

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON :**20.02.2018**

JUDGMENT PRONOUNCED ON : **06.04.2018**

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.662 of 2010

1. Tmt.A.Kanagalakshmi
2. Tmt. U.Sudamani
3. Tmt. J.Raja Rajeswari

... Plaintiffs

Vs

1. V.Gururaj
2. V.Thangamani
3. V.Krishnamurthy
4. V.Chandrasekaran
5. Deivanai
6. Marimuthammal
7. V.Sundar
8. V.Sridharan (deceased)
9. V.Rajendran

10. N.Pushpavalli
11. Mahaveerchand Ranka
12. Mrs. Gulab Devi
13. Mahaveerchand
14. S.Malika
15. Sridevi
16. Saravanan
17. Shyam

... Defendants

(Defendants 14 to 17 were added as per order dated 09.03.2015 in Appl. No.1630 of 2015)

Prayer : Complaint filed under Order IV Rule 1 of the Madras High Court Original Side Rules read with Order VII Rule 1 Code of Civil Procedure, 1908, praying for the following judgment and decree:-

- (a) directing the defendants to divide and allot their 3/13 share in the suit property to the plaintiffs;
- (b) directing the defendants to pay costs of the suit to the plaintiffs.

For Plaintiffs : Mr. S.Kanniah

For Defendants : Mr.R.Sekaran for D1 & D4
 Mr.M.Venkateswaran for D11 to D13
 Mr. K.Bijay Sundar for D2, D3, D6 to D9

J U D G M E N T

The suit for partition and possession of 3/13th share of the plaintiffs in the suit property.

2. The case of the plaintiffs in brief is as follows:

The plaintiffs 1 to 3 and the defendants 1 to 10 are the sons and daughters of T.G.Vellaya Nadar, who died on 10.05.2006, leaving behind the plaintiffs, defendants 1 to 10 and Tmt.Thanlakshmi Ammal, his wife. The said Thanalakshmi Ammal died 19.07.2006. One of the sons of T.G.Vellaya Nadar, V.Shanmugam, died, issueless and intestate on 01.02.1995. Another son of T.G.Vellaya Nadar, viz. V.Vijayakumar, died intestate leaving behind his wife, who has been added as the 6th defendant

in the suit.

3. According to the plaintiffs, the ancestral properties of the joint Hindu family of which T.G.Vellaya Nadar was the kartha, were vast extent of landed property at Tharangambadi Village in Nagapattinam District and Chennai including a bungalow with 25 grounds of land situate in Door No.21/57, Dr.Azhagappa Road, Purasawalkam, Chennai 600 084. By a Registered Partition Deed dated 13.12.1956, bearing Document No.12/1957, the agricultural lands situate in Tharangambadi and the properties at Chennai were partitioned amongst the family members.

4. According to the plaintiffs, in the said Partition Deed dated 13.12.1956, the bungalow along with 25 grounds of lands in Dr.Azhagappa Road, Purasawalkam, Chennai 600 084 and a house site in Tharangambadi were kept undivided common family property and the properties that were kept undivided, where shown as "J" Schedule properties in the Partition Deed. According to the plaintiffs, they are entitled to equal rights over the said property along with defendants 1 to 10. It is also claimed by the plaintiffs that they, along with defendants 1 to 10, have sold the house and land in Tharangambadi Village covered in J Schedule property in the Partition Deed and the plaintiffs along with defendants 1 to

10 have jointly executed a registered Power of Attorney dated 02.07.2009, bearing Document No.506/2009. It is also contended that the plaintiffs were paid their share of the consideration received on the sale of the property situate at Tharangambadi.

5. The claim of the plaintiffs is that, defendants 1 to 10 have entered into an agreement of sale on 08.04.2010 with defendants 11 to 13 for sale of the land measuring about 4 grounds and 7 sq. feet situate in Dr.Azhagappa Road, Purasawalkam, Chennai 600 084. According to them, it is also a common property of the family shown in "J" Schedule in the Partition Deed. The defendants 1 to 10 have claimed that bungalow and 25 grounds of land have been partitioned and they are alone entitled to the same. The defendants 1 to 10 with an intention to defraud the plaintiffs have entered into the Sale Agreement dated 08.04.2010. As per the Partition Deed dated 13.12.1956, the bungalow and 25 grounds of land have been kept as an undivided common property of the family. When the defendants 1 to 10 joined with the plaintiffs and sold the Tharangambadi house and land, which was kept in common, considering the same as a common property of the family, they have entered into sale agreement to sell the Chennai property, with an intention to defraud the plaintiffs and defeat their rights over the properties.

6. According to the plaintiffs, they are entitled to 1\13th share each in the suit property and they claimed that the agreement does not bind them with reference to their share. The plaintiffs would further contend that on coming to know about the sale agreement dated 08.04.2010, the plaintiffs have caused a notice to the defendants 1 to 10 and defendants 11 to 13 on 16.06.2010, requiring them to divide the property and allot their share in the schedule mentioned property. Copies of the notices were also marked to the Sub Registrar, Purasaivalkam. Though the defendants have received the notice neither did they comply with the demands of the plaintiffs nor did they send any reply. On the above contentions, the plaintiffs have come forward with the suit seeking partition and separate possession of their 3/13th share and for other reliefs.

7. The defendants 11 to 13 filed a written statement contending that the suit is not maintainable. The relationship between the parties is admitted, it is claimed that T.G.Vellaya Nadar had nine sons and five daughters. He, his six sons, viz., Mr.V.Gururaj (1st defendant), V.Krishnamurthy (3rd defendant), V.Chandrasekaran (4th defendant), V.Sundar (7th defendant), V.Sridharan (8th defendant), V.Shanmugam and

two of his daughters, viz. N.Pushpavalli (10th defendant), U.Sudamani (2nd plaintiff), his wife Thanalakshmi Ammal and his mother Raja Rajeswari Ammal, entered into the partition on 13.12.1956. As per the said partition, the suit properties which form part of the larger extent of 25 grounds was allotted to T.G.Vellaya Nadar and his sons and the said property was to be enjoyed in common. The property was covered under Schedule "J" of the partition. It is also claimed by defendants 11 to 13 that it is only T.G.Vellaya Nadar and his sons 2 to 7, who are entitled to the said property. According to defendants 11 to 13, T.G.Vellaya Nadar and his sons had sold more than 20 grounds of the property and only an extent of 4 grounds and 7 sq. feet remains and the same is an enjoyment of respondents 1 to 4 and 6 to 9. They have also obtained patta in their names.

8. According to defendants 11 to 13, defendants 1 to 4 and 7 to 9 and the 6th defendant viz. wife of late Vijayakumar, her son and daughter represented that they are the co-owners of the property and that they have absolute power to deal with the suit property. On the strength of the said representation, they had entered into an agreement of sale on 08.04.2010 and 13.04.2010 and have received the entire sale consideration and handed over possession of the suit property to the defendants 11 to 13

herein. It is also claimed that at the request of defendants 11 to 13 herein, defendants 1 to 4 and 6 to 9, have executed a General Power of Attorney in favour of their nominee Mr.Mukesh M.Ranka, thus, according to the defendants 11 to 13, the sale transaction is completed.

9. It is also contended by the defendants 11 to 13 that the female heirs have no right over the property, as per the Partition Deed. Defendants 11 to 13 would also contend that the father, T.G.Vellaya Nadar had executed a Settlement Deed dated 06.03.2006, registered as Document No.1278/06 at SRO, Purasawalkam, whereby he settled the "A" Schedule property in the settlement deed, absolutely to his sons, grandson and granddaughter. In the settlement, he has specifically mentioned that the daughters have no right in the suit property, as per Clause 13 of the settlement, it has been recited that the five daughters are entitled to 2% each of the sale price and the remaining amount will go to the six sons and the daughter and son of Late Vijayakumar. Therefore, according to defendants 11 to 13, the plaintiffs have no right over the suit property. With reference to the sale of the Tharagambadi properties, it is contended that the plaintiffs were added as executants, since the settlement deed dated 06.03.2006 gave an equal share in the said property. Therefore, according to defendants 11 to 13, the plaintiffs have suppressed the factum of

settlement deed and have come forward with the present suit. The defendants would contend that they have invested nearly a sum of Rs.2,40,00,000/- over the property and are planning to develop the property. On the above pleadings, the defendants 11 to 13 sought for dismissal of the suit. The other defendants remained *ex-parte*.

10. On the above pleadings, this Court had framed the following issues on 21.02.2012.:

1. *Whether the suit property covered under "J" schedule of the partition deed dated 13.12.1956 is an ancestral property or not?*
2. *Whether the defendants alone are entitled to take over the suit property to the exclusion of the plaintiffs?*
3. *Whether the plaintiffs are entitled for partition and separate possession of their 1/13th share each in the suit property?*
4. *Whether the settlement deed dated 06.03.2006 executed by the father of the parties is valid and binding on the parties?*
5. *Whether the sale deeds executed by the defendants after the suit are binding on the plaintiffs?*
6. *What are the other reliefs the plaintiffs entitled to?*

11. At trial, the 1st plaintiff was examined as P.W.1 and Mahaveerchand Ranka, the 11th defendant was examined as D.W.1.

Exhibits P1 to P8 were marked on the side of the plaintiffs and Exhibits D1 to D7 were marked on the side of the defendants.

12. I have heard Mr.S.Kanniah, learned counsel appearing for the plaintiffs, Mr.R.Sekaran, learned counsel appearing for defendants 1 to 4, Mr.K.Bijai Sundar, learned counsel appearing for defendants 6 to 9 and Mr.M.Venkateswaran, learned counsel appearing for the defendants 11 to 13.

13. Issue Nos.1, 2 and 4:

13.1. The plaintiffs have come to Court with a plea that the property mentioned in 'J' Schedule to the Partition Deed dated 13.12.1956 was not divided and the same was kept in common and as such on the death of their father, they are entitled to partition and separate possession of their share of the property. The plaintiffs claim is understandably under the provisions of the Amended Section 6 of the Hindu Succession Act, 1956, as amended by Act 39 of 2005. In order to ascertain the nature of the property, essentially, the Partition Deed dated 13.12.1956 that has been marked as Ex.P6 has to be looked into. It is not in dispute that the suit property is mentioned in Schedule "J" to the said Partition Deed.

13.2. The recitals in the document regarding the “J” Schedule property are as follows:

“.....நம்மில் 1 நபர் டி.ஜி.வெள்ளைய நாடார் தாயார் ராஜாராஜேஸ்வரி அம்மாள் அவர்களுக்கு மெயின்டன்ஸ்க்காக மதராஸ் ஹை கோர்ட் சி.எஸ்.எண்.528/47 டிகிரியில் இடங்கல் கிராமத்தில் ஒதுக்கப் பட்டிருந்த சொத்துக்களை 1வது நபர் கோருதல் படி ஷீ ராஜாராஜேஸ்வரியம்மாள் ரிலீஸ் செய்து கொடுத்து விட்டபடியால் அதற்காக அவர்கள் ஆயுள் வரையில் நமது குடும்பத்திற்கு பொதுவாக வைக்கப்பட்டுள்ள ஜெ.செடியூலில் சொத்துக்களை ஷீ ராஜாராஜேஸ்வரி அம்மாள் ஜீவதிசை வரையில் யாதொரு பராதீனத்துக்கும் தன் ஜீவனத்திற்கு எடுத்துக் கொள்வதுடன் நம்மில் 1 நபர் சம்சாரம் தனலட்சுமி அம்மாளுக்கு ஷீ வரும்படியில் ஷீயார் ஜீவனத்துக்காக ஷீயார் ஆயுள் வரையில் மாதம் 1க்கு ரூபாய் 75 வீதம் கொடுத்து வர வேண்டியது. ஷீ ராஜாராஜேஸ்வரியம்மாள் ஜீவதிசைக்கு பிறகு ஷீயார் அடைந்து வந்த வரும்படியை மைனர்கள் 2 முதல் 7 அடையவேண்டியதுடன் ஷீ தனலட்சுமி அம்மாளுக்கும் ஆயுள் பரியந்தம் மாதாந்திரம் கொடுக்கவேண்டிய ரூபாய் 75யும் கொடுத்து வர வேண்டியது. இவர்கள் இருவர் ஜீவதிசைக்கு பிறகு இதில் கண்ட இரண்டு பார்ட்டிகளும் அதாவது 1 முதல் 7 நபர்கள் ஜெ செடியூல் சொத்துக்களை பிரிக்காமல் பொதுவில் அனுபவித்து கொள்ள வேண்டியது”

13.3. This Partition Deed is entered into between T.G.Vellaya Nadar, his six sons and two daughters. It is seen that after the said partition, the said T.G.Vellaya Nadar and Thanalakshmi have begotten atleast six children, viz., V.Thangamani (2nd defendant), V.Chandrasekaran (4th defendant), Deivanai (5th defendant), V.Rajendran (9th defendant), A.Kanagalakshmi (1st plaintiff) and J.Raja Rajeswari (3rd plaintiff). According to the plaintiffs, the property mentioned in "J" schedule, viz. an extent of about 1.84 acres of Nanja land and 25 grounds along with bungalow situate in Dr.Azhagappa Road, Purasawalkam, Chennai 600 084, as well as certain agricultural lands in Kidankil Village in Myladuthurai Taluk, where kept in common to be enjoyed by the family. Therefore, the plaintiffs would contend that it is an undivided family property and upon the enactment of the Hindu Succession Amendment Act, 39 of 2005, they would also become co-parceners along with T.G.Vellaya Nadar, who died on 10.05.2006 (after the coming into force of Act 39 of 2005) and hence, defendants 1 to 10 alone do not have the right to deal with the said property. The defendants would however, relying upon the recitals in the said Partition Deed, contend that it is only the parties 1 to 7 to the Partition Deed, viz. T.G.Vellaya Nadar and his six sons who would be entitled to

enjoy the property and not the other children including the after born children. Of Course, none of the parties have adverted to the fact that the right of maintenance in the property was given to Raja Rajeswari Ammal, the mother of T.G.Vellaya Nadar and a restricted right was prescribed on her and it was only after the lifetime of Raja Rajeswari Ammal, the parties viz. T.G.Vellaya Nadar and his six sons would be entitled to enjoy the property, without dividing the same.

13.4. Neither of the parties have made a claim, on the basis that the property was allotted to Rajarajeswari Ammal, in lieu of her maintenance and in view of Section 14(1) of the Hindu Succession Act, the right of Raja Rajeswari Ammal, who died on 27.12.1971, would blossom into an absolute right. However, Mr.Bijay Sundar, learned counsel appearing for the 1st defendant would submit that, since the Partition Deed itself had come into existence in December 1956, i.e., after coming into force of the Hindu Succession Act, 1956, and the said document, itself prescribed the limited estate, in favour of Raja Rajeswari Ammal, Section 14(2) alone would apply and the limited estate that vested in Raja Rajeswari Ammal, would not blossom into an absolute estate. On the other hand Mr.Kanniah, learned counsel appearing for the plaintiffs would contend that the document itself recites that Raja Rajeswari Ammal had a

right of maintenance over some of the properties, as per the decree in CS No.528 of 1947 and since she had released the said properties, from the right of maintenance held by her, she was given the right of maintenance over the properties described in schedule "J". Therefore, according to him, in as much as the Partition Deed dated 13.12.1956 only substituted the properties in which Raja Rajeswari Ammal had a right of maintenance, these properties that were possessed by Raja Rajeswari Ammal, in lieu of her maintenance would become her absolute properties and upon her death in 1971, the properties would devolve on her legal heir, viz. T.G.Vellaya Nadar.

13.5. I am unable to countenance the said submission, in view of the fact that the plaintiffs have not claimed any right over the properties on the basis that the properties became the absolute properties of Raja Rajeswari Ammal. There was no plea nor there is an issue to the effect in the suit, therefore, the claim of the plaintiffs that the properties became the absolute properties of Rajarajeswari Ammal and that they would devolve under Section 15 cannot be countenanced in the absence of any plea or evidence on the side of the plaintiffs to that effect.

13.6. The next question that arises is whether the after born

children of T.G.Vellaya Nadar would be entitled to a share in the “J” Schedule properties, which were admittedly kept in common or that T.G.Vellaya Nadar, and his six sons alone would be entitled to the properties to the exclusion of the other children born to T.G.Vellaya Nadar, after the said partition. In this regard, it is become necessary to look into the law relating to the rights of after born children in the property of the family. The Hindu Law has its stood prior to the codification by the Hindu Succession Act, 1956, insofar as the rights of after born children has been set out in the 22nd Edition of the text book of Hindu Law by Mullah as follows:

309. Son begotten as well as born after partition.- *A father separating from his sons, may or may not reserve to himself, a share on partition. The rights of a son born as well as begotten after partition are different, depending upon whether the father has or has not reserved a share to himself.*

(1) Where the father has reserved a share to himself, a son who is begotten as well as born after partition, is not entitled to have the partition reopened; but in lieu thereof he is entitled, after the father's death, to inherit not only the share allotted to the father on partition, but the whole of the separate property of the father, whether acquired by him before or after

partition, to the entire exclusion of the separated sons.

(2) Where the father has not reserved a share to himself on a partition with his sons, a son who is born as well as begotten after the partition is entitled to have the partition reopened and to have a share allotted to him not only in the property as it stood at the time of the original partition, but in the accumulations made with the help of that property.”

13.7. Of course, Section 8 of the Hindu Succession Act had made deep inroads in the above law relating to the right of the after born children. After the enactment of the Hindu Succession Act, any property that is allotted to a male Hindu at a partition between him and his sons is held by him as his absolute property and it will devolve, under Section 8 on his Class I heirs. But a son or daughter born after the partition would become a co-parcener along with the father in respect of the property allotted to the Male Hindu at the partition. Therefore, whatever property that was allotted to T.G.Vellaya Nadar in the partition deed is held by him as his absolute property, but as soon as a son or daughter is born to him after the partition, they get a right by birth in those properties that are allotted to him at the partition. Of course, Section 8 of the Hindu Succession Act, has abrogated the distinction between the divided son and

the undivided son, in the matter of the inheritance of father's separate property.

13.8. Be that as it may, the partition deed dated 13.12.1956, the recitals which have been extracted supra, would show that a life estate was given to Raja Rajeswari Ammal, in lieu of her maintenance and an obligation was also imposed upon the said Raja Rajeswari Ammal to pay a sum of Rs.75/- per month to Thanalakshmi Ammal, wife of T.G.Vellaya Nadar. The document further recites that on the death of Rajarajeswari Ammal, the income from the property is to be taken by the minor sons, viz. parties 2 to 7 in the Partition Deed and they would be liable to pay a sum of Rs.75/- per month to Thanalakshmi Ammal, towards her maintenance and after the death of Thanalakshmi Ammal, T.G.Vellaya Nadar and his six sons, who were parties to the partition deed would take the 'A' Schedule property in common and enjoy the same without dividing the same.

13.9. According to defendants 11 to 13 on a plain reading on the above recitals, it is clear that after the termination of the life-estate of Raja Rajeswari Ammal as well as Thanalakshmi Ammal, the property is to be taken by the parties 1 to 7, viz. T.G.Vellaya Nadar and his six sons alone and the after born children will not have any right over the said property.

The document creates a vested right in favour of the existing sons of T.G.Vellaya Nadar, though the enjoyment is postponed because of the intervening life estates given to Raja Rajeswari Ammal and Thanalakshmi Ammal. The essential question that arises is as to what is the right of the after born children in these circumstances. It is seen from the genealogy that T.G.Vellaya Nadar has begotten atleast six children after 13.12.1956, out of the six, three are sons and three are daughters. It is also not in dispute that most of the properties allotted to T.G.Vellaya Nadar in the said partition as well as the major portion of the 'J' Schedule properties have been sold leaving behind only the suit property measuring an extent of about 4 grounds and 7 sq. ft. with the family. Even that 4 grounds and 7 sq. ft, has been sold by the defendants 2, 3, 7, 8, 9 and the legal heirs of the deceased son Vijaya Kumar, viz. the 6th defendant and her two children, under two Sale Deeds dated 31.12.2010, in favour of defendants 11 to 13.

13.10. From the date of commencement of the Hindu Succession Amendment Act 39 of 2005, i.e., 09.09.2005 the daughters of T.G.Vellaya Nadar, would become co-parceners with him. Admittedly, T.G.Vellaya Nadar was entitled to a share in the 'J' Schedule property after the death of Raja Rajeswari Ammal and T.G.Vellaya Nadar, died after coming into the

force of the Hindu Succession Act 39 of 2005, therefore, the daughters, viz. the plaintiffs would become co-parceners along with him in respect of the share of T.G.Vellaya Nadar, in the suit property, which remained undivided as on that date. Therefore, T.G.Vellaya Nadar would be entitled to a 1/7th share in the suit property on the termination of the life interests.

13.11. In view of the Hindu Succession Amendment Act 39 of 2005, the after born children of T.G.Vellaya Nadar, i.e. the children, who were born after the Partition Deed dated 13.12.1956, as well as his daughters, who were born prior to 13.12.1956 would become co-parceners along with him, in respect of 1/7th share of T.G.Vellaya Nadar. At his death, T.G.Vellaya Nadar had left behind 14 children, apart from his wife Thanalakshmi Ammal. Thanalakshmi Ammal also died on 19.07.2006, the divided sons of T.G.Vellaya Nadar, viz., the sons, who were parties to the Partition Deed dated 13.12.1956 cannot claim as a coparceners along with T.G.Vellaya Nadar. It is the after born children and the daughters, who would become co-parceners with T.G.Vellaya Nadar, in respect of his share in the suit property.

13.12. From the passage in Mullah's 22nd Edition text book of the

Hindu Law, extracted supra, it could be seen that the after born children, do not entitle to reopen the partition, they would be entitled to inherit the share allotted to the father in the Partition. The effect of Section 8 of the Hindu Succession Act, has also been discussed supra, the legal position could be summarised as follows:

- i. The after born son of a Male Hindu would be entitled to a share in the property allotted to the father at a partition. He would be termed as a coparcener with his father in respect of the property that was allotted to the father in the partition. In view of the decision of the Full Bench of this Court in ***the Additional Commissioner Income Tax, Madras Vs. P.L.Karuppan Chettiar*** reported in ***AIR 1979 Madras 1.***
- ii. By virtue of the amendment of Section 6 of the Hindu Succession Act, introduced by Act 39 of 2005, a living daughter of living coparcener would become a coparcener and she will be entitled to a share that would be allotted to a son. Such a right is vested in a daughter by virtue of the amendment can be equated to the right of an after born son under the Sastric Hindu Law. In ***Sundarambal and others v. Deivanaayagam and others***, reported in ***1991 (1) LW 97*** equivalent to ***1991 (2) MLJ 199***, while considering the nature

of the right conferred on the daughters, under the Hindu Succession Amendment Act 1 of 1990, this Court had observed as follows:

“24. Again the question arose with reference to an after-born son before the Privy Council in [Bhagwat Ram v. Ramji Ram](#) (1974) 2 M.L.J. 67. The Privy Council held that the law is well settled that a son begotten as well as born after the partition, where a share has been allotted to the father, is not entitled to have the partition re-opened and to claim a re-distribution of the shares and that he is only entitled to succeed to his father's share and to his separate and self-acquired property to the exclusion of the divided sons. The Privy Council held that the fact that the partition had not been completed by the actual division of the estate by metes and bounds prior to the birth of such after-born son cannot affect the quantum of share to which the other members had already become entitled, in so far as their rights are concerned, partition had already taken place and their shares cannot be diminished by the subsequent birth of a son.

25. That principle will certainly apply to present case. Though the daughter is actually born before 25.3.1989 and on that date cannot be considered to be an after-born coparcener, her position in law will be analogous to that of an after-born son claiming a share in the joint family property after a partition had been effected before

*the **Amendment Act** came into force. Hence in this case, a partition having been effected by the preliminary decree in which the shares of the parties are definitely quantified and crystalised, it is not open to the 4th plaintiff to claim the benefits of the **Amendment Act** 1 of 1990 and contend that she will be entitled to a larger share, as, in my view, she is precluded by Clause (5) of **Section 29-A**. The words 'Partition effected' found in Clause (5) should be understood in the sense in which they are understood in Hindu Law and it should be held in this case that a partition had been effected prior to the coming into force of the **Amendment Act**."*

Therefore, the daughters of T.G.Vellaya Nadar, who were alive as on 09.09.2005 will necessarily become coparceners in respect of the property, that is allotted to T.G.Vellaya Nadar in the Partition Deed dated 13.12.1956.

- iii. The sons of T.G.Vellaya Nadar, who were parties to the Partition Deed dated 13.12.1956, viz. defendants 1, 3, 4, 7, 8 and Shanmugam (predeceased son) cannot be considered as coparceners with T.G.Vellaya Nadar, in as much as they have become divided sons even in the year 1956. Therefore, the after born sons of T.G.Vellaya Nadar, viz. the 2nd defendant, the 4th defendant, husband of the 6th defendant, and the daughters viz.

plaintiffs 1 to 3, the 5th defendant, and the 10th defendant would become coparceners along with T.G.Vellaya Nadar, in respect of his share in the suit property, which was agreed to be kept in common by the parties in the Partition Deed dated 13.12.1956. I have already adverted to the recitals in the Partition Deed, which make it abundantly clear that T.G.Vellaya Nadar, and his six existing sons would be entitled to the properties shown in "J" Schedule to the Partition Deed. It is not in dispute that except the suit property of an extent of 4 grounds and 7 sq.ft. all the other properties that were shown in "J" Schedule to the Partition Deed have been sold prior to 20.12.2004. Therefore, T.G.Vellaya Nadar, died possessed of the 1/7th share in the suit property alone. This 1/7th share of T.G.Vellaya Nadar, essentially assumes the character of joint family property, vis-a-vis, T.G.Vellaya Nadar, his after born sons and his daughters. Therefore, a notional partition has to be assumed prior to the death of T.G.Vellaya Nadar, in respect of his 1/7th share alone, this would mean that T.G.Vellaya Nadar, his after born sons, viz., the 2nd defendant, the 4th defendant, the husband of the 6th defendant and his daughters viz., the plaintiffs 1 to 3, the 5th defendant and the 10th defendant would each be entitled to the 1/9th share in the 1/7th share

of T.G.Vellaya Nadar, in the suit properties. Therefore, the plaintiffs would each be entitled to a $\frac{1}{9}$ th share in the $\frac{1}{7}$ th share of T.G.Vellaya Nadar, in the suit properties, i.e. $\frac{1}{63}$ share.

13.13. The defendants 11 to 13 would contend that T.G.Vellaya Nadar, had executed a settlement in respect of his $\frac{1}{7}$ th share over the suit property in favour of his sons on 06.03.2006, said deed of settlement has been produced as Ex.D2. Mr. S.Kanniah, learned counsel appearing for the plaintiffs would contend that the settlement deed does not relate to the suit property and it relates to the property shown in the "G" Schedule to the Partition Deed dated 13.12.1956. He would also, as a second limb of his submission, contend that this property being ancestral property in the hands of T.G.Vellaya Nadar, and his after born sons and daughters having become coparceners along with him, T.G.Vellaya Nadar, had no right to execute the settlement in respect of the undivided share in the ancestral properties with regard to which the plaintiffs as well as the after born children of T.G.Vellaya Nadar, have become coparceners along with him to the extent of his share in the said property. It is settled position of law that the coparcener cannot settle or gift away his undivided share in the ancestral property, such a gift or settlement has been held to be not binding on the other members of the co-parcenary.

13.14. In view of the above conclusion, I do not think, it is necessary for me to go into the question, as to whether the Settlement Deed dated 06.03.2006, deals with the suit property or the property allotted to T.G.Vellaya Nadar, in the Partition Deed dated 13.12.1956, marked as Ex.P6. Even assuming that the Settlement Deed relates to the portion of the "J" Schedule property in the Partition Deed, the same cannot bind the plaintiffs, since it has been executed after the cut of date prescribed under explanation to Section 6 of the Hindu Succession Act, viz. 20.12.2004.

13.15. Therefore the Issue No.1 is answered to the effect that the property covered by "J" Schedule in the Partition Deed dated 13.12.1956 is ancestral property and Issue No.2 is answered to the effect that the defendants alone or not entitled to take over the property to the exclusion of the plaintiffs. Insofar as the Issue No.4 is concerned, it is answered to the effect that the Settlement Deed dated 06.03.2006 even if it relates to the suit property the same is not binding on the plaintiffs.

14. Issue No.3:

14.1. In view of my finding to Issue Nos. 1, 2 and 4, the plaintiffs would undoubtedly be entitled to the share in the suit properties. The

question that remains to be considered is, what is the share that the plaintiffs are entitled to? Admittedly, T.G.Vellaya Nadar, had died intestate, the Settlement Deed executed by him on 06.03.2006 has held to be invalid. Therefore, the $\frac{1}{63}^{\text{rd}}$ share that would have been allotted to T.G.Vellaya Nadar, in the notional partition, will have to be again divided among the Clause (1) heirs of T.G.Vellaya Nadar, viz. the plaintiffs 1 to 3, defendants 1, 2, 3, 4, 5, 6, 7, 9 and 14 to 17. Two of the sons of T.G.Vellaya Nadar, viz. Vijaya Kumar and Sridharan are no more. The 6th defendant is the wife of the Vijaya Kumar and defendants 14 to 17 are the wife and children of Sridharan, viz. the 8th defendant, this $\frac{1}{63}^{\text{rd}}$ share of T.G.Vellaya Nadar, would devolve on his Clause (1) heirs, his wife Thanalakshmi Ammal, defendants 1 to 10, and the plaintiffs. Thus the $\frac{1}{63}^{\text{rd}}$ share of T.G.Vellaya Nadar, would devolve on the above 14 persons equally and each of them will take $\frac{1}{882}$ share. Therefore, the plaintiffs each be entitled to $\frac{1}{63} + \frac{1}{882}$ share in the estate of the deceased T.G.Vellaya Nadar, i.e. $\frac{15}{882}$ share. But the question of sharing does not end there.

14.2. Of course the plaintiffs have claimed only as the heirs of T.G.Vellaya Nadar, his wife Thanalakshmi Ammal had died on 19.07.2006, she would get a $\frac{1}{882}$ share as the Clause (1) heir of T.G.Vellaya Nadar,

apart from the above, she would also inherit the 1/7th share of Shanmugam, her son, who died as a bachelor in the year 1995. Therefore, Thanalakshmi Ammal, died possessed of 1/7th share of Shanmugam and the 1/882 share of which she inherited as the Clause (1) heir of T.G.Vellaya Nadar. Thus, Thanalakshmi Ammal died possessed of 127/882 share. On her death, her 127/882 share would devolve on her Clause (1) heirs, under Section 15 of the Hindu Succession Act. Her Clause (1) heirs are plaintiffs 1 to 3, defendants 1 to 5 and 7 to 10. The 6th defendant being the daughter-in-law/wife of the pre-deceased son will not inherit as an heir of Thanalakshmi ammal, viz. her mother-in-law. Mr.Bijay Sundar, learned counsel appearing for defendants 2, 3, 6 to 9 would contend that Thanalakshmi Ammal had executed a registered Settlement Deed dated 28.11.2005, in and by which, she had settled the property that was allotted to Shanmugam under the Partition Deed dated 13.12.1956 in favour of her two other sons, viz. V.Sundar and V.Chandrasekaran, defendants 7 and 4 respectively. The copy of the said Settlement Deed has been produced as Ex.D4. Relying upon the said document, Mr.Bijay Sundar, would contend that Thanalakshmi Ammal had parted with the property which she had inherited as a Clause (1) heir of her son Shanmugam. A perusal of the said Settlement Deed would show that Thanalakshmi Ammal had settled

an extent of about 522 sq. ft. of property, which according to the said document was allotted to Shanmugam, under the Partition Deed dated 13.12.1956. A perusal of the said document, viz. the Partition Deed dated 13.12.1956, which has been marked as Ex.P6, shows that Shanmugam was allotted the property set out in the Schedule "B" to the said Partition Deed. From Schedule "B" of the Partition Deed, it is seen that Shanmugam was not allotted any property at Azhagappa Road, Chennai, under the said Partition Deed. Therefore, it is not known, as to how, Thanalakshmi Ammal went ahead to execute a Settlement Deed in respect of about 522 Sq.ft. land and building in the property situate at Door No.21 New No.57 Azhagappa Road, claiming that it was allotted to Shanmugam. Though, the document has been produced, being a Settlement Deed, it requires to be proved under Section 68 of the Evidence Act. None of the attesting witnesses have been examined. Therefore, it cannot be concluded that it was the share of Shanmugam in the "J" Schedule property that was sought to be settled on the defendants 7 and 4, under the Exhibit D4.

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14.3. This 127/882 share of Thanalakshmi Ammal will devolve on the plaintiffs 1 to 3, defendants 1 to 5 and defendants 7 to 10, equally each of them taking a 1/12th share in 127/882 share, i.e., each of them will be

entitled to 127/10584 shares. Thus, the plaintiffs will be entitled to a 15/882 share as the heirs of T.G.Vellaya Nadar, and a 127/10584 share as the heirs of Thanalakshmi Ammal, thus, each of the plaintiff would be entitled to 307/10584 shares.

14.4. Defendants 1, 3, 7 and 8 would each be entitled to 1/7th share which they got under the Partition Deed plus the 1/882 share as the Clause (1) heirs of T.G.Vellaya Nadar, and the 127/10584 share as Clause (1) heirs of Thanalakshmi Ammal. Thus, the defendants 1, 3, 7 and 8 would each entitled to 1651/10584 shares.

14.5. The 6th defendant wife of the pre-deceased son, viz. Vijaya Kumar would get the 1/7th share, which her husband got under the partition deed plus the 1/882 share, which her husband would have got as Clause (1) heir of T.G.Vellaya Nadar, and therefore, the 6th defendant entitled to 1524/10584 shares.

14.6. The defendants 2, 4, 5, 9 and 10 after born children and the daughters will get 15/882 share as the heirs of T.G.Vellaya Nadar, and 127/10584 shares as the clause (1) heirs of Thanalakshmi Ammal. Thus, they will be entitled to 307/10584 shares.

14.7. The sum up the shares that the parties will be entitled to is as follows:

(i) Plaintiffs	-	$\frac{307}{10584}$	X 3	=	$\frac{921}{10584}$
(ii) Defendants 1, 3, 7 & 8	-	$\frac{1651}{10584}$	X 4	=	$\frac{6604}{10584}$
(iii) 6 th defendant	-	$\frac{1524}{10584}$	X 1	=	$\frac{1524}{10584}$
(iv) Defendants 2, 4, 5, 9 and 10	-	$\frac{307}{10584}$	X 5	=	$\frac{1535}{10584}$

14.8. Though, the plaintiffs have not claimed as the heirs of Thanalakshmi Ammal, the suit being one for partition, I am of the considered opinion that the shares must be worked out, in accordance with law *de hors* the claims of the parties. This Court had in ***Annapoorni v. Janaki, reported in 1995 (1) LW 141***, held that in a partition suit, the Court is obliged to work out the shares of the parties, in accordance with law even if a claim is not made on a particular plea. Defendants 14 to 17 will take the share that the 8th defendant is found to be entitled to.

Issue No. 5:

15. While discussing the Issue Nos.1, 2 and 4, it has been held that the suit property is the ancestral property belonging to the joint family and hence the Settlement Deed executed by T.G.Vellaya Nadar, is not valid and binding on the parties. Hence, Issue No.4 is answered in favour of the plaintiffs and against the defendants. Insofar as the Sale Deeds in favour of defendants 11 to 13 are concerned, admittedly, the plaintiffs are not parties to the said, once it is found that the plaintiffs are entitled to the share in the said property, the Sale Deed are undoubtedly not binding on the plaintiffs. Hence, Issue No.5 is also answered in favour of the plaintiffs and against the defendants.

16. In view of the above discussion, the plaintiffs will be entitled to the preliminary decree for partition and separate possession of their 307/10584 shares each in the suit property. In fine, there will be a preliminary decree declaring the plaintiffs 307/10584 share each in the suit properties. The plaintiffs have not prayed for mesne profits, hence it is made clear that they will not be entitled to any past mesne profit. However, the plaintiffs would be entitled to future mesne profits. Considering the relationship between the parties and the fact that the defendants 1 to 10, who had alienated the properties have not chosen to contest the suit, the

parties are directed to bear their own costs.

06.04.2018

jv

Index: Yes
Internet: Yes
Speaking order

List of the Witnesses examined on the side of the Plaintiff:

P.W.1 Kanagalakshmi

List of Exhibits marked on the side of the Plaintiff:

Sl.No.	Exhibits	Date	Description of documents
1	Ex.P1	16.06.2010	Lawyer's notice
2	Ex.P2	17.06.2010	Postal Acknowledgements 14 numbers
3	Ex.P3	-	Returned covers 3 numbers
4	Ex.P4	-	Encumbrance Certificate
5	Ex.P5	.02/07/2010	Reply notice
6	Ex.P6	13.12.1956	Partition Deed
7	Ex.P7	.08/04/2010	Sale Agreement Document
8	Ex.P8	.02/07/2009	Registered Power of Attorney

List of the Witnesses examined on the side of the Defendant:

D.W.1 Mahaveerchand Ranka

List of Exhibits marked on the side of the Defendant:

Sl.No.	Exhibits	Date	Description of documents
1	Ex.D1	.02.07.2009	Certified copy of Sale deed
2	Ex.D2	.06.03.2006	Photo copy of the Settlement deed
3	Ex.D3	28.02.1967	Sale deed executed by V.Gururajan Nadar and others
4	Ex.D4	28.11.2005	Photo copy of Settlement deed
5	Ex.D5	31.12.2010	Certified copy of Sale deed
6	Ex.D6	31.12.2010	Certified copy of Sale deed
7	Ex.D7	.12/09/2012	Certified copy of Sale deed

jv

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

06.04.2018



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R.SUBRAMANIAN,J.

Jv



Pre Delivery Judgment
C.S.No.662 of 2010

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