

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2019

PRONOUNCED ON: 16.10.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.287 of 2013

and

M.P.No.1 of 2013

P.Avanashiappan ... Appellant/Plaintiff

Vs.

1. P.Senniappan

2. P.Aruchamy

3. P.Lakshmi

4. K.Saraswathi Respondents/Defendants

Prayer: First Appeal filed under Order 44 Rule 1, r/w. Section 96 of C.P.C., against the judgment and Decree passed in O.S.No.525 of 2011 on the file of the I Additional District and Sessions Judge, Tirupur dated 02.04.2013.

For Appellant : Mr.V.K.Vijayaraghavan

For RR1 & R2 : No appearance
set exparte vide order dated 04.10.2019

For RR3 and R4 : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

J U D G M E N T

Aggrieved over the judgment and decree dated 02.04.2013 passed in O.S.No.525 of 2011 on the file of the I Additional District and Sessions Court, Tirupur, the plaintiff has preferred the First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for partition.

4. The case of the plaintiff in brief is that one Chennimalai Gounder and Rangappa Gounder are brothers, being the sons of Rayappa Gounder. Chennimalai Gounder had three sons namely Karuppusamy Gounder, Pattae Gounder and Appachi Gounder. An extent of 8.40 acres of land with a well in S.F.No.180 originally belonged to the family of Chennimalai Gounder and his brother Rangappa Gounder ancestrally. Chennimalai Gounder and his three sons were cultivating the said lands along with Rangappa Gounder. From and out of income derived from the ancestral lands and by joint exertion, Chennimalai Gounder consisting of himself and his three sons had purchased an extent of 1.45 acres of land in S.F.No.42 and an extent of 6.54 acres in S.F.No.44 and a well in S.F.No.180 by way of a sale deed dated 18.07.1938. The abovesaid sale deed was taken in the name of Chennimalai Gounder, the Karta of the family, however the said properties were enjoyed as the joint family properties. Chennimalai Gounder died in the year 1948. On his demise, his three sons and Rangappa Gounder had partitioned the ancestral properties by way of a partition deed dated 09.08.1961, under which an extent of 4.20 acres in S.F.No.180 came to be allotted to the share of the sons of Chennimalai Gounder. Subsequently, Chennimalai Gounder's three sons had partitioned the abovesaid extent of 4.20 acres orally and by way of the same, an extent of 1.33 acres described in the plaint A schedule was allotted to the share of Pattae Gounder. The properties purchased under the sale deed dated 18.07.1938 were partitioned amongst the three sons of Chennimalai Gounder orally and by way of the same, an extent of 3.58 acres described in the plaint B schedule were allotted to the share of Pattae Gounder. The house property set out in the plaint C schedule was allotted to Pattae Gounder by way of the partition deed dated 17.11.1980. Thus the plaint schedule properties are the ancestral and joint family properties of Pattae Gounder. The plaintiff and the defendants 1 and 2 are the sons and the defendants 3 and 4 are the daughters of Pattae Gounder. The plaintiff and the defendants 1 and 2 acquired a right by birth in the ancestral properties. Pattae Gounder died on 25.08.1998. On his demise, the plaintiff and the defendants 1 and 2 are each entitled to 6/20 share in the plaint schedule properties whereas the defendants 3 and 4 each entitled to 1/20 share in the plaint schedule properties. The defendants are, on the wrong impression that they are also entitled to obtain equal share in the plaint schedule properties by virtue of the Act 39 of 2005, refusing to amicably allot the share in the plaint schedule properties to the plaintiff and hence according to the plaintiff, he has been necessitated to seek for the partition in the plaint schedule properties and accordingly laid the suit for appropriate reliefs.

5. The defendants 1 and 2 have filed a memo before the trial court accepting the division of the properties as prayed for by the plaintiff and also paid the Court fees and accordingly prayed for the allotment of their shares in the suit properties.

6. The defendants 3 and 4 resisted the plaintiff's suit and after admitting the relationship between the parties, put forth the case that the properties acquired by Chennimalai Gounder are his separate properties and contended that the plaintiff has to establish the partition effected on 09.08.1961 as well as the oral partition put forth by him and according to the defendants 3 and 4, they being the daughters of Pattaie Gounder are entitled to obtain 2/5 share in the plaint schedule properties and accordingly contended that the plaintiff is not entitled to seek the partition and separate possession of 6/20 share in the suit properties as prayed for and sought for the dismissal of the plaintiff's suit.

7. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

i. Whether the plaintiff is entitled preliminary decree for partition as prayed for?

ii. To what other reliefs?

Additional Issue:

Whether the defendants 3 and 4 entitled equal shares with the plaintiff and the defendants 1 and 2 as per the amended Act of 39/2005?

8. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A5 were marked. On the side of the defendants 3 and 4, D.W.1 was examined. No document has been marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court declared that the plaintiff and the defendants are each entitled to obtain 1/5 share in the plaint schedule properties and accordingly granted the preliminary decree in favour of the plaintiff. Aggrieved over the judgment and decree of the trial court, the plaintiff has preferred the First Appeal.

10. The following points arise for determination of the First Appeal:

i. Whether the plaintiff is entitled to obtain partition and separate possession of 6/20 share in the plaint schedule properties as claimed in the plaint?

ii. Whether the determination of the trial court that the

plaintiff and the defendants are each entitled to obtain partition and separate possession of 1/5 share in the plaint schedule properties is correct?

iii. To what relief the plaintiff/appellant is entitled to?

iv. To what relief the defendants 3 and 4 entitled to?

Point Nos.1 and 2:

11. The relationship between the parties is not in dispute. From the materials placed on record, it is found that Chennimalai Gounder and Rangappa Gounder are the sons of Rayappa Gounder and that they owned an extent of 8.40 acres in S.F.No.180 ancestrally. It is further seen that Chennimalai Gounder had three sons namely Karuppusamy Gounder, Pattae Gounder and Appachi Gounder. It is further seen and also not in dispute that Chennimalai Gounder by way of a sale deed dated 18.07.1938 had acquired an extent of 1.45 acre in S.F.No.42 and 6.54 acres in S.F.No.44, which document has been marked as Ex.A1 and according to the plaintiff, the abovesaid properties had been treated as the joint family properties of Chennimalai Gounder and his three sons and the same is also not put in issue by the contesting defendants. According to the plaintiff, the properties acquired under Ex.A1 had been purchased out of the income derived from the ancestral lands as well as the joint exertion of Chennimalai Gounder and his three sons. The abovesaid case projected by the plaintiff has not been controverted by the contesting defendants. It is thus found that the properties acquired under Ex.A1 sale deed partake the character of the ancestral and joint family properties.

12. As per the partition deed dated 09.08.1961 marked as Ex.A2, it is found that an extent of 4.20 acres had been allotted to the three sons of Chennimalai Gounder. Furthermore, the case has been projected by the plaintiff that in the oral partition effected subsequently amongst the three sons of Chennimalai Gounder, an extent of 1.33 acres out of 4.20 acres had been allotted to Pattae Gounder and an extent of 3.58 acres had been allotted to the share of Pattae Gounder in respect of the oral partition effected qua the properties acquired by way of the sale deed marked as Ex.A1. The abovesaid properties had been described in the plaint A and B schedules. It is the further case of the plaintiff that the property described in the plaint C schedule had been allotted to Pattae Gounder by way of the partition deed dated 17.11.1980, which document has been marked as Ex.A4. Thus the case has been projected by the plaintiff that the plaint A, B and C schedule properties had been allotted to Pattae Gounder and the plaint schedule properties are the ancestral and joint family properties of Pattae Gounder. That the plaint schedule properties described in A, B and C schedules are the ancestral and joint family

properties of Pattae Gounder had not been challenged by the contesting defendants. The trial court has also determined that the plaint schedule properties abovestated are the ancestral and joint family properties of Pattae Gounder.

13. Pattae Gounder is found to have died on 25.08.1998. The same is not in dispute.

14. The contesting defendants namely the defendants 3 and 4 putforth the claim of equal share in the plaint schedule properties by virtue of the Amendment Act 39 of 2005 which came into force on 09.07.2005. Accepting their case and holding that the plaintiff has miserably failed to establish that any partition had been effected in respect of the plaint schedule properties prior to 09.07.2005, on that premise, the trial court has proceeded to hold that the defendants being the daughters of Pattae Gounder, having become the coparceners by virtue of the Amendment Act 39 of 2005, accordingly determined that the daughters namely the contesting defendants 3 and 4 are also entitled to obtain equal share in the plaint schedule properties. In this connection, the trial court is found to have placed reliance upon the decision of the Apex Court reported in 2011 (6) CTC 102 [Ganduri Koteshwaramma & Another Vs. i Yanadi & Another]. The plaintiff's counsel contended that the trial court has failed to appreciate that Act 39 of 2005 is only prospective in nature and erred in not considering the demise of Pattae Gounder much prior to the same ie. on 25.08.1998 itself and according to him, as per the Explanation 1 appended to Old section 6 of the Hindu Succession Act 1956, on the demise of Pattae Gounder, notional partition should be deemed to have taken place in the family of Pattae Gounder and in the light of the notional partition, the shares have to be worked out and allotted and so viewed according to him, Pattae Gounder would be entitled to 1/4 share in the plaint schedule properties and his three sons would be entitled to the remaining 3/4 share in the suit properties. The abovesaid contention of the plaintiff's counsel seems acceptable. In this connection, the plaintiff's counsel placed reliance upon the decisions reported in 2008 (4) CTC 374 [Bagirathi and 5 others Vs. S.Manivannan and another] and 2003(4) LW 193 [Kamalakannan & Others Vs. Kasthuri & another]. From the abovesaid decisions, it could be seen that the daughter could be considered as the co-parcener only if the father was a co-parcener at the time of coming into force of the amended Act. The Amendment Act 39 of 2005 being prospective in nature, the daughter could be considered as a coparcener only on and from the commencement of Hindu Succession Amendment Act 2005 and it is found that on the demise of Pattae Gounder in the year 1998, the succession had opened during 1998 itself on the demise of Pattae Gounder in

accordance with the existing provisions contained in Section 6 and accordingly it is found that Pattae Gounder would be entitled to obtain 1/4 share in the suit properties and his daughters namely the defendants 3 and 4 would be entitled to claim only their lawful share in the 1/4 share which had come to be allotted to Pattae Gounder under the notional partition on his demise during 1998. As rightly contended by the plaintiff's counsel, in the decision relied upon by the trial court reported in 2011 (6) CTC 102 [Ganduri Koteswaramma & Another Vs. i Yanadi & Another], the facts disclosing that the father being alive and succession having not opened, accordingly in that position, it was held that the daughters are also entitled to equal share in the coparcenary properties. However, insofar as this case is concerned, Pattae Gounder having died on 25.08.1998 and by virtue of the unamended section 6 and the Explanation appended to the same, the notional partition having been effected, in all, it is found that his daughters namely the defendants 3 and 4 would be entitled to obtain their lawful share only from and out of the 1/4 share allotted to Pattae Gounder in the notional partition. It is thus seen that as contended by the plaintiff's counsel, the defendants 3 and 4 would be each entitled to obtain 1/20 share in the plaint schedule properties and that the plaintiff and the defendants 1 and 2 would be each entitled to 6/20 share in the plaint schedule properties. In the light of the abovesaid discussions, it is found that the determination of the trial court that Act 39 of 2005 would apply to the case at hand is found to be erroneous and resultantly the determination of the trial court that the defendants and the plaintiff are each entitled to equal share in the plaint schedule properties is found to be erroneous and unsustainable in the eyes of law.

15. For the reasons aforesaid, I hold that the plaintiff and the defendants 1 and 2 each entitled to obtain 6/20 share in the plaint schedule properties and I further hold that the defendants 3 and 4 are each entitled to obtain 1/20 share in the plaint schedule properties. The determination of the trial court that the plaintiff and the defendants are each entitled to obtain equal i.e., 1/5 share in the plaint schedule properties by virtue of the Act 39 of 2005 is erroneous and liable to be set aside. Accordingly the Point Nos.1 and 2 are answered. Point No.3 and 4:

16. In the light of the abovesaid discussions, the judgment and decree dated 02.04.2013 passed in O.S.No.525 of 2011 on the file of the I Additional District and Sessions Court, Tirupur are modified and it is declared that the plaintiff and the defendants 1 and 2 are each entitled to obtain partition and separate possession of 6/20 share in the plaint schedule properties and that the defendants 3 and 4 are each entitled to

obtain partition and separate possession of 1/20 share in the
plaint schedule properties and accordingly there shall be a
preliminary decree passed in the suit. Accordingly, the First
Appeal is disposed of. Considering the relationship between the
parties, there is no order as to costs. Consequently, connected
miscellaneous petition if any is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mfa

To

The I Additional District and Sessions Judge, Tirupur.

Copy to

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.V.K.Vijayaraghavan, Advocate SR.No.86635

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.86970

A.S.No.287 of 2013
and
M.P.No.1 of 2013

GJ (CO)
GMY (19/12/2019)

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