

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **06.12.2017**

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

A.S.No.35 of 2015
and M.P.No.1 of 2015

1. Marammal	
2. K.K.Gunasekaran	
3. K.Kuppuraj	... Appellants / Defendants 1 to 3
	Vs.
1. V.Sarojini	
2. R.Ananthi	... Respondents / Plaintiff & 4th Defendant

Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of the Code of Civil Procedure, against the Judgment and Decree, dated 29.10.2014 made in O.S.No.197 of 2011 on the file of the V Additional District and Sessions Court, Coimbatore.

For appellants : Mr.N.Manokaran
for Mr.S.Vinoth Kumar

For respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.S.Veeraraghavan for R1
No Appearance for R2

JUDGMENT

(Judgment of the Court was delivered by
P.KALAIYARASAN, J)

This Appeal Suit has been directed against the Judgment and Decree of the V Additional District Court, Coimbatore, dated 29.10.2014 in O.S.No.197 of 2011 passing a preliminary decree by dividing the first item of the suit property into two shares and by

allotting half share to the plaintiff at the instance of the defendants 1 to 3 as appellants.

2. This Appeal Suit relates to Item No.1 of the suit property. Against dismissal of the suit with respect to Item Nos.2 and 3 of the suit property, there is no appeal. Therefore suffice to narrate the case of the parties with respect to Item No.1 of the suit property.

3. The case of the first respondent / plaintiff as averred in the plaint and the reply statement are as follows :

(i) The plaintiff and Kandaswamy Gowder are children of late Smt.Karaiyakkal and late Sri. Subbai Gowder. The first defendant is the wife and defendants 2 and 3 are the sons of the said Kandaswamy. The said Karaiyakkal died intestate on 17.09.1985 leaving behind the plaintiff and her brother Kandaswamy to succeed her estate. After her demise the plaintiff and her brother Kandaswamy succeeded to her properties and were in the joint possession and enjoyment of the same. The said Kandaswamy died intestate on 23.11.2002 leaving behind the defendants 1 to 3 as his legal heirs. Accordingly, the defendants 1 to 3 succeeded to the properties of Smt.Karaiyakkal and they have been in joint possession and enjoyment of the same along with the plaintiff for all these days.

(ii) Smt. Karaiyakkal purchased an extent of 8.00 acres in

S.F.No.183/1 and 183/2 of Madampatty Village, as per the sale deed, dated 05.03.1936. Subsequently, the said property was exchanged with her mother and sisters through her son Kandaswamy as per the registered exchange deed, dated 06.05.1957 and thereby she acquired Item No.1 of the suit property. The plaintiff was having cordial relationship with her brother and was getting half share in the income from the property till his death. Thereafter the defendants also have been giving the said share for all these years to the plaintiff and she has been doing some manual works in the properties and helped for cultivation.

(iii) The plaintiff has been a widow for more than two decades with seven children. The tendency of the defendants 1 to 3 have changed and they have stated that no share will be given to the plaintiff. The plaintiff has been demanding for amicable partition from January 2011. She issued legal notice on 14.03.2011. The defendants 1 and 2 issued a reply with false and untenable averments. The defendants 1 to 3 also created false partition deed, dated 31.03.2005. Her brother Kandaswamy managed to register the alleged partition deed, dated 17.04.1985 by exercising fraud, undue influence, coercion etc. The plaintiff being an illiterate widow lady and under the care of her brother Kandaswamy had signed in the release deed, dated 08.03.1994 trusting her brother. The plaintiff's mother Karaiyakkal was

sick for more than one year before her death and she was not in good physical and mental health. The plaintiff has half share in the property in Item No.1 of the suit property.

4. The case of the defendants 1 and 2 as per the written statement filed by them are as follows :

(i) The relationship set out in the plaint is admitted as correct. The allegation that Kariyakkal died intestate leaving behind the plaintiff and her brother Kandaswamy to succeed her estate is denied as false. The deceased Karaiyakkal has not left any property at the time of death except the small extent of vacant site. Even in respect of that property the plaintiff executed the release deed in favour of Kandaswamy releasing her common half share on 08.04.1994. The plaintiff has got no manner of any right, interest or share in the properties of the said Kandaswamy.

(ii) As per the sale deed, dated 05.03.1936, Karaiyakkal and his sons Kandaswamy and Duraisamy purchased 8 acres in S.F.No.183/1 and 183/2 in Madampatty village. After purchase, the said Duraisamy died unmarried and the said property was in possession of Karaiyakkal and Kandaswamy for some time and later on they were in the exclusive possession and enjoyment of Kandaswamy.

As per the exchange deed, dated 06.05.1957, the properties were

exchanged between Kandaswamy on one side, Rangammal and four others including Karaiyakkal on the other side. Under the said exchange deed, the first item of the suit properties were allotted exclusively to Kandaswamy and he became the absolute owner of the suit property. Except Kandaswamy no one including Karaiyakkal has got any right, title or interest in the property. By the deed of exchange Karaiyakkal relinquished and abandoned her right if any in the said properties. Thus Kandaswamy was the absolute owner and had been in exclusive possession and enjoyment of the said properties along with his family members, viz., defendants 1 to 3. Under law, the plaintiff is not entitled to any share in the suit property much less half share as claimed by her. No share in the income was given to the plaintiff by Kandaswamy.

(iii) The defendants have not at all paid any share in the income of the plaintiffs at any point of time. After the death of Kandaswamy on 31.01.2005 his heirs, namely the defendants 1 to 3 partitioned the properties and they have been in possession and enjoyment of their respective shares. Mutations in the revenue records have already taken place. The allegations in the reply statement that Karaiyakkal was sick for one year before her death and was not in a good mental health, that the plaintiff's brother managed to register the alleged partition deed, dated 17.04.1985 by exercising undue

influence, fraud, compulsion and coercion etc., and that she signed in the release deed, dated 08.04.1994 towards her brother without knowledge of the deed are denied. Therefore the suit is liable to be dismissed.

5. The trial Court framed necessary issues. On the side of the plaintiff, the plaintiff was examined as P.W.1 and 14 Exhibits were marked. On the side of the defendants, second defendant and the husband of the fourth defendant were examined as D.W.1 and D.W.2 and Ex.B.1 to Ex.B.21 marked.

6. The trial Court after analysing both oral and documentary evidence passed the preliminary decree allotting half share in Item No.1 of the suit property to the plaintiff. Aggrieved by the same, the defendants 1 to 3 have come forward with this Appeal Suit.

7. The learned counsel appearing for the appellants argued that Item No.1 of the suit property has been transferred to Kandaswamy under the deed of exchange, Ex.A.2, dated 06.05.1957 and Karaiyakkal has no right over the said property after the exchange deed and Kandaswamy became the absolute owner. It is further argued that the plaintiff filed the suit claiming her status as a coparcener over the property on the maternal side which is totally unknown to Hindu

Law of inheritance.

8. The learned Senior counsel appearing for the first respondent repletedly argued that Kandaswamy exchanged not only his share but also his mother's share and the same is not proper. He further argued that since Karaiyakkal's one of the son by name Duraisamy predeceased her, his share in the property devolved upon Karaiyakkal and therefore, she had 2/3rd share and Kandaswamy had only 1/3rd share. The plaintiff who has not relinquished her right is entitled to 1/3rd share in Item No.1 of the suit property.

9. There is no dispute that Karaiyakkal had two sons by name Kandaswamy and Duraisamy and one daughter the plaintiff Sarojini. Duraisamy predeceased his mother as bachelor. Karaiyakkal and Kandaswamy died intestate on 17.09.1985 and 23.11.2002 respectively. Kandaswamy left behind him, his legal heirs D1 to D3. This Appeal Suit relates to Item No.1 of the suit property. Ex.A.1 is the sale deed, dated 05.03.1936 with respect to S.F.No.183/1, Acres 3.44 cents and S.F.No.183/2, Acres 4.56 cents, totalling 8 Acres. The said property under Ex.A.1 was purchased by Karaiyakkal in her name and her minor sons, namely Kandaswamy and Duraisamy. Ex.A.2 is the Exchange Deed, dated 06.05.1957 whereby Karaiyakkal, her mother and her sisters exchanged the properties in S.F.No.180/2, Acres 3.05

cents and in S.F.No.183/1, Acres 4.95 cents totalling 8 acres with Kandasamy for the land under Ex.A.1. There is no dispute that there was exchange of land of 8 acres between Kandaswamy on one side and Karaiyakkal, her mother and her sisters on the other side and thus Item No.1 of the suit property came to the hands of Kandswamy.

10. The learned counsel appearing for the appellants cited the following Judgments of the Hon'ble Supreme Court (i) Sharanappa Basappa Dindawar v. State of Karnataka, (1996) 10 SCC 230; (ii) C.I.T v. Rasiklal Maneklal (HUF), (1989) 2 SCC 454 and (iii) Ram Kristo v. Dhankisto, AIR 1969 SC 204 for the proposition that by virtue of Section 118 of the Transfer of Property Act, transfer of the property is complete between two persons in the manner provided under the transfer of the property by way of exchange duly registered under the Registration Act. Through the exchange deed duly registered under Section 17 of the Registration Act, 1908, the right, title and interest of the land held by the two persons stood mutually transferred to each other.

11. Section 118 of the Transfer of Property Act, 1882 is extracted below :

"When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being

money only, the transaction is called exchange."

12. In the instant case, Karaiyakkal along with her mother and sisters exchanged the Item No.1 of the suit property with the property covered under the sale deed, Ex.A.1 with Kandaswamy and thus transferred the first item of the suit property to Kandaswamy. Thus through the exchange deed, dated 06.05.1957, Karaiyakkal along with her mother and sisters transferred Item No.1 of the suit property to Kandaswamy by taking the property under Ex.A.1 in exchange. By doing so it is needless to say that parties relinquished their rights they originally had in the properties. Exchange amounts to transfer as per law. Therefore, Kandaswamy got absolute title over Item No.1 of the suit property, as per the exchange deed, dated 06.05.1957. After his demise, his legal heirs, namely the defendants 1 to 3 are entitled to inherit.

13. It is also pertinent to note that pursuant to the Exchange Deed, Ex.A.2, Kandaswamy cancelled the mortgage of the property under Ex.B.1, dated 03.06.1958 and therefore he had been enjoying the property of his own.

14. In view of the finding that Item No.1 of the suit property is absolute property of Kandaswamy, this Court need not dwell upon

share to Karaiyakkal as one of the sons by name Duraisamy predeceased her.

15. For the aforesaid reasons, this Court holds that there is no partible interest to the plaintiff in Item No.1 of the suit property and the plaintiff is not entitled to any share. Accordingly the suit filed by her is liable to be dismissed.

16. In fine, this Appeal Suit is allowed. The Judgment and Decree, dated 29.10.2014 passed in respect of Item No.1 of the suit property in O.S.No.197 of 2011 by the trial Court is set aside and O.S.No.197 of 2011 is dismissed. No costs. Consequently connected miscellaneous petition is closed.

(A.S.,J.) (P.K.,J)

06-12-2017

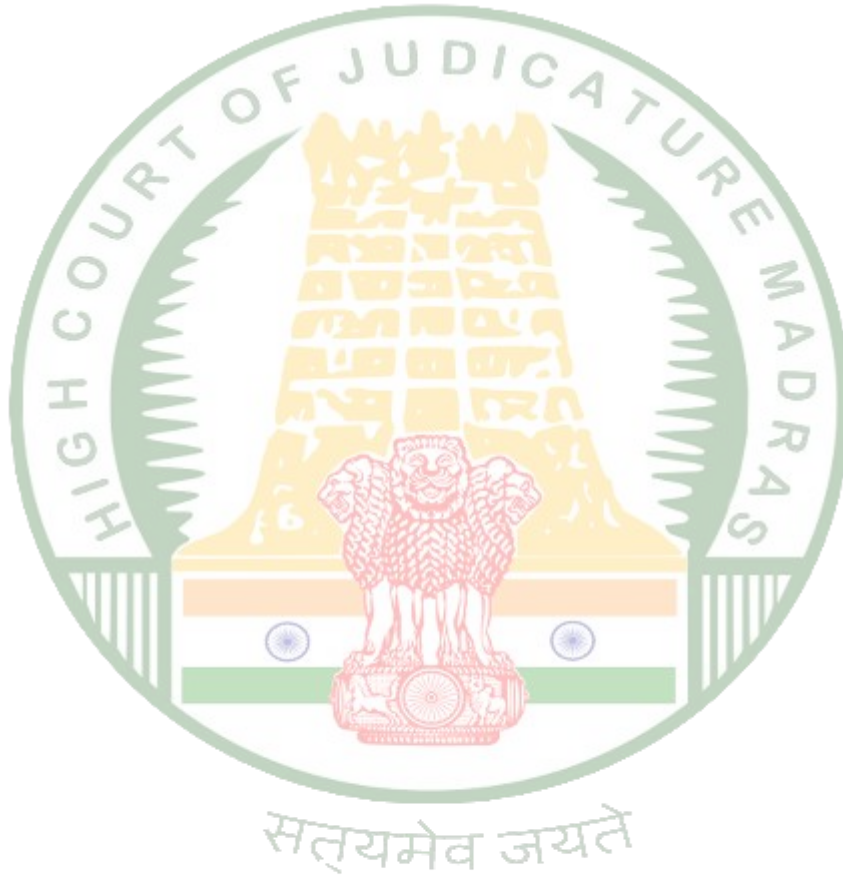
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To

The V Additional District
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Coimbatore.



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**A.SELVAM,J.
AND
P.KALAIYARASAN,J.**

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**Pre Delivery Judgment in
A.S.No.35 of 2015**

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