

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.04.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

A.S.No.275 of 2012

1. T. Shankar
2. T. Kotteswaran
3. T. Perumal
4. T. Gopinath
5. Arulmani
6. Venkatesan
7. Ravi
8. Karthi
9. Bhuvaneshwari
10. Anusuya
11. Sasidevi
12. Amul

..... Appellants/Plaintiffs

Vs.

1. Sivaprakasam
2. Vankatesan @ Durai
3. Kumatha Valli
4. Ramani
5. Bharathi
6. Bhuvaneshwari

.... Respondents/Defendants

Appeal filed under Order 41 Rules 1 and 2 of Civil Procedure Code against the judgment and decree dated 08.11.2011 passed in O.S.No.13 of 2011 (Principal District Court, Vellore O.S.No.136/2009) by the Court of Additional District and Sessions Judge, Vellore, Vellore District (Fast Track Court, Vellore, Vellore District).

For Appellants : Mr.D. Nagesh Babu

For Respondents : No appearance

JUDGMENT

(Order of the Court was made by P.D. AUDIKESAVALU, J.,)

The Appellants/Plaintiffs have preferred this appeal against Judgment and Decree dated 08.11.2011 in O.S.No.13 of

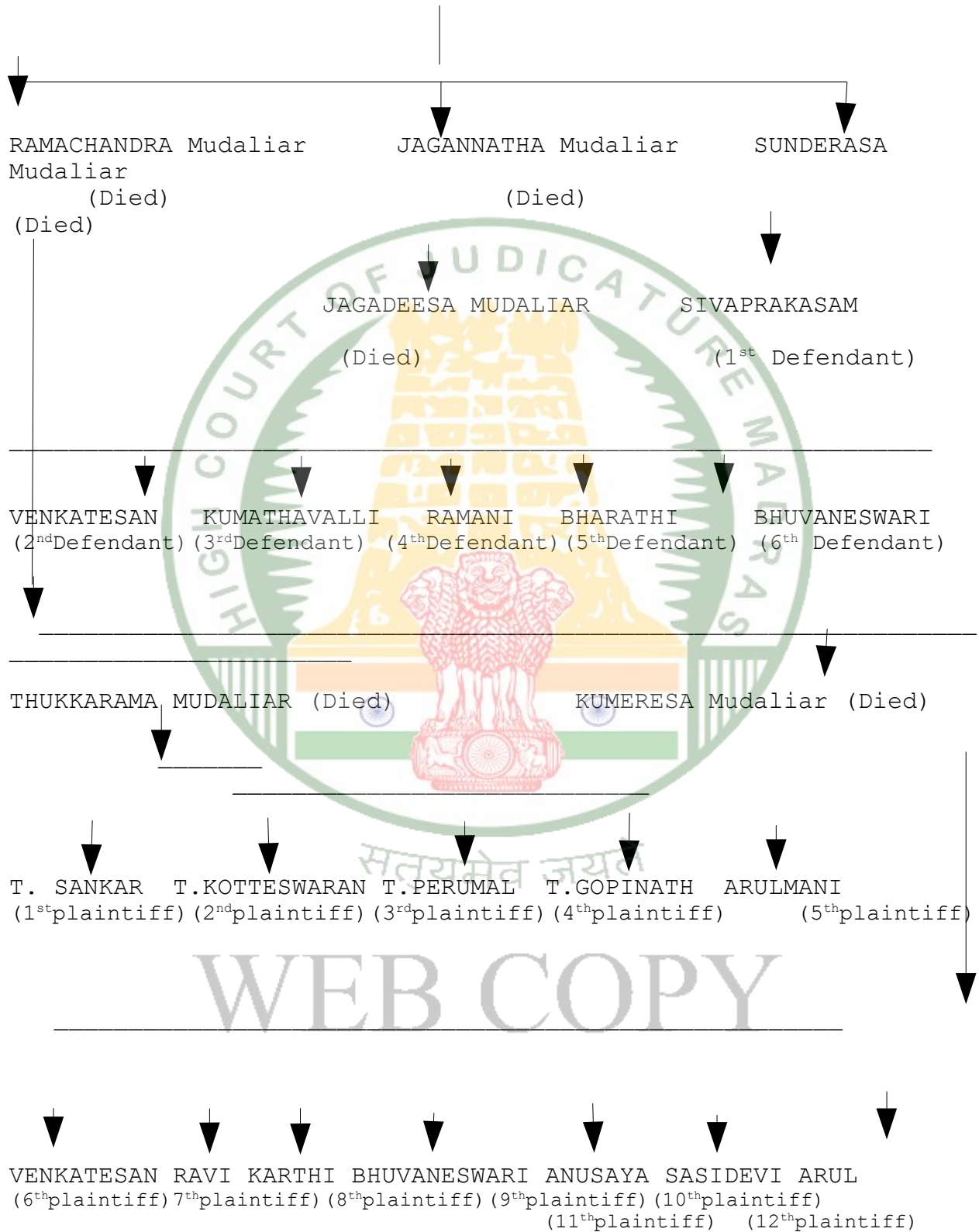
2011 passed by the Additional District and Sessions Judge, Vellore, Vellore District (Fast Track Court, Vellore, Vellore District) aggrieved by the dismissal of the suit instituted against the Respondents/Defendants for partition of the following properties which have been set out in the Schedule to the Plaint in that suit:-

S.No	Survey No	Extent
1	Dry Survey No.140, Abdullapuram Village, Vellore Taluk	1.08 Acres
2	Dry Survey No.170, Abdullapuram Village, Vellore Taluk	0.41 Acres
3	Dry Survey No.167/1, Abdullapuram Village, Vellore Taluk	0.84 Acres
4	Dry Survey No.167/3, Abdullapuram Village, Vellore Taluk	5.20 Acres
5	Dry Survey No.168 and this a Well is situated $\frac{1}{2}$ share extent of 0.12 Acres, Abdullapuram Village, Vellore Taluk	0.24 Acres
6	Dry Survey No.161/1 and in this a well is situated, $\frac{1}{2}$ share extent of 0.10 $\frac{1}{2}$ Acres, Abdullapuram Village, Vellore Taluk	0.21 Acres
7.	Abdullapuram Village Natham S.No.123 Pillaiyar Koil Street, South of Pillaiyar Koil Street, North of Sivasankaran Mudaliar Plot, East of Santhiyappa Mudaliar Vagaiyara house and 3 feet with common road, West of Kannabiran house, East to West 27 feet North to South 52 feet in this constructed tiled house with door Nos.1/5 & 1/6.	

The parties hereinafter referred to as per the description in the suit for the sake of convenience.

2. Since the matter relates to partition of the properties between blood relatives, it would be useful at the outset to refer to the Genealogy Tree indicating the inter- se relationship between the parties:-

GENEALOGY TREE
VENKATESA MUDALIAR (died)
&
MUNIRANGAMMAL (died)



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3. The case of the Plaintiffs as set out in the plaint is as follows:-

(i) The seven items of properties mentioned supra were given as sridhana property to Munirangammal by her brother by Document No.3088 of 1918 dated 09.11.1918.

(ii) The said Munirangammal was married to one Venkatesa Mudaliar and through their wedlock, they had three sons, viz., (1) Ramachandra Mudaliar (2) Jaganatha Mudaliar, and (3) Sundaresa Mudaliar.

(iii) The said Venkatesa Mudaliar pre-deceased the said Munirangammal.

(iv) On the intestate demise of the said Munirangammal, the aforesaid properties devolved upon of her three sons, viz., Ramachandra Mudaliar, Jaganatha Mudaliar and Sundaresa Mudaliar in three equal shares.

(v) On the intestate demise of the eldest son, viz., Ramachandra Mudaliar, his one-third undivided share in the joint family property devolved upon his two sons, viz., Thukkarama Mudaliar and Kumaresa Mudaliar, who thereafter continued to hold the same with one-sixth undivided share for each of them.

(vi) On the intestate demise of Thukkarama Mudaliar in the year 1979, his one-sixth undivided share in the joint family properties devolved upon the First to Fifth Plaintiffs jointly.

(vii) On the intestate demise of Kumaresa Mudaliar, who died three years before the institution of the suit, his one-sixth undivided share in the joint family properties devolved upon the Sixth to Twelfth Plaintiffs.

(viii) On the intestate demise of Jaganatha Mudaliar, who is the second son of Munirangammal and Venkatesa Mudaliar, his one-third undivided share in the joint family properties devolved upon his only son, viz., Jagadeesa Mudaliar.

(ix) On the intestate demise of Jagadeesa Mudaliar, his one-third undivided share in the joint family properties devolved upon the Second to Sixth Defendants who were his legal heirs.

(x) On the intestate demise of Sundaresa Mudaliar, the last son of Munirangammal and Venkatesa Mudaliar, the First Defendant succeeded to his one-third undivided share of the

aforesaid properties.

(xi) The Plaintiffs who were jointly enjoying one-third undivided share in the properties, claimed allotment of their share by partitioning the aforesaid properties.

4. The case of the First Defendant in his written statement is as follows:-

(i) The relationship between the parties as stated in the plaint is not denied.

(ii) It is true that Item Nos.1 to 6 of the suit properties were sridhana properties of Munirangammal given to her under Registered Deed dated 09.11.1918.

(iii) Item No.7 of the suit property was neither a property given under the said document nor it was a sridhana property but it was ancestral property of Venkatesa Mudaliar, the husband of Munirangammal.

(iv) On the intestate demise of Venkatesa Mudaliar and Munirangammal, their three sons, viz., Ramachandra Mudaliar, Jaganatha Mudaliar and Sundaresa Mudaliar divided the suit properties by way of oral partition about 70 years prior to the institution of that suit by way of family arrangements and subsequently they were in separate possession and enjoyment of the respective shares allotted to them, demonstrating and displaying that there occurred division in co-parcenary status and joint family between the three brothers and nothing was left to be divided between them.

(v) In pursuance of the said partition, Ramachandra Mudaliar (Paternal Grand Father of the plaintiffs) had sold his share in the suit properties about 70 years prior to the institution of the suit to one T.M. Venkatarama Iyer and as a result thereof, the plaintiffs ceased to have any interest over the suit properties and they were not in possession of the same.

(vi) The said Jagannatha Mudaliar (Father of the First Defendant), in turn, had purchased the aforesaid properties from the said T.M. Venkatarama Iyer by registered Sale Deed dated 11.01.1943 which was attested by the said Ramachandra Mudaliar himself.

(vii) The mother of the First Defendant viz., Ramajayammal had purchased the share of Jagadeesa Mudaliar (Son of Jagannatha Mudaliar) under registered Sale Deed dated 09.03.1959 in respect of his share in the suit properties.

(viii) The right and title of the First Defendant over the suit properties were specifically acknowledged by Thukkarama Mudaliar and Kumaresa Mudaliar (Sons of Ramachandra Mudaliar) in the registered documents dated 19.04.1972 and 20.09.1977 and as such, the Plaintiffs were estopped from claiming any share in the entire suit properties.

(ix) The First Defendant and his father Sundaresa Mudaliar have been in exclusive possession and enjoyment of the entire suit properties and as absolute owners, by mortgaging the suit properties.

(x) The address of the Plaintiffs given in the suit is not correct inasmuch as all of them except the Fourth Plaintiff viz., T. Gopinath, were residing elsewhere and the said T. Gopinath was occupying the tiled house in item No.7 of the suit property only as a tenant under the First Defendant.

(xi) Since the said Jagadeesa Mudaliar (Father of the Second Defendant to Sixth Defendants) had sold his share in the suit properties to the mother of the First Defendant, viz., Ramajayammal under Registered Sale Deed dated 09.03.1959, the Second to Sixth Defendants did not succeed to any share in the suit properties.

(xii) It was contended that neither the Plaintiffs nor the Second to Sixth Defendants have any share in the suit properties and they were not in joint possession along with the First Defendant and that the entire suit properties were claimed to be absolutely and exclusively belonging to the First Defendant alone.

5. The Second, Fourth and Fifth Defendants in their Written Statement admitted all the averments in the plaint as correct and claimed that they were jointly entitled to one-third share in the suit schedule properties, for which, they are ready to pay court fee for their share.

6. On a consideration of the pleadings of the parties, the trial Court framed the following issues:

(i) Whether the suit properties are ancestral properties?

(ii) Whether the Plaintiffs are entitled to one-third share in the suit properties as prayed for?

(iii) To what other relief the Plaintiffs are entitled?

7. On the side of the Plaintiffs, the Third Plaintiff, viz., T.Perumal, the Second Plaintiff, viz., T.Kotteeswaran and one Tmt.Anusuya were examined as P.Ws.1, 2 and 3 respectively and Exs.A-1 to A-3 were marked. On the side of the Defendants, the First Defendant viz., Sivaprakasam examined himself as D.W.1 and Exs.B-1 to B-21 were marked.

8. The Trial Court had taken note of the following evidence placed on record:-

(i) Ramachandran Mudaliar, the eldest son of Munirangammal had sold the property which he got under oral partition to T.M. Venkatarama Iyyer as seen from the certified copy of the sale deed dated 07.06.1936 (Ex.B-3).

(ii) The said T.M. Venkatarama Iyyer had sold the property to Jagannatha Mudaliar and Sundaresa Mudaliar under the registered sale deed dated 11.01.1943 (Ex.B-4), which was attested by Ramachandra Mudaliar.

(iii) Jagadeesa Mudaliar (the only son of Jagannatha Mudaliar) had sold his share of the suit property to Ramajayammal (wife of Sundaresa Mudaliar and the mother of the First Defendant) on 09.03.1959 by Sale Deed (Ex.B-5).

(iv) P.W.1 admitted the signature of Kumaresa Mudaliar (Ex.B-6) as found in the original sale deed dated 19.04.1972 executed by Thukkaram Mudaliar, Kumaresa Mudaliar and Jagadeesa Mudaliar in favour of the First Defendant (Ex.B-1), in which, they signed it on behalf of themselves and also on behalf of their minor children, viz., the Plaintiffs and the Second to Sixth Defendants.

(v) The original sale deed dated 29.09.1977 executed by Kumaresa Mudaliar and his elder son Venkatesan and also on behalf of his minor sons in favour of the First Defendant (Ex.B-2) had been produced.

(vi) The First Defendant had mortgaged the properties on 10.05.1984 by executing a mortgage deed in favour of one Jayarama Mudaliar (Ex.B-7) and later he redeemed the property by settling the mortgage loan.

9. On the basis of the aforesaid facts supported by evidence, the Trial Court arrived at the factual finding that the First Defendant and his father Sundaresa Mudaliar were in exclusive possession and all items of property in the suit and as the Plaintiffs do not have any share in those properties, they were estopped from making any claim in that regard.

10. In respect of Item No.7 of the suit schedule properties, which is a tiled house bearing Door No.1/5 and 1/6 situated in S.No.123, Pillaiyar Koil Street, Abdullapuram Village, the Trial Court held that the First Defendant proved that he was in possession and enjoyment of that property on the basis of Chitta and Patta respectively (Ex.B-8 and B-11) standing in his name apart from electricity cards, property tax receipts and water tax receipts (Exs.B-10 to B-21). The only documents produced by the Plaintiffs (Ex.A-2 and A-3), were found to be house tax receipts in the name of Mrs.Lakshmi, W/o Thukkaram for Door No.13 and electricity cards annexed with two numbers of receipts issued in the name of First Plaintiff.

11. In the light of the aforesaid discussions on the rival factual claims, the Trial Court answered the issues against the Plaintiffs holding that the suit properties ceased to be ancestral properties and the Plaintiffs were not entitled to get one-third share in the suit property and accordingly, dismissed the suit.

12. The learned counsel appearing for the Plaintiffs urged in this Appeal that the findings of the Trial Court were not based upon proper appreciation of evidence on record and the claim made by the First Defendant for exclusive ownership and title of the suit properties ought not to have been believed.

13. Though Notice had been served to the Defendants in this Appeal, they have neither appeared in person nor through counsel.

14. We have heard the submissions made on behalf of the Plaintiffs with reference to the oral and documentary evidence in the suit.

15. On a careful consideration of the reasons stated by the Trial Court in arriving at the finding on the basis of the evidence that the share of Ramachandra Mudaliar (Grand Father of the Plaintiffs) and Jagannatha Mudaliar (Grand Father of Second to Sixth Defendants) had been transferred to Sundaresa Mudaliar and his wife Ramajeyammal respectively, we are satisfied that the Trial Court was right in holding that the Plaintiffs and the Second to Sixth Defendants ceased to have any right, title or interest in the suit properties which ultimately became the absolute properties of the First Defendant on the demise of his parents, viz., Sundaresa Mudaliar and Ramajeyammal. In the aforesaid circumstances, we do not find any scope to take any different view from those factual findings arrived at by the trial Court on the basis of the evidence on record. Learned

counsel for the Plaintiffs was unable to establish any infirmity in the impugned judgment warranting interference in this appeal.

16. Resultantly, the Judgement and Decree of the Trial Court passed by the Court of Additional District and Sessions Judge, Vellore, Vellore District (Fast Track Court, Vellore, Vellore District in O.S.No.13 of 2011 dated 08.11.2011 stands confirmed and the Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

sr

To

To

The Additional District and Sessions Judge,
(Fast Track Court, Vellore)

+1cc to Mr.D.Nagesh Babu, Advocate SR.No.24780

A.S.No.275 of 2012

TM(CO)
GN(10/07/2018)

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