and his associates was false, during cross examination he admitted that a criminal case has been registered and it is pending on the file of the Judicial Magistrate, Sathyamangalam and he figures as 9th accused whereas Meganathan and Sivasamy, who attested the partition deed, were arraigned as accused Nos.8 and 12 in the said case. He has also admitted that Kumara Ravikumar is the State Convenor of Kongu Peravai, office of which functioned in the second item of the suit properties for about six years and the said Kumara Ravikumar figures as 7th accused in the said case. He has also admitted the original partition deed Ex.A15 had been pledged with the bank and the police got it from the State Bank and the same came to be filed in the criminal case.

19. In the written statement he had stated that both the plaintiffs together received a sum of Rs.75,000/- and gave up their share in the immovable properties. However in his evidence there is a contrary version. According to the testimony of DW1, first plaintiff was given Rs.25,000/- in lieu of maintenance and the second plaintiff was given Rs.65,000/- in lieu of her share in the immovable properties. Thus the total amount paid to plaintiffs 1 and 2 according to the evidence of DW1 comes to Rs.90,000/- whereas in the written statement it was stated that only Rs.75,000/- was paid. In Ex.B15-partition deed relied on by the contesting defendants it is recited that the first plaintiff Lakshmi was given Rs.25,000/- towards maintenance from the common fund of the family, whereas the second plaintiff Thangamani was given a sum of Rs.50,000/- in lieu of her share and Thulasiammal was given Rs.15,000/- towards her share. From a comparison of the recitals found in Ex.B15 and the evidence of DW1 and also the pleadings made in the written statement of the third defendant, it shall be obvious that contradictory stands have been taken at three different stages.

20. One Meganathan figured as DW2. He has stated in his chief examination that he was a witness for the execution of Ex.B15-Partition Deed; that he saw the parties to the partition deed signing the document and he signed as a witness to the document and also as an identifying witness before the Registrar. However in cross examination, he stated that the partition deed was executed giving measurements but he did not know whether the properties were measured with measurement chain. Ex.A18 is the first information report in the criminal case registered based on the complaint that the partition deed was brought into existence by committing forgery by impersonation. DW2 admits that he and another witness S.R.Sivasamy figured as 8th and 12th accused respectively in the case. In the partition deed it has been stated that the first defendant

Thulasiammal was given only a sum of Rs.15,000/- without allotting any share in the immovable properties. The said amount of Rs.15,000/- allegedly given to the first defendant Thulasiammal is shown in 'E' schedule in the partition deed in question. DW3 also admits that a criminal case is pending against 25 persons including himself in respect of the execution and registration of the partition deed dated 28.11.2002 and that she figures as the 12th accused in the said criminal case.

21. The second defendant Thulasiammal deposed as DW4. In the chief examination, she supported the case of the third defendant regarding the execution of the partition deed dated 28.11.2002. Though the partition deed recites that the plaintiffs and the second defendant were given cash from the common fund of the joint family, DW4 would say that at the time of partition there was no common fund available to the joint family. She also pleaded ignorance as to whether any recital had been made in the partition deed mentioning the liabilities (loan) of the joint family. It is pertinent to note that she pleaded absence of knowledge when it was suggested that there was a criminal case based on the complaint that the partition deed had been brought into existence by forgery and impersonation. She also pleaded absence of knowledge as to whether the expert opinions were obtained regarding the signatures and thumb impressions found in the partition deed on comparison with the admitted signatures and thumb impressions of the plaintiffs. She was also not able to say what was the value of the properties that were made the subject matter of the partition.

22. DW5 - Balarajan was the Sub-Registrar of Sathyamangalam. On 15.03.2011 when he was examined before the court in the chief examination he simply spoke about the procedure followed in registering the document. In cross examination he did admit that he was not there in the office of the Sub Registrar, Sathyamangalam at the time of registration of the disputed partition deed dated 28.11.2002 and at that point of time he was serving as an Assistant in the office of the District Registrar at Namakkal. He simply spoke about the fact that only from 2007, the identity of the parties to the document are verified with reference to photo and family cards. Hence the evidence of DW5 will not be helpful either to the plaintiffs or to the contesting defendants.

23. One Subramanian Head Clerk of the Judicial Magistrate, Sathyamangalam deposed as DW6. He spoke about the fact that the disputed document and the specimen signatures along with specimen thumb impressions were sent to the Forensic Laboratory on the basis of the requisition sent by the Sub-Inspector of Police to the Judicial Magistrate in C.C.No.128/2006 on the file of the Judicial Magistrate, Sathyamangalam. However he stated that he could not say whether the specimen signatures and specimen thumb impressions were obtained in the court Hall or by the police. He simply speaks about

the reference of the disputed document with the specimen signatures and specimen thumb impression to the forensic experts and receipt of the reports form the forensic experts directly in the Court of the Judicial Magistrate, Sathyamangalam.

24.It is an admitted fact that the criminal case records especially Exs.X1 and X2 were sent for from the criminal court by the trial court, contains the original partition deed marked as Ex.B15 and also the specimen signatures and the thumb impression of not only the plaintiff but also the thumb impressions of Ramayal wife of Easwaramoorthi and Kavitha @ Mysizhiselvi wife of Somasundaramoorthy (D3). PW3 has sent Ex.X1-Report stating that the thumb impressions found against the names of the first plaintiff Lakshmi in the disputed documents did not tally with the specimen thumb impression or any of the impressions of the fingers of Lakshmi. Similarly, it was also found out that thumb impressions found against the name of the second plaintiff Thangamani in the disputed document did not tally with the specimen thumb impression or any of the impressions of the fingers of Thangamani. On the other hand, the expert found that the disputed thumb impressions against the name of Lakshmi tallied with the thumb impressions of Ramayal wife of Easwaramurthy and the disputed thumb impression against the name of Thangamani, tallied with the left thumb impression of Kavitha @ Myzhiselvi wife of Somasundaramurthy.

25.After the records from the criminal court were summoned and received in the trial court, the plaintiffs filed an application to call for the report of the forensic experts from the court of the Judicial Magistrate, Sathyamangalam regarding the purported signatures and thumb impressions of the plaintiffs in the disputed documents, namely partition deed dated 28.11.2002 In I.A.No.1/2005. The said application was resisted tooth and nail by the defendants and the trial court dismissed the application. High Court also refused to interfere with the order thereby forcing the plaintiffs to approach the Supreme Court under Article 136 of the Constitution of India in C.A.No.2243/2009. By judgment dated 08.04.2009, the Supreme Court sustained the prayer made by the plaintiffs, set aside the order of the trial court and the High Court. Only thereafter, the documents were sent for.

26.It seems the defendants filed a petition in I.A.No.17/2005 for referring the disputed documents along with signatures and left thumb impressions of the plaintiffs to be obtained in the court to the handwriting and fingerprint experts for opinion. The said application was resisted by the plaintiffs and the trial court chose to dismiss the said application by order dated 23.02.2005. The defendants did not file any revision against the said order. In the above said background of facts and evidence, the learned trial judge chose to hold that the plaintiffs had failed to prove forgery of their signatures and thumb impressions found in the disputed partition deed dated 28.11.2002. The learned trial judge rendered a finding that the report of the finger print experts marked as Ex.X1

and the report of the handwriting expert marked as Ex.X2 were not reliable and that equally the evidence of PW3- the fingerprint expert and PW4-handwriting expert were not reliable and were not sufficient to discharge the burden of proof cast on the plaintiffs to prove forgery pleaded by them. But besides re-stating the arguments advanced on both sides regarding the above said evidence in the form of Exs.X1 and X2 and the testimonies of PWs.3 and 4, without assigning reasons, the learned trial judge abruptly jumped to the conclusion that Exs.X1 and X2 were not true and conclusive. Learned trial judge simply referred to the dismissal of I.A.No.17/2005 filed by the defendants to send the disputed documents with the signatures and thumb impressions of the plaintiffs to be obtained by the trial court, to the handwriting and fingerprint expert for opinion and the fact that the interlocutory application filed by the plaintiffs to send for the opinions of the handwriting and fingerprint experts from the criminal court records was dismissed; that the plaintiffs unsuccessfully prosecuted the civil revision petition and that ultimately they became successful before the Supreme Court in getting an order as prayed for by them in C.A.No.2243/2009. It is also an admitted fact that the said judgment of the Supreme Court was reported in (2009) 4 MLJ 1040(SC). No other reason came to be assigned by the trial court for disbelieving and disregarding Exs.X1 and X2 and the testimonies of PWs.3 and 4. Simply relying on the oral testimonies of the defendants' side witnesses and disregarding or without noticing, the discrepancies pointed out supra, the learned trial judge chose to render a finding that the plaintiffs failed to prove their contention that their signatures and thumb impressions were forged by impersonation by other persons arranged by the defendants.

27. In view of the said finding, the learned trial judge chose to hold that the partition deed dated 28.11.2002 stood proved and the plaintiffs had given up their shares in the suit properties for a sum of Rs.75,000/- received in cash by them. Consequently, the learned trial judge held that the relief sought for for cancellation of the partition deed dated 28.11.2002 registered as document No.3789/2002 on the file of Sub Registrar, Sathyamangalam and the reliefs of partition and separate possession and mesne profits could not be granted to the plaintiffs and the same resulted in passing of the judgment and decree of the trial court dismissing the suit.

28. As rightly pointed out by the learned counsel for the appellants, the learned trial judge rendered the above said finding without assigning proper and logical reasons and in fact the finding could be even termed perverse. It is true that the plaintiffs having come forward with the suit for cancellation of the partition deed dated 28.11.2002 on the ground that the said partition deed was brought into existence by forging their signatures and thumb impressions making two other persons to impersonate them. In an attempt to prove the said contention, besides the second plaintiff and her husband figuring as PWs.1 and 2 supporting the plaint

averments and holding out that the plaintiffs did not join in the execution of the partition deed dated 28.11.2002 and they did not go to the Office of the Sub Registrar for the registration of the same, the fingerprint and handwriting experts were examined as PWs.3 and 4 and their reports have been marked as Exs.X1 and X2 respectively.

29. It is an admitted fact that based on the complaint of the second plaintiff, a case was registered in Crime No.699/2003 on the file of Sathyamangalam Police Station. It is also an admitted fact that after completion of investigation, final report was filed and the case is now pending on the file of the learned Judicial Magistrate, Sathyamangalam in C.C.No.128/2006. It is also an admitted fact that the other signatories to the partition deed either as parties or as attestors and identifying witnesses and the alleged associates of the third defendant including his wife Kavitha @ Myvizhielvi and one Ramayyal wife of Easwaramurthy are facing prosecution in the said case as accused. The defendants not only resisted the application for summoning a report of the fingerprint expert and handwriting expert for reference in the suit before the trial court but also successfully resisted the revision petition before the High Court after the dismissal of the application by the trial court. Only in the Supreme Court the plaintiffs were able to get necessary orders. Thereafter the reports of the fingerprint expert and the handwriting expert were received in the trial court from the criminal court. Ex.X1 contains not only the original disputed partition deed but also the specimen signatures and thumb impressions. Coupled with Exs.X1 and X2 reports and testimonies of PWs.3 and 4, the plaintiffs were able to elicit contradictions between the plea made in the written statement and the evidence adduced through DW1(D3), DW2 and DW3 who signed as attestors and identifying witnesses in the partition deed in question. DWs.5 and 6 are the official witnesses. DW5 speaks about the procedure followed in registering the documents. DW6 simply states the fact of sending the documents containing disputed signatures and thumb impressions along with the documents containing the specimen signatures and thumb impressions to the forensic expert and about the receipt of the reports from the fingerprint expert and handwriting expert in the Court of Judicial Magistrate, Sathyamangalam from the Forensic Sciences Department. DWs.1 and 4 are signatories to the disputed partition deed dated 28.11.2002. DWs.2 and 3 are attestors of the disputed partition deed and they were also the identifying witnesses. All of them face criminal charges of conspiracy and committing forgery by impersonation besides other offences. Had the trial court evaluated their evidence in proper perspective taking note of the contradictions indicated supra and the fact that they had even gone to the extent of pleading absence of knowledge as to the particulars of the registration of the criminal case and pendency of the criminal case against them and the further fact that PWs.3 and 4 are disinterested official witnesses, as rightly contended by the learned counsel for the appellants/plaintiffs, the learned trial judge would have arrived at a conclusion that the plaintiffs discharged their

burden of proving their case regarding the genuineness of the partition deed dated 28.11.2002 sufficient to shift the burden of proving its genuineness on the defendants. By an erroneous approach towards the evidence adduced on both sides, the learned trial judge seems to have rendered a finding regarding the genuineness of partition deed against the plaintiffs. The said finding cannot be sustained and as rightly contended by the learned counsel or the appellants, the same deserves to be interfered with and set aside.

30. However for the first time before this court Mr.V.Raghavachari, learned counsel for the contesting respondent/3rd defendant argued that the specimen signatures and thumb impressions of the plaintiffs and thumb impressions of Ramayyal, Kavitha @ Myvizhiselvi, who allegedly impersonated the plaintiffs for the registration of the partition deed in question were not obtained in the presence of the Judicial Magistrate and on the other hand, they were obtained by the Investigating Officer in the course of investigation and that unless and until the specimen signatures and specimen thumb impressions of the plaintiffs sent for comparison are proved to be that of the plaintiffs and the specimen thumb impressions of Ramayyal and Kavitha @ Myvizhiselvi sent for comparison with the thumb impressions found in the disputed partition deed and the Thumb Impression Register are proved to be that of the said persons, no evidenciary value can be attached to the opinions of the experts marked as Exs.X1 and X2. The learned counsel for the contesting respondent in the appeal contended further that using the influence with investigating officer, the thumb impressions of the plaintiffs were wrongly designated as the specimen thumb impressions of Ramayyal and Kavitha @ Myvizhiselvi and some other persons thumb impressions were wrongly designated as the thumb impressions of the plaintiffs with the object of securing a punishment to the accused in the above said criminal case. Though such an argument at the outset may seem to be far-fetched, this court is of the considered view that sufficient opportunity to the defendants ought to have been given to prove their case that the signatures of the plaintiffs and their thumb impressions found against their names in the disputed partition deed and the Thumb Impression Register maintained in the office of the Sub Registrar are their signatures and thumb impressions. The same could have been done by getting their specimen signatures and the specimen thumb impressions in the presence of the Presiding Officer of the court below and referring the same to the handwriting and fingerprint expert for opinion. When such an attempt was made by the defendants by filing a petition in I.A.No.17/2005, the plaintiffs unnecessarily resisted the said petition and made the court below dismiss the same. If at all the plaintiffs were cock sure that the signatures in the disputed documents are not theirs and the thumb impressions found there in the Thumb Impression Register kept in the office of the Sub Register are not their left thumb impressions, they ought not to have resisted the application filed by the defendants for the simple reason that though the signature may have some

variation due to passage of time, the thumb impressions will not change and the same will be the permanent feature. When the contesting defendant came forward to have the disputed signatures and thumb impressions compared with the signatures and thumb impressions to be obtained in the open court which the plaintiffs themselves should have done, the plaintiffs ought to have conceded.

Point No.4:

31. In view of the said facts, this court comes to the conclusion that besides holding that the finding of the trial court regarding the genuineness or otherwise of the disputed document, namely partition deed dated 28.11.2002 marked as Ex.B15 cannot be sustained and the same is liable to be set aside, it shall be in the interest of justice to remit the matter back to the trial court for fresh disposal with a direction to get the specimen signatures and specimen thumb impressions of the plaintiffs in open court in the presence of the parties and the counsel for the parties for the purpose of comparison with the disputed signatures and thumb impressions by handwriting and fingerprint experts. The sheets in which the specimen signatures and the specimen thumb impressions of the plaintiffs shall be obtained in the open court shall be countersigned by the counsel for the parties and also authenticated by the trial court. Thereafter the same along with the disputed document and the copy of the thumb impression register maintained in the office of the Sub Registrar should be referred to the forensic laboratory for comparison of the signatures by a handwriting expert and for the comparison of the thumb impression by a fingerprint expert for their opinion. Upon receipt of the opinion from the experts, the parties shall be allowed to lead evidence by examining the experts and the other parties shall be permitted to cross examine the expert witnesses. After recording such an additional evidence the trial court shall pronounce a judgment taking into account such an additional evidence in the form of experts opinion. It is made clear that in case the signatures and thumb impressions found in the disputed documents are found to be not that of the plaintiffs, then the plaintiffs shall be entitled to the reliefs sought for in the plaint and their shares shall be as indicated in the earlier portion of this judgment. In case the signatures and thumb impressions in the partition deed dated 28.11.2002 are found to be that of the plaintiffs then the suit shall be dismissed holding the plaintiffs not entitled to any of the reliefs sought for therein.

32. For all the reasons stated above, the appeal deserves to be allowed in part and the decree of the trial court dated 15.02.2013 dismissing the original suit O.S.No.35 of 2004 deserves to be set aside. The suit shall be remitted back to the trial court for fresh disposal after complying with the directions to be issued by this Court.

33. In the result, the appeal is allowed in part. The decree

of the trial Court dated 15.02.2013 dismissing the suit O.S.No.35 of 2004 is set aside and the suit is remitted back to the trial Court for fresh disposal after complying with the following directions:-

i) Specimen signatures and specimen thumb impressions of the plaintiffs shall be obtained in open court in the presence of the parties and the counsel for the parties. The sheets in which the specimen signatures and the specimen thumb impressions of the plaintiffs shall be obtained in the open court, shall be countersigned by the counsel for the parties and also authenticated by the trial court.

ii) Thereafter the same, along with the disputed document and the copy of the thumb impression register maintained in the office of the Sub Registrar should be referred to the forensic laboratory for comparison of the signatures by a handwriting expert and for the comparison of the thumb impressions by a fingerprint expert for their opinion. Upon receipt of the opinion from the experts, the parties shall be allowed to lead evidence by examining the experts and the other parties shall be permitted to cross examine the expert witnesses.

iii) After recording such additional evidence the trial court shall pronounce a judgment taking into account such an additional evidence in the form of experts opinion. It is made clear that in case the signatures and thumb impressions found in the disputed documents are found to be not that of the plaintiffs, then the plaintiffs shall be entitled to the reliefs sought for in the plaint and their shares shall be as indicated in the earlier portion of this judgment. In case the signatures and thumb impressions in the partition deed dated 28.11.2002 are found to be that of the plaintiffs', then the suit shall be dismissed holding the plaintiffs not entitle to any of the reliefs sought for.

There shall be no order as to cost. The appellants shall be entitled to refund of court fees paid on the appeal as per the Rules. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

asr

To

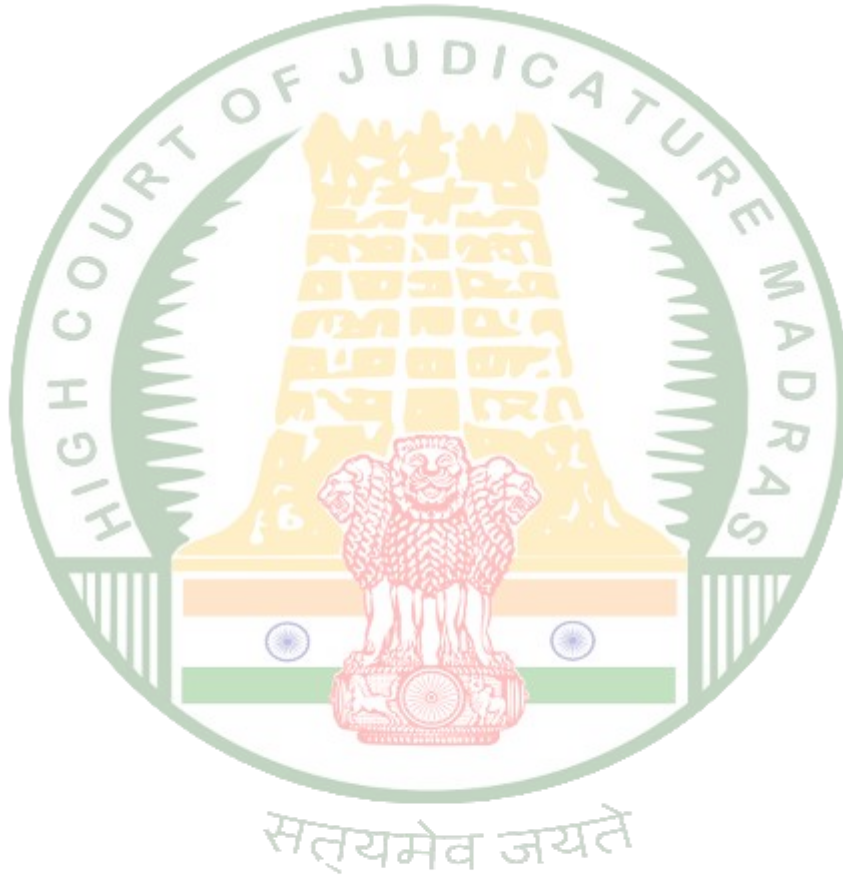
1. The IV Additional District Judge, Erode District at Bhavani
2. The Section Officer, VR Section, High Court, Madras.

+1 cc to Mr.N.Manokaran, sr.31859

+1 cc to Mr.V.P. Karthikeyan, Advocate, sr.32305.

A.S.No.255 of 2013

tej(co)
kra(31/07)



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