

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:06.12.2018

Delivered on:21.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.386 of 2015

&

M.P.No.1 of 2015

1.Rani
2.Kasthuribai
3.Vijayalakshmi
4.Rajalakshmi
5.Leelavathi

...Appellants/Plaintiffs

Vs

1.Subramani
2.Mangammal (Deceased)
3.Sugantha
4.Saraswathi
5.R.Velmani
6.R.Anbu
7.R.Durai
8.R.Venkatesan

...Respondents/Defendants

(R5 to R8 brought on record as Lrs of the deceased 2nd respondent Vide order of this Court dated 29.06.2018 made in C.M.P.No.5780 of 2018 in A.S.No.386 of 2015).

PRAYER: First Appeal is filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 20.12.2011 made in O.S.No.35 of 2009 on the file of the Principal District Judge, Dharmapuri.

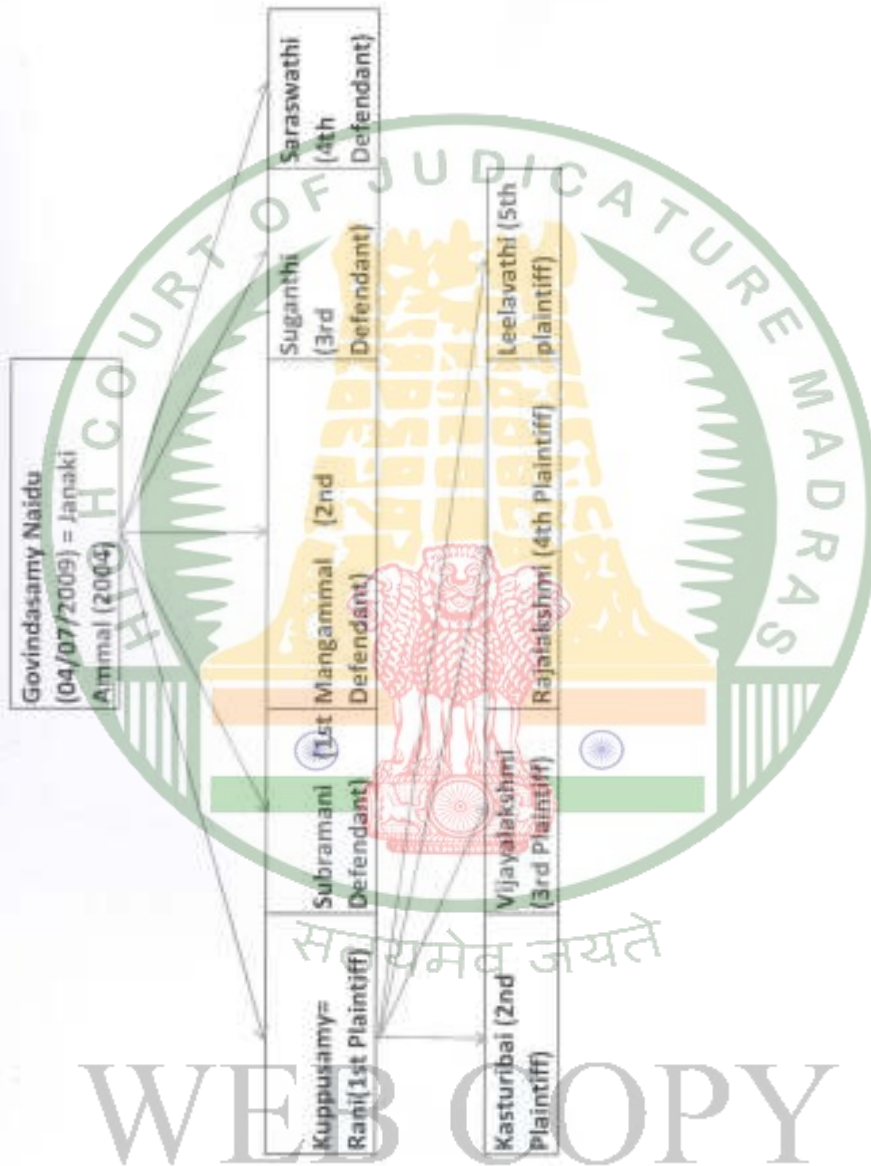
For Appellants : Mr.C.Munusamy

For Respondent 1, 3 to 8 : Mrs.Elizabeth Ravi

JUDGMENT

The plaintiffs are the appellants before this Court. The appeal arises against the Judgement and Decree dismissing the suit filed by the plaintiffs for a partition and separate possession of their 70/135th share in the suit schedule

properties. The genealogy herein below is being given for ease of understanding the relationship between the parties.



2.The plaintiffs, as seen from the genealogy tree are the wife and daughters of elder son of Govindasamy Naidu one late Kuppusamy. The defendants 1 to 4 are the siblings of Kuppusamy and other children of Govindasamy Naidu and Janaki Ammal. It is the case of the plaintiffs that the suit properties are the ancestral joint family properties of Govindasamy Naidu. The case of the plaintiffs was that the 1st plaintiff had contributed the Gold that she had got at the time of her marriage to her father-in-law for developing the joint family property. Kuppusamy, his father and his brother Subramani were enjoying the said properties and that the defendants 2 to 4 were married giving them dowry befitting their status.

3.It is the case of the plaintiffs that the suit schedule properties were being enjoyed only by Kuppusamy, his father Govindasamy Naidu and brother Subramani, the 1st defendant herein. Govindasamy Naidu was managing the property as a Kartha till his life time. Kuppusamy had predeceased his father and on the death of Govindasamy Naidu as well, the 1st defendant tried to cheat the plaintiffs of the suit properties.

4.In the year 2009, the plaintiffs had demanded partition and thereafter, the 1st defendant tried to delete the name of Govindasamy Naidu from the revenue records and insert his name therein. The plaintiffs on coming to know about the same had immediately lodged their objections to the Tahsildar and the attempt was successfully prevented. On 31.08.2009, the 1st defendant was trying to alienate the suit properties and had declared to the plaintiffs that they would get no share in the suit properties. This has constrained the plaintiffs to file the present suit on the file of the Principal District Judge, Dharmapuri.

5.The 1st defendant had filed a detailed written statement denying the various allegations contained in the plaint and this written statement was adopted by the other defendants. It was their case that Kuppusamy had left his father's house long back after getting a job and he had not contributed in any fashion to the joint family. On 10.04.2008, Govindasamy Naidu had executed a will in favour of defendants 2 to 4 with reference to the 1st item of the property and another will on the same day in respect of the 4th item of the suit schedule property in favour of the 1st defendant. The plaintiffs were never in enjoyment of the property and they were not entitled to a share.

6.The defendants had also taken a plea that since the plaintiffs were not in possession of the property the Court fees ought to have been paid is under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act and not under Section 37 (2).

7.The defendants had filed an additional written statement inter alia contending that the plaintiffs were only entitled to a share 1/5th share since defendants 2 to 4 were also entitled an equal share in the property.

8.The learned Principal District Judge, Dharmapuri had

framed the following issues and additional issues:

i) Whether the plaintiffs are entitled to get partition decree as prayed for?

ii) Whether the plaintiffs are entitled to get permanent injunction against the defendants?

iii) Is it true to say that the suit schedule 4th item of property was executed by the Govindasamy Naidu dated 10.04.2008 in favour of the 1st defendant by way of will?

iv) Is true to say that the plaintiffs are not in possession in suit schedule properties?

v) To what any other relief the plaintiffs are entitled to?

Additional issues: 11.10.2011.

i) Whether the plaintiffs are entitled to get 1/5 share alone in the suit properties?"

9. The plaintiffs have examined the 4th plaintiff as P.W.1 and Ex.A.1 to Ex.A.12 were marked on their side. On the side of the defendants the 1st defendant had examined himself has D.W.1 no documents were filed by the defendants. Issue No.3 related to the Will dated 10.04.2008 that had been propounded by the defendants. However the defendants had not taken any steps to prove the Will in the manner known to law, they had not examined the attester or witnesses to the Will. The Court below decreed the suit on par by allotting 1/5th share in the suit properties to the plaintiffs and the permanent injunction was granted restraining the defendants from alienating the property in question.

10. Challenging this Judgement and Decree the plaintiffs have filed the first Appeal. Heard Mr.C.Munusamy, learned counsel for the appellants and Mrs.Elizabeth Ravi, learned counsel for the respondents. The main contention that has been addressed by the counsel appearing for the appellants was that the properties are the ancestral joint family properties of the father Govindasay Naidu and late Kuppasamy and the 1st defendant. The plaintiffs are therefore entitled to a 70/135th share, the 1st defendant entitled to 50/135th and the defendants 2 to 4 entitled to 5/135th share each. He would further contend that allotting a share to the female members of the family is totally erroneous. He would further argue that the Court below has overlooked various provisions of pronouncements with reference to the share of the females in Hindu undivided ancestral property.

11. Per contra, Mrs.Elizabeth Ravi, learned counsel who argued on behalf of the respondents would contend that till the death of the father in the year 2009 the properties had not been partitioned and they continued to be in joint family. Therefore as per the Hindu Succession Act with commencement of the Hindu Succession Act (Amendment Act 2005) the daughters would also have an equal share in the property as the same had not been partitioned between the father and the sons.

12.Heard the parties and perused the papers. It is an admitted fact that the properties are the ancestral joint family property of Govindasamy Naidu. It is also admitted that Kuppasamy had predeceased his father and Govindasamy Naidu, the father had died in the year 2009, therefore, on the death of the father and applying the provisions of the Hindu Succession Act (Amendment Act 2005) defendants 2 to 4 will have an equal right to the property along with the 1st defendant and the plaintiffs jointly.

In the light of the above Act, the Judgement and Decree passed by the learned Principal District Judge, Dharmapuri cannot be called into question. I find no infirmity in the order passed by the Principal District Judge, Dharmapuri. The Appeal Suit is dismissed and the Judgement in O.S.No.35 of 2009 stands confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To,
The Principal District Judge,
Dharmapuri.

+lcc to Mr. C.Munusamy, Advocate, S.R.No. 27448

+lcc to Mr. Elizabeth Ravi, Advocate, S.R.No. 27010

RSI (CO)
GN(11/06/2019)

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