

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2019

PRONOUNCED ON : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.Nos.269 & 270 of 2011

and

M.P.Nos. 1 & 2 of 2011

A.S.No. 269 of 2011

Kaliyamurthy ...Appellant/1st Defendant

Vs.

1.Thangamani

2. Palanivel

3. Ganesan

4. Gurusamy

5. Saminathan

6. Anjalidevi

7. Amirthavalli

...Respondents/Plaintiff &
Defendants 2 to 7

A.S.No. 270 of 2011

Kaliyamurthy ...Appellant/1st Defendant

Vs.

1.Thangamani

2. Palanivel

3. Ganesan

4. Gurusamy

5. Saminathan

...Respondents/Plaintiff
& Defendants 2 to 5

Prayer: First Appeals filed under Section 96 of Civil Procedure Code, against the judgment and decree made in O.S.Nos.54 of 2001 and O.S.No.49 of 2000 respectively on the file of the District Judge, Karaikal, dated 25.01.2011.

For Appellant : Mr. V. Raghavachari in both appeals

For Respondents

For R1 : Mr. S. Sounthar in both appeals

R2 to R7 : In A.S.No.269 of 2011 No appearance.
Set Exparte vide order dated 21.11.2019

R2 to R5 : In A.S.No.270 of 2011. No appearance.
Set Exparte vide order dated 21.11.2019

COMMON JUDGMENT

A.S.Nos. 269 and 270 of 2011 are directed against the common judgment and decree dated 25.01.2011 passed in O.S.No.54 of 2001 and O.S.No.49 of 2000 respectively on the file of the District Judge, Karaikal.

2. The suit in O.S. No.49 of 2000 has been laid by the appellant for the relief of declaration that he alone is entitled to administer and deal with the suit properties at his discretion for the purpose of perpetuating the Thiruvannamalai Veerapa Vanniar Madam, Akkaraivattam in Neravy Commune and to continue the feeding of mendicants in CYPRES of the will of Arunachala Vanniar dated 18.12.1968 and for the costs.

3. O.S.No.54 of 2001 has been laid by the first respondent for partition and mesne profits.

4. Inasmuch as the parties had been agitating both the matters one way or the other by raising the common issues and furthermore, when it is noted that the suit properties covered under O.S.No.49 of 2000 are also involved in O.S.No.54 of 2001, accordingly, it is seen that the abovesaid two suits were jointly tried and common evidence has been recorded in both the suits.

5. Briefly stated, the case projected by the appellant in both the suits is that one Kuppammal W/o. Suba Vaniyar, by an authentic deed dated 05.11.1901, gifted the immovable property consisting of two mahs of wet land situate at Akaraivatham in favour of her son Veerappa Vanniyar and imposed a condition that the donee shall feed, himself and his posterity, from generation to generation, 50 pilgrims in the Tamil month of Chitrai and Karthikai at the Madam consecrated by her in Tiruvannamalai and her daughter namely Veerayee had also agreed to the abovesaid condition imposed in the deed. Even as per the appellant, he has no information whether the abovesaid arrangement had been worked out. It is further put forth by him that on the demise of Veerappa Vanniyar, his son Arunachala Vanniyar stepped into his shoes and conducting the Annathanam and it is further put forth that one Ganapathi Vanniar S/o. Subramania Vanniar, namely, the grandson of Kuppammal, laid a suit in Karaikal against Arunachala Vanniar that the charity created by Kuppammal has been in existence and accordingly demanded partition of his half share in the property set apart for the charity as the legal heir of Kuppmmal. The abovesaid suit came to be dismissed by the lower court on 26.04.1957 and the appeal had been preferred

challenging the same by Ganapathi Vanniar and it is stated that the appeal preferred by him had been dismissed confirming the judgment and decree of the lower court and it is also stated that by way of the judgment rendered, the appellate court has expressly removed the element of trust or endowment in the donation of Kuppammal and further admitted that Arunachala Vanniar was thus entitled to hold and enjoy the property as his own. It is stated that Arunachala Vanniar left a Notarial will dated 18.12.1968 and the will contains various stipulations and it is put forth that the will stipulates that Arunachala Vanniar's daughter Kunjammal shall take possession of the house with limited right of enjoyment during her life time and allow free entry to the other daughters and, Kunjammal's sons, Thangamani Vanniar and Narayana Vanniar shall continue to have enjoyment of the property by executing the following charities, i.e., the construction of Veerapa Vanniar Madam in the garden and the body of Arunachala Vanniar should be buried in the garden and acknowledge to feed 50 persons in the month of Chitrai and Karthigai and further also admitted that as per the stipulations set out in the will, the descendants irrespective of sex, would have full ownership of the properties covered in the will with the right of gifting / alienating or selling the same and the stigma of element of non alienability is totally removed. Therefore, it is stated that the properties covered under the will became private properties of the legal heirs of Arunachala Vanniar, to which they have an absolute and unconditional ownership. It is however put forth that the charities had been continued by Kunjammal, Thangamani Vanniar and Narayana Vanniar by feeding 50 persons in the Tamil months of Chithirai and Karthigai and further it is also stated that the two sons had not obtained the Government sanction for continuing the charities. It is stated that Narayana Vanniar died intestate on 16.02.2000 and the appellant is his eldest son and it is further put forth that the appellant had taken over the possession of the properties i.e., the subject matter of the will and put forth the case that the body of Arunachala Vanniar was unable to be buried in the garden as desired by him in the will and also put forth that the completion of the construction of the madam could not also be complied with and further would state that the appellant has improved the property in his own way and installed the portrait of Arunachala Vanniar having the semblance of madam and performing the religious activities at his own cost and the said madam is identified as the private property and the first respondent did not evince interest to manage and administer the madam and the properties and it is only the appellant who had been paying the taxes to the Government for the properties and has been conferred with the power to maintain the madam by his father and feeding the pilgrims and the performance of the charities as expressed in the will should not be discontinued and should be carried on to the possible extent

and accordingly it is put forth that by the Doctrine of Cyprus, the intention of the testator should be carried out as nearly as may be practicable or reasonable or in consistent with law and hence, with a view to implement the administration of madam by the Doctrine of Cyprus, according to the appellant, he has been necessitated to lay the suit for appropriate reliefs and accordingly put forth the case that the first respondent is not entitled to seek the partition of the suit properties as put forth by him in O.S.No.54 of 2001.

6. The first respondent put forth the case admitting the gift deed executed by Kuppammal dated 05.11.1901 in favour of Veerappa Vanniar and also admitted the notarial will dated 18.12.1968 executed by Arunachala Vanniar, Son of Veerappa Vanniar and accepted the stipulations contained in the abovesaid will that the Arunachala Vanniar's daughter Kunjammal and her two sons are to enjoy the properties covered in the will subject to the performance of the charities. It is further put forth that as far as item No. 1 of the will, namely, the house property, the same should be enjoyed by the first respondent and his brother Narayana Vanniar absolutely on the demise of Kunjammal and it is further put forth by him that Item No.2 and 3 of the will is burdened with the obligations to feed 50 pilgrims in the month of Chithirai and Karthigai and though it has been ordained to obtain the sanction of the Government for the constitution of the madam and its activities, it is stated that as the system of approval had been abrogated, the same had not been applied and obtained and therefore, put forth the case that the properties covered in the will continue to be enjoyed as private properties and also averred about the suit laid by Ganapathy Vanniar against Arunachala Vanniar and the dismissal of the suit and the appeal preferred before the appellate court and dismissal of the appeal by the appellate court confirming the judgment and decree of the lower court and it is stated that the appellate court has held that there is no creation of any trust as such left by the original owner Kuppammal and there is no dedication of the property to any trust and there is only a direction to perform secular charity and the properties are burdened only with secular obligation and there has been no madam for the past several decades and accordingly consecration of madam had not been carried out and the entire properties had been treated and enjoyed as separate properties of the first respondent and the appellant and the other family members and therefore, it is put forth by the first respondent that he is entitled to the half share in the properties and the appellant and his brothers, namely, the legal heirs of Narayana Vanniar are entitled to the remaining half share and without any basis, the appellant had laid the suit as if he is continuing the activities of the madam and feeding the mendicants in continuation of the alleged trust created by Kuppammal. Further, the appellant having admitted that the

properties covered under the will are the private properties and not the trust properties, the suit laid by him is prima facie not maintainable and there is no question of application of Doctrine of Cyprus as put forth by the appellant and accordingly seeking partition of his half share, the first respondent has laid the suit and prayed for the appropriate relief and also sought for the dismissal of the appellant's suit in O.S.No.49 of 2000.

7. Based on the abovesaid pleadings put forth by the respective parties, the following issues were framed by the trial court for consideration in O.S.No. 49 of 2000.

- 1) Whether the plaintiff is entitled for a relief of declaration as prayed in the plaint?
- 2) Whether the contention of the defendants that the plaintiff has no right to administer the suit property is correct?
- 3) Whether the contention of the first defendant that the suit properties are the private properties of the defendants and his brother and the plaintiff is entitled to half share in it is correct?
- 4) Whether the contention of the defendants that the suit properties are not given for the purpose of charity are correct?
- 5) Whether the suit filed by the plaintiff is not maintainable?
- 6) To what other relief?

In O.S.No.54 of 2001 the following issues were framed for consideration.

1. Whether the plaintiff is entitled for a partition as prayed for?
2. Whether the suit is barred by resjudicata?
3. To what relief the parties are entitled?

8. The abovesaid suits were jointly tried by the trial court and accordingly common evidence has been recorded in both the suits and the evidence had come to be recorded in O.S.No.49 of 2000.

9. In support of the appellant's case P.Ws.1 and 2 were examined and Exs.A1 to A25 were marked. On the side of the first respondent, D.W.1 was examined and Exs.B1 to B6 were marked.

10. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit laid by the appellant in O.S.No.49 of 2000 and granted the preliminary decree in favour of the first respondent for partition as

claimed in O.S.No.54 of 2001. Challenging the same, the abovesaid appeals have been preferred by the appellant.

11. The following points arise for determination in the first appeals.

1. Whether the appellant is entitled to seek the relief of declaration that he is entitled to administer the suit properties on the Doctrine of Cyprus pursuant to the will dated 18.12.1968 executed by Arunachala Vanniar?
2. Whether the first respondent is entitled to claim partition and separate possession of half share in the suit properties as put forth by him?
3. To what relief the appellant is entitled to?
4. To what relief the first respondent is entitled to?

Point Nos. 1 and 2

12. Both the appellant and the first respondent seek derivement of title to the properties involved in the matter through Kuppammal. It is not in dispute that Kuppammal and her husband Suba Vanniar had two sons, namely, Veerappa Vanniar and Subramania Vanniar and a daughter namely Veerayee. Ganapathy Vanniar is the son of Subramania Vanniar. Arunachala Vanniar is the son of Veerappa Vanniar. It is also found that and also not in dispute that Arunachala Vanniar had three children, namely, Ponnu Manickam, Kunjammal and Sudlai Ammal. Kunjammal and her husband Ramu Vanniar had two sons, namely, Narayana Vanniar and Thangmani. The first respondent Narayana Vanniar had five sons, namely, the appellant Kaliamurthy and his other sons are arrayed as the defendants in O.S.No. 49 of 2000 as well as in O.S.No.54 of 2001.

13. From the materials placed on record, it is found that the original owner of the properties involved in the matter, namely, Kupammal had executed a gift deed dated 05.11.1901 in favour of her son Veerappa Vanniar. The abovesaid Gift Deed has not been exhibited in the matter. However from the materials available on record, it is found that the Gift Deed stipulates interalia that Veerappa Vanniar, the donee, should feed 50 pilgrims in the months of Chithirai and Karthigai at the madam situate in Thiruvannamalai.

14. The appellant has claimed the relief prayed for by him mainly upon the will dated 18.12.1968 executed by Arunachala Vanniar, Son of Veerappa Vanniar. The abovesaid will has been marked as Ex.A1 and the translation copy of the

same has been marked as Ex.A2. From the available materials on record, it is seen that Ganapathy Vanniar, S/o. Subramania Vanniar, namely, the grandson of Kuppammal laid a claim of right in the properties and laid a suit for partition against Arunachala Vanniar putting forth that the properties of Kuppammal are the trust properties. The same had been contested by Arunachala Vanniar. It is admitted that the abovesaid suit came to be dismissed on 26.04.1957. An appeal had been preferred by Ganapathi Vanniar. The appellate court had also confirmed the judgment of the trial court and dismissed the appeal. It is from these proceedings, we could gather the details about the Gift Deed executed by Kuppammal in favour of her son Veerappa Vanniar. The judgment of the appellate court has been marked as Ex.A6 and the translation copy of the same has been marked as Ex.A7. On a perusal of Exs.A6 and A7, it is found that by way of the Gift Deed dated 05.11.1901, Kuppammal left two mahs of wet land situate at Akkaraivattam with the condition that the donee, namely, her son Veerappa Vanniar should feed, himself and his posterity from generation to generation, 50 mendicants in the month of Chithirai and Karthigai in the madam constructed by the donee in Thiruvannamalai. It is also noted that claiming that the charity proposed under the abovesaid gift deed is in existence and also claiming right over the same, Ganapathy Vanniar has laid a suit against Arunachala Vanniar, S/o. Veerappa Vanniar and sought for the partition as above noted. The said suit ended in dismissal. The appellate court in the judgment and decree, after analysing the contentions put forth by the respective parties, has held that the gift deed dated 05.11.1901 though had set apart an immovable property in favour of Veerappa Vanniar under the following conditions,

"The present gift is effected on condition that the donee shall get the ownership of lands entered in his name, pay out the land taxes thereof... shall feed annually, he and his posterity from generation to generation, fifty mendicants in the months of Chithirai and Karthigai, through the income of the said lands in the Madam constructed by the said Veerappa Vanniar, with his money situated in Thiruvannamalai."

had proceeded to hold that in the light of the abovesaid recitals in the abovesaid gift deed, there is no creation of any charity, trust or foundation and also further proceeded to hold that if the donee had created a madam pursuant to the gift deed at Thiruvannamalai, namely, Veerappa Vanniar Madam, this establishment enjoys a separate existence according to the laws and rules of the Indian Union and cannot be invoked or classified as a charity-trust in existence in the territory of Pondicherry State. Based on the abovesaid determination, further proceeded to hold that the obligation to feed, imposed

on Veerappa Vanniar every year from generation to generation, constitutes a perpetual inalienability of the immovable property set apart for the same. Further held that the abovesaid clause or condition has not been the impulsive and determining clause of the gift deed dated 05.11.1901 and held that the abovesaid condition/clause is deemed in terms of Article 900 of the Civil Code, as not written, as pointed out rightly by the trial court and accordingly further holding that the properties covered under the gift deed having been purchased through the personal funds of Arunachala Vanniar, accordingly, proceeded to dismiss the appeal confirming the judgment and decree of the lower court.

15. Therefore, the main contention of the appellant's counsel is that the suit properties involved in the matters are the trust properties and therefore, the first respondent cannot claim any partition of the trust properties and once the suit properties are constituted as the trust properties, no one can claim any partition of their alleged share in the same and on that basis alone, according to the appellant's counsel, the partition suit laid by the first respondent is not maintainable and in this connection, he would mainly rely upon the judgment of the appellate court marked as Exs.A6 and A7. However, as above pointed out, the appellate court, while considering the various recitals and conditions in the gift deed dated 05.11.1901, has held that, indeed, there is no creation of any charity, trust or foundation by the donor, namely, Kuppammal and, the donee, namely, Veerappa Vanniar, pursuant to the will if he had created a madam at Thiruvannamalai, the said establishment would be governed by the Indian laws and the same cannot be classified as a charity trust in existence in the territory of Pondicherry State and accordingly further proceeded to hold that the conditions imposed on the donee to feed the poor mendicants would not operate as the impulsive and determining clause of the gift and further proceeded to hold that the same is deemed as not written in terms of Article 900 of the Civil Code of Pondicherry and thereby confirmed the judgment and decree of the trial court. In the light of the abovesaid determination of the appellate court and when there is no further challenge to the same, the appellate court having determined that the gift deed dated 05.11.1901 had not created any charity, trust or foundation and only, as rightly put forth by the first respondent's counsel, an obligation had been created on donee to feed the poor pilgrims which could only at the most construed as a creation of the charge on the properties concerned and as such no dedication of the property had been made to any particular trust or charity or foundation as such and when it is seen that the desire of the donor, namely, Kuppammal, had not been put in action either by Veerappa Vanniar or his son, Arunachala Vanniar and when it is further

noted that Arunachala Vanniar had left a will dated 18.12.1968 based on which alone the appellant seeks the claim of administration of the properties on the doctrine of Cyprus, when on a perusal of the terms contained in the abovesaid will, when Arunachala Vanniar had directed that this daughter Kunjammal should take possession of the house and enjoyment thereof with the full facilities and faculties of gifting, alienating and selling the same thereby it is evident that the house property had been fully conferred on the daughter Kunjammal and the will further only recites that sons of Kunjammal, namely, Thangamani Vanniar and Narayana Vanniar should continue the charity and after their demise, their descendants without distinguishment of sex would have full ownership of the immovable properties with facilities/faculties of gifting, alienating and selling the same and when it is seen that and also not in dispute that the body of Veerappa Vanniar had not been cremated in the garden as desired by him and the sanction of the Government of Pondicherry had also not been obtained for the constitution of any madam and continuation of the same and when nothing has been done either by Kunjammal or her sons, namely, Thangamani Vanniar and Narayana Vanniar in furtherance of the constitution of any charity or madam and when the same had also been determined by the appellate court, as above noted, and when the appellate court has held that no charity, madam or foundation had been made even in the original gift deed dated 05.11.1901 and further held that the said condition of the charities described in the original gift deed shall be deemed as if not written as per the Civil Code of Pondicherry and accordingly when it is found that no step had been taken by anyone interested to constitute any madam and continue the madam or charities and the same had also been admitted by the appellant in his plaint and when the appellant's plaint reads that no activities of any madam had been done by the sons of Kunjammal and fairly admitted that none of the condition contained in the will executed by Arunachala Vanniar had been put in action and the properties had been enjoyed as the separate properties of the descendants of Kunjammal and when it is also noted that certain alienations had also been effected by the descendants, in such view of the matter, to say that the appellant had failed to continue the charity or the madam as there is no sufficient fund for the continuation of the same and therefore to say that on the doctrine of Cyprus, the court should permit him to do the same to the possible extent and accordingly he should be granted the relief prayed for, as such, cannot be countenanced and the same is found to have been rightly declined by the trial court.

16. Knowing fully well that he would not be entitled to claim any such right under the will dated 18.12.1968 and also

by way of the gift deed dated 05.11.1901, particularly in the light of the judgment and decree of the appellate court marked as Exs.A6 and A7, whereunder it has been clearly held that no charity, madam or foundation had been created under the original gift deed dated 05.11.1901, in the abovesaid scenario, it is seen that the appellant seeks to claim the right of administration of the properties on the doctrine of Cyprus only by way of the Release deed said to have been executed in his favour by his father dated 20.05.1993 marked as Ex.A10. However, as rightly determined by the trial court, when Narayana Vanniar had no entitlement or legal right to nominate the appellant as the trustee much against the recitals of the gift deed dated 05.11.1901 as well as the will dated 18.12.1968 and when there is no creation of any trust, madam or foundation by way of the original gift deed dated 05.11.1901 as held by the appellate court and when no further action had been done by anyone towards the creation of any charity, madam or trust following the original gift deed and the will above pointed out, in such view of the matter, the appellant cannot claim any right of administration for the performance of the charities based on Ex.A10 Release deed, particularly, when he has failed to establish that his father had the entitlement to confer any such right on him. When there is no creation of trust, charity or madam in respect of the properties covered under the original gift deed dated 05.11.1901 as well as the will dated 18.12.1968 in the light of the judgment and decree of the appellate court marked as Exs.A7 and A8, the same having also been admitted by the appellant in the plaint, however, would endeavour to claim the right of administration of the properties based on Ex.A10 Release Deed and when there is no clear material worth acceptance on the part of the appellant that the properties set apart for the creation of the so called trust, charity or madam had been enjoyed exclusively by the madam, charity or trust as such and on the other hand, as rightly determined by the trial court, the revenue documents stands in the names of the descendants of Kuppammal and Arunachala Vanniar in their own right, in such view of the matter, the trial court is found to be justified in holding that the appellant is not entitled to seek the relief of declaration qua the administration of the properties on the doctrine of Cyprus as put forth by him and justified in holding that the subject matter, namely, the suit properties being the private properties of the parties, accordingly and rightly determined that the the first respondent is entitled to claim partition and separate possession of half share in the same.

17. Counsel for the first respondent in support of his contentions placed reliance upon the decision reported in AIR 1966 SC 653 (M.R. Goda Rao Sahib vs. State of Madras). The principles of law outlined in the abovesaid decision are taken

into consideration and followed as applicable to the case at hand.

18. No valid reason has been projected for interfering with the judgment and decree of the trial court. The trial court is found to have analysed and appreciated the materials placed on record in the right perspective both factualwise and legalwise and correctly negatived the relief sought for by the appellant and rightly granted the reliefs prayed for by the first respondent. In the light of the above position, I hold that the appellant is not entitled to seek the relief of declaration to administer the suit properties on the Doctrine of Cyprus pursuant to the will dated 18.12.1968 executed by Arunachala Vanniar. I further hold that the first respondent is entitled to claim partition and separate possession of half share in the suit properties. Accordingly, the point numbers 1 and 2 are answered.

Point Numbers 3 and 4

19. For the reasons aforesaid, the common judgment and decree dated 25.01.2011 passed in O.S.No.54 of 2001 and O.S.No.49 of 2000 respectively on the file of the District Judge, Karaikal, are confirmed and resultantly, both the first appeals are dismissed with costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

bga

Copy to

- 1.The District Judge, Karaikal,
- 2.The Section officer,
V.R. Section, High Court, Madras.

+2cc to Mr.V.Raghavachari, Advocate SR.103441, 103442
+2cc to Mr.S.Sounthar, Advocate SR.104256, 104257

A.S.Nos.269 & 270 of 2011

PA(CO)
CB(22/12/2020)