

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.828/2010 & MP.No.1/2010

&

A.S.No.40/2011 & M.P.No.1/2011

A.S.No.828/2010

1.Chinnaponnu

2.Pappathi

...Appellants/Defendants 1&2

..Vs..

1.Jeyanthi

2.Sibi

3.Minor Nandhitha

rep. by next friend 1st respondents

Jeyanthi

...Respondents 1to3/Plaintiffs

4.Kanagaraju

5.Nallammal

6.Karuppannan

7.Selvam

8.Kamalam

9.Santhanam

10.Velusamy

..Respondents 4 to 10/Defendants 3to9

A.S.No.40/2011

1.Jayanthi

2.Minor Nandhida

rep.by next friend Mother

Jayanthi

...Appellants/Plaintiffs 1to3

..Vs..

1.Chinnaponnu

2.Pappathi

3.Kanagaraju

4.Nallammal

5.Karuppannan

6.Selvam

7.Kamalam

8.Santhanam

9.Velusamy

..1to9 Respondents/Defendants 1to9

10.Cibi

..10th Respondents/2nd Plaintiff

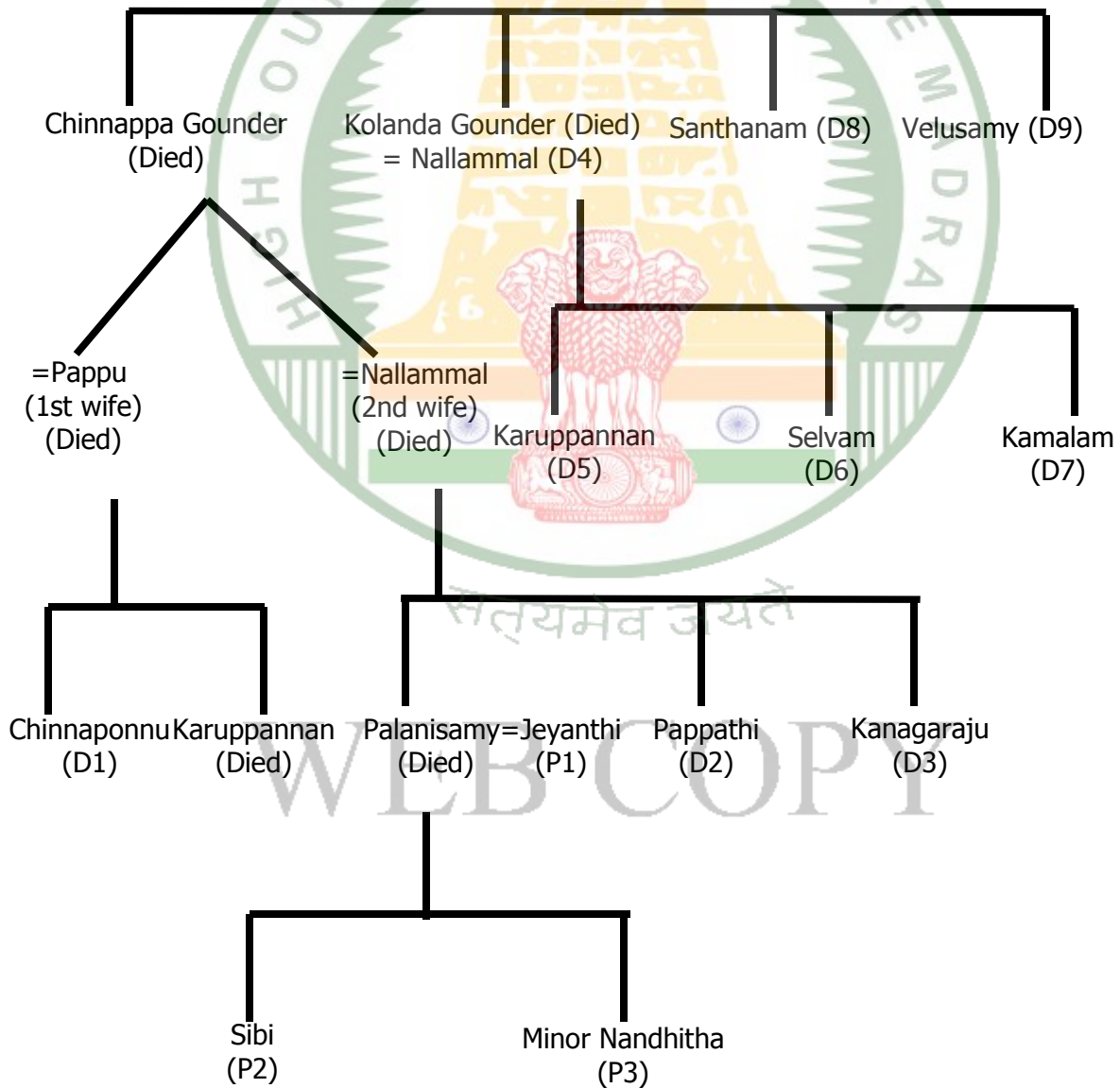
(R10 given up in the appeal)

Prayer: Appeal filed Under Section 96 and Order 41 Rule 1 CPC, against the judgment and decree dt.28.06.2010 made in O.S.No.49/2005 on the file of the Additional District Court, Fast Track Court, Namakkal District.

For Appellants
in AS.828/10 and
for Respondents in AS.40/11 : Mr.T.Dhanyakumar
For Appellants in AS.40/11
and for Respondents 1to3
in AS.828/10 : Mr.R.Nalliyappan

COMMON JUDGMENT

The plaintiffs in O.S.No.49/2005 whose suit for partition was decreed in part granting the plaintiffs 5/12th share in the properties shown in 'A' Schedule to the partition



dated 07.10.1991 are appellants in A.S.No.40/2011. The defendants 1 and 2 in the said suit who were allotted 1/12th share each are the appellants in A.S.No.828/2010. The suit in O.S.No.49/2005 was filed by the plaintiffs claiming that they are entitled to 9/72 share each in the suit schedule properties. According to the plaintiffs, the suit schedule properties belonged to 4 brothers namely Chinnappa Gounder, Kolanda Gounder, Santhanam and Velusamy. The plaintiffs are the wife and children of Palanisamy, S/o.Chinnappa Gounder through his second wife Nallammal. The genealogy appended to the plaint is reproduced for easy reference.

2. In defence it was contended that there was in fact a partition between the four brothers by way of registered partition deed dated 07.10.1991. If at all, the plaintiffs could claim a share, it can only be in the 'A' Schedule properties which were allotted to Chinnappa Gounder under the partition deed dated 07.10.1991. The defendants 1 and 2 would contend that the properties are self acquired properties of Chinnappa Gounder. They also projected a will said to have been executed by Chinnappa Gounder on 05.02.2003 bequeathing the properties allotted to him under the partition deed dated 07.10.1991 to defendants 1 and 2.

3.It was further contended that Chinnappa Gounder had executed a settlement deed on 18.10.2002, in and by which he had settled an extent of 2.64 acres in favour of the 2nd defendant since she became a young widow, with a view to support her financially. On the above pleadings, the trial Court framed the following issues:

- 1.Whether the plaintiffs are entitled to partition as prayed for?
- 2.Whether the genealogy appended to the plaint is complete in all respects?
- 3.Whether the suit properties are separate properties of Chinnappa Gounder inspite of the fact that they have been declared as joint family properties in the partition deed dated 17.10.1991?
- 4.Whether the settlement deed dated 18.10.2002 in favour of the 2nd defendant is valid?
- 5.Whether the will dated 05.02.2003 is valid and acted upon?
- 6.Whether late Palanisamy or his heirs have a right to seek partition of Chinnappa Gounder's properties?
- 7.To what other relief the plaintiffs are entitled to?

4. On the side of the plaintiffs, PW-1 was examined, and Ex.A.1 to A-15 were marked. On the side of the defendants DW-1 and DW-2 were examined. On consideration of the evidence on record, the learned District Judge came to the conclusion that the suit properties are ancestral properties of Chinnappa Gounder, the partition deed dated 17.10.1991 was also upheld. As a result, the learned District Judge concluded that the plaintiffs are entitled to seek a share only in the properties described in Schedule 'A' to the partition deed dated 17.10.1991. The learned District Judge disbelieved the will put forth by the defendants. The settlement deed executed by Chinnappa Gounder on 05.02.2003 was upheld. It was also brought on record that even during his life time, Chinnappa Gounder and his sons had sold some of the properties allotted to Chinnappa Gounder in the partition. On the above findings, the learned District Judge concluded that the plaintiffs are entitled 5/12th share in the properties described in Schedule 'A' to the partition deed dated 07.10.1991 excluding properties alienated and the properties covered by the settlement deed dated 05.02.2003. A preliminary decree was passed to that effect. Aggrieved by the said preliminary decree, the defendants 1 and 2 have preferred the appeal in A.S.No.828/2010. The plaintiffs have preferred A.S.No.40/2011.

5. I have heard Mr.T.Dhanyakumar, learned counsel appearing for the appellants in A.S.No.828/2010 and the respondents in A.S.No.40/2011. Mr.R.Nalliyappan, learned counsel appearing for the appellants in A.S.No.40/2011 and the respondents 1 to 3 in A.S.No.828/2010. At the outset, it should be pointed out that both the counsels did not dispute the nature of the properties as ancestral properties in the hands of Chinnappa Gounder. Mr.T.Dhanyakumar, learned counsel appearing for the appellants in A.S.No.828/2010 does not seriously challenge the findings by the trial Court with regard to the Will said to have been executed by Chinnappa Gounder on 05.02.2003. Mr.R.Nalliyappan, learned counsel appearing for the appellants in A.S.No.40/2011 would submit that Chinnappa Gounder had no right to make a gift of the ancestral property. He would submit that once the character of properties are held to be ancestral, Chinnappa Gounder had no right to make a gift of it in favour of his daughter without the consent of the other coparceners. Taking note of the limited scope of the appeal, the following points are framed for determination:

1. Whether Chinnappa Gounder had the right to executed the settlement deed in favour of the 2nd defendant Pappathi?

2. Considering the extent of properties that were allotted to Chinnappa Gounder under Ex.A-1 partition deed dated 07.10.1991? Whether the

gift of 2 acres and 64 cents by Chinnappa Gounder under Ex.A-14 dated 18.10.2002 could be termed as reasonable?

6.The total extent of properties that were dealt with under Ex.A-1 partition deed is about 88 acres. It is not in dispute that Chinnappa gounder was entitled to $1/4^{\text{th}}$ of the total extent of 88 acres. Therefore, the extent of property that was allotted to Chinnappa Gounder under Ex.A-1 works out to 22 acres. The extent of property that has been settled on 2nd defendant Pappathi is 2.64 acres. The Hon'ble Supreme Court in R.Kuppayee and another .v. Raja Gounder reported in AIR (2004) SC 1284 has held as follows:

" 20. On the authority of the judgment referred to above it can safely be held that a father can make a gift of ancestral immovable property within reasonable limits, keeping in view, the total extent of the property held by the family in favour of his daughter at the time of her marriage or even long after her marriage.

21.The only other point, which remains for consideration, is as to whether a gift made in favour of the appellants was within the reasonable limits, keeping in view, the total holding of the family. The total property held by the family was 3.16 acres, 12 cents would be approximately $1/26^{\text{th}}$ share of the total holding. The share of each daughter would come to $1/52^{\text{nd}}$ or $1/26^{\text{th}}$ share of the total holding of the family which cannot be held to be either unreasonable or excessive under any circumstances. Question as to whether a particular gift is within reasonable limits or not has to be judged according to the status of the family at the time of making a gift, the extent of the immovable property owned by the family and the extent of property gifted. No hard and fast rule prescribing quantitative limits of such a gift can be laid down. The answer to such a question would vary from family to family."

7.In view of the above said proposition of law laid down by the Hon'ble Supreme Court we have to see only as to whether the extent of property settled in favour of 2nd defendant Pappathi could be said to be reasonable. Considering the totality of circumstances, as already stated Chinnappa Gounder was allotted an extent of 22 acres of land under Ex.A.1. Out of the said 22 acres he had settled only an extent of 2.64 acres in

favour of the 2nd defendant Pappathi, considering the fact that she had been widowed at a young age. Such a gift of only about 1/10th of the property by her father infavour of a widowed daughter cannot be termed as unreasonable by any stretch of imagination. Therefore, I am unable to agree with the submissions of Mr.R.Nalliyappan, learned counsel appearing for the appellants in A.S.No.40/2011 to the effect that Chinnappa Gounder, has no right to execute the settlement deed dated 18.10.2002 and the same is not valid. In the light of the above discussions, I am unable to find any error in the conclusions of the trial Court, wherein the trial Court had upheld the alienation as well as the gift of the property in favour of the 2nd defendant. The plaintiffs as legal heirs of a predeceased son have been allotted 5/12th share which they are legally entitled to. I do not see any merit in both the appeals and the appeals are liable to be dismissed.

8.In fine, both the appeals have dismissed, confirming judgment and decree of the trial Court. Taking note of the relationship of the parties there will be no order as to costs in this appeal. Consequently the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

The Additional District Court,
The Additional District Court,
Fast Track Court, Namakkal,
Namakkal District.

+ 2 ccs to Mr.R. Nalliyappan, Advocate Sr.76346, 47
+ 1 cc to Mr.T. Dhanyakumar, Advocate Sr.76033

A.S.No.828 of 2010
&
A.S.No.40 of 2011

RSY(CO)
EU 14.02.17