

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.609 of 2016

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C.M.P.Nos.16451 and 16452 of 2016

Gomathi

... Appellant/ Plaintiff

Vs

1.Chinnammal

2.Ramasamy

3.Deivasigamani

4.Valliammal

5.Saraswathi

6.Palanisamy

... Respondents/ Defendants

This appeal is filed under Order 41 Rule 1 r/w Section 96 of C.P.C. against the judgment and decree dated 24.08.2016 made in O.S.No.26 of 2016 on the file of the learned First Additional District Court, Erode.

For Appellant : N.Manokaran

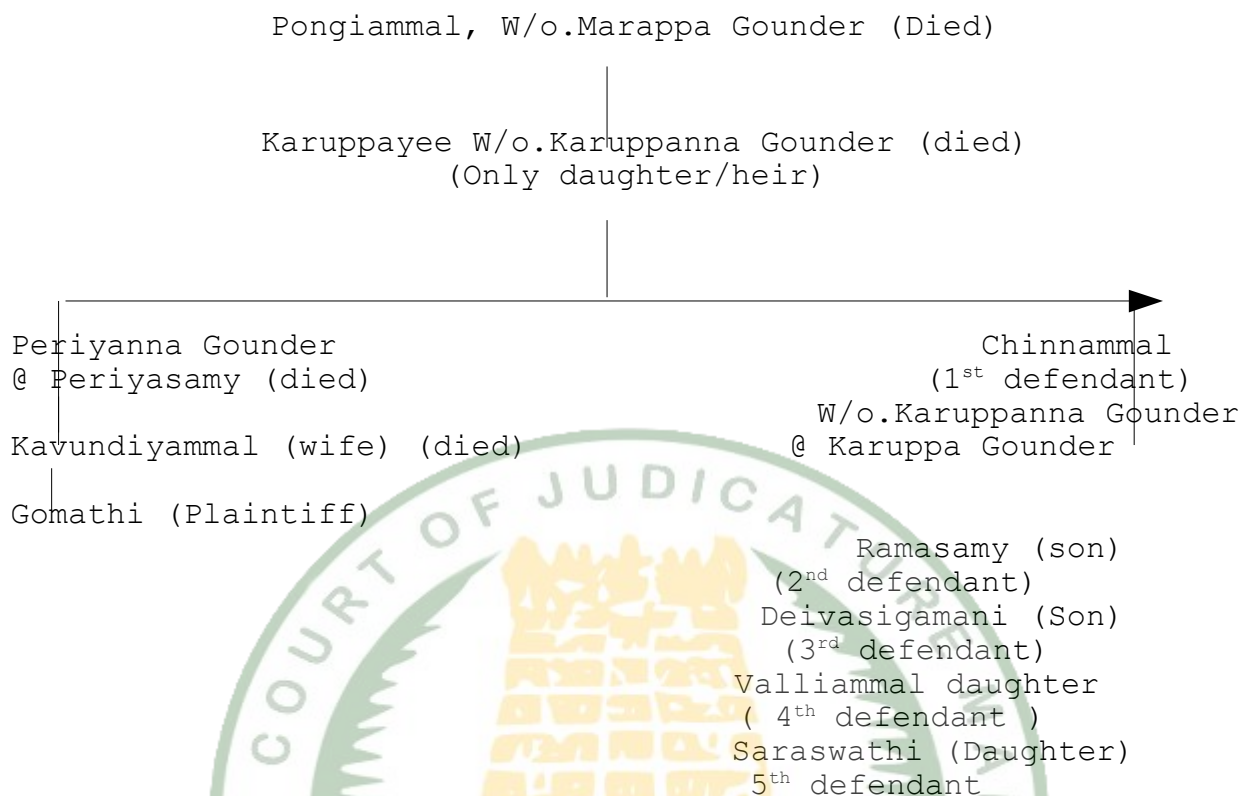
For Respondents : M.Guruprasad

J U D G E M E N T

The plaintiff in O.S.No.26 of 2016 on the file of the first Additional District Judge, Erode is the appellant. The suit was laid for partition and separate possession of plaintiff's half share in the suit properties.

2. According to the plaintiff, the suit properties belonged to one Pongiammal wife of Marappa Gounder. The said Pongiammal and Marappa Gounder died leaving behind them only daughter Karuppayee wife of Karuppanna Gounder. The father of the plaintiff Perianna Gounder @ Periasamy is the son and the 1st defendant is daughter of said Karuppayee and Karuppanna Gounder.

The devolution of the property as claimed by the plaintiff is as per the following Geneology.



3. The 6th defendant is said to be an alienee of some of the properties from the defendants 1 to 5. The plaintiff would claim that the deceased Pongiammal had executed a settlement deed in favour her grand children, namely, Periyanna Gounder @ Periyasamy (the father of the plaintiff) and Chinnammal, son and daughter of her daughter Karuppayee, by way of a Registered document dated 16.03.1940 in Document No.220/1940 in the Office of Sub-Registrar, Perundurai. According to the plaintiff, her father Periyanna gounder @ Periyasamy died on 15.08.2006 leaving behind the plaintiff alone to succeed the properties settled by the Pongiammal on him under the settlement deed dated 16.03.1940.

4. The plaintiff would further claim that her father's father one Karuppanna Gounder had certain properties at Siruvalur Village, Gobi Taluk. Since the said Karuppanna Gounder contracted second marriage after the death of his first wife, the properties that were situated at Siruvalur village were orally partitioned between the plaintiff's father, 1st defendant and the son and daughters through his 2nd wife. Therefore, the present suit is confined only to the properties that belonged to Pongiyammal, which are the subject matter of settlement deed dated 16.03.1940.

5. The plaintiff would further claim that the defendants had fraudulently transferred the pata in the name of the 1st defendant and using the said patta, they have sold some of the properties to the 6th defendant under a sale deed dated

19.06.2013 registered as document No.1458/2013 in the office of the Sub Registrar, Thingaloor.

6. According to the plaintiff, the defendants are entitled to only half share in the suit properties. Therefore, she had filed the suit seeking partition and separate possession of half share in the suit properties, namely the properties that were the subject matter of settlement dated 16.03.1940. The defendants remained exparte.

7. The plaintiff was examined as PW1 and one Velmurugan was examined as PW2. Exs.A1 to A6 were marked. The learned Trial Judge, framed the following issue for consideration.

1. Whether the plaintiff is entitled to for the reliefs as prayed for?

8. The learned First Additional District Court, Erode, had dismissed the suit holding that the suit is bad for partial partition on the allegation in the plaint to the effect that the properties situated in Siruvalur Village that belonged to paternal grand father of the plaintiff namely, Karuppanna Gounder, were not included in the suit and the plaintiff has pleaded that there was a oral partition with reference to these properties.

9. Aggrieved by the dismissal of the suit, the plaintiff has come on this appeal.

10. I have heard Mr.N.Manokaran, the learned counsel appearing for the appellant and Mr.M.Guruprasad, the learned counsel appearing for the respondents 1 to 6.

11. The following points arise for determination in this appeal.

1) Whether the Trial Court was right in holding that the suit is bad for partial partition?

12. Mr.N.Manokaran, learned counsel appearing for the appellant inviting my attention to paragraph 8 of the plaint would submit that when it has been clearly averred that the properties situated at Siruvalur Village belonged to Karuppanna Gounder namely, the paternal grand father of the plaintiff and the 1st defendant and that the present suit is confined only to the properties of Pongiammal, who happens to be the maternal grand mother of the plaintiff's father and the 1st defendant, which have been settled on the plaintiff's father and the 1st defendant, by the said Pongiammal under the settlement deed dated 16.03.1940. Therefore, the learned First Additional District Court, Erode was not right in dismissing the suit on the ground that the suit is bad for partial partition.

13. It is further contended by the learned counsel that the plaintiff had pleaded and let in evidence to the effect that the properties at Siruvalur Village had already been orally divided. According to the learned counsel the findings of the learned First Additional District Court, Erode to the effect that the non-inclusion of the properties of Siruvalur Village, would be fatal to the suit are unsound and cannot be sustained.

14. Mr.N.Gruprasad, learned counsel appearing for the respondents 1 to 6 is unable to support the judgement of the trial court. Respondents 1 to 6 have remained exparte before the trial court. Therefore, there is no material to controvert the pleadings and evidence let in by the plaintiff.

15. I have gone through the pleadings as well as the evidence let in. The suit has been laid for partition of the properties that belonged to Pongiammal. Pongiammal is the maternal grand mother of the father of the plaintiff, namely Periyanna Gounder @ Periyasamy and the first defendant namely Chinnammal. The plaintiff would contend that Pongiammal died leaving behind only daughter Karuppayee and the father of the plaintiff and first defendant being children of the said Karuppayee, were the only the grand children of Pongiammal.

16. It is also claimed that Pongiammal had executed the settlement deed dated 16.03.1940, which is a registered instrument. Therefore, the plaintiff had sought for partition of only those properties which were settled by Pongiammal in favour of her father and the 1st defendant, her paternal aunt. In so far as the properties situated at Siruvalur Village are concerned, it has been specifically pleaded that those properties belonged to the paternal grandfather of the plaintiff namely, Karuppanna Gounder. It is also in the pleadings and evidence that the said Karuppanna Gounder had contracted second marriage after the death of his first wife, therefore, a oral partition has been effected between herself namely, the plaintiff, defendants and the children through his second wife. Thus, it is clear that there are two set of properties devolving from two different sources and the law relating to succession of the two sets of properties is also different because, the properties, the subject matter of the suit originally belonged to a Hindu Female.

17. In the light of the above, I am unable to subscribe the view of the learned First Additional District Court, Erode that the suit is bad for partial partition. The theory of partial partition could be invoked to deny the relief of partition only when some undivided properties are not included in the suit. Therefore, I am constrained to set aside the judgement and decree of the trial court and the suit is remitted back to the Trial Court for denovo trial.

18. The respondents 1 to 6, who remained exparte will be at liberty to file written statement and contest the suit. Such written statement should be filed within a period of four weeks from the date of the receipt of a copy of the order and upon filing of such written statement, the learned First Additional District Court, Erode is directed to take up the suit for trial and dispose of the same preferably within a period of six months thereafter.

19. In fine, the appeal is allowed and the judgement and decree of the Trial Court are set aside and O.S.No.26 of 2016 on the file of the First Additional District Court, Erode is remitted to the Trial Court with the above directions, There shall be no order as to costs in this appeal. Consequently the connected C.M.P.Nos.16451 and 16452 of 2016 are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

The First Additional District Court,
Erode.

1 cc to Mr.N. Manokaran, Advocate, Sr. 69559
1 cc to Mr.M. Guruprasad, Advocate, sr. 69568

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