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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.06.2019
PRONOUNCED ON : 24.06.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.90 of 2016
and
CMP No.2214 of 2016

1. Azhagammal

2. Valli

3. Adhilakshmi ...Appellants/Plaintiffs

Vs.

1. Irusappan

2. Murugan @ Subramani

3. Suguna @ Sugunavathy ...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 15.07.2015 and made in A.S.No.2 of 2013 on the file of the Principal District Judge at Puducherry reversing the judgment and decree dated 27.11.2012 and made in O.S.No.199 of 2004 on the file of the Principal Subordinate Judge at Puducherry.

For Appellants : Mr.S.Vadivel

For Respondents: Mr. T.M. Naveen
for M/s. K.P.Jotheeswaran for R3
R1 and R2 - No appearance. Set exparte
vide order dated 17.06.2019.

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 15.07.2015 passed in A.S.No.2 of 2013 on the file of the Principal District Court, Puducherry, reversing the judgment and decree dated 27.11.2012 passed in O.S.No.199 of 2004 on the file of the Principal Subordinate Court, Puducherry.



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

3. Suit for partition, cancellation of the sale deed dated 05.03.1999 and permanent injunction.

4. The case of the plaintiffs, in brief, is that the plaint schedule property was owned by Ponnikannan and enjoyed by him till his demise on 14.07.1978 intestate leaving behind the plaintiffs and the defendants 1 and 2 as his legal heirs and the third plaintiff is the wife of Ponnikannan and the plaintiffs 1 and 2 are the daughters and the defendants 1 and 2 are the sons of Ponnikannan and the plaintiffs and the defendants 1 and 2 are living in the suit property jointly and the suit property is ancestral in nature and the plaintiffs and the defendants 1 and 2 have equal share and right in the suit property and the third defendant attempted to fence over the suit property on 09.08.2003 and when the plaintiffs questioned the same, the third defendant claimed that she had purchased the suit property from the defendants 1 and 2 on 05.03.1999 and following the same, the plaintiffs applied for the copy of the abovesaid sale deed and found that the defendants 1 and 2 had alienated the suit property to the third defendant on 05.03.1999 without the knowledge of the plaintiffs and when the plaintiffs questioned the defendants 1 and 2, they replied that the plaintiffs have no right or claim to the suit property and denied their title and on the other hand, as the plaintiffs are entitled to the equal share in the suit property as that of the defendants, the suit property being the property of the deceased Ponnikannan, accordingly, it is contended by the plaintiffs that the sale deed dated 05.03.1999 is null and void and not binding upon them and have come forward with the suit seeking for the appropriate reliefs.

5. The third defendant resisted the plaintiffs' suit contending that the defendants 1 and 2 are the absolute owners of the suit property and that she had purchased the same from them for a valid consideration by way of the sale deed dated 05.03.1999 and only with the consent of the plaintiffs, the defendants 1 and 2 had alienated the suit property in favour of the third defendant and since the date of purchase, the suit property is in the possession and enjoyment of the third defendant and the plaintiffs have come forward with the suit after the period of five years from the date of sale and the sale consideration for the sale deed dated 05.03.1999 has been received both by the plaintiffs as well as the defendants 1 and 2 and therefore, only with a view to cheat and defraud the third defendant, the plaintiffs have come forward with the false suit in connivance with the defendants 1 and 2 and the suit for partition by the plaintiffs does not arise since the same had



already been sold by the defendants 1 and 2 to the third defendant and in the additional written statement, the third defendant reiterated the pleas already put forth in the written statement and also contended that other than the suit property, the other properties are also liable to be partitioned and therefore, the prayer sought for by the plaintiffs is against law and natural justice, the defendants 1 and 2 are the co-sharers / co-owners of the family properties and had the right to sell the suit property to the third defendant and the suit has been laid by the plaintiffs after limitation in collusion with the defendants 1 and 2. The property had been sold by the defendants 1 and 2 and is well known to the plaintiffs. The suit property had been sold only to celebrate the marriage of the second plaintiff Valli and therefore, the sale transaction is only with the consent and knowledge of the plaintiffs and the other properties were not blended together and the suit property had been sold with the consent of the plaintiffs, and the defendants 1 and 2 had already sold some properties independently but the plaintiffs have not included such sales in the present suit for partition and therefore, the suit is liable to be dismissed.

6. In support of the plaintiffs' case P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On the side of the third defendant D.W.1 was examined and no document was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to grant the reliefs in favour of the plaintiffs as prayed for and on appeal by the third defendant, the first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the third defendant, dismissed the suit laid by the plaintiffs. Impugning the same, the present second appeal has been preferred by the plaintiffs.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

"a. Whether the Appellate Court was right in giving a finding that the male members alone would get share in the ancestral property as coparceners by applying the Mitakshara Hindu Law when admittedly the suit property and the parties are in Puducherry?

b. Whether the Appellate Court was right in applying the Mitakshara Hindu Law which is prevailing in Tamil Nadu by ignoring the



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Coramandal Hindu Customary law prevailing in Puducherry when admittedly the suit property and the parties are in Puducherry?

c. Whether the Appellate Court was right in allowing the appeal filed by the third defendant after giving a finding that the defendants 1 and 2 were entitled to only 12/15 shares or 4/5 shares alone by applying the Mitakshara Hindu Law?

9. The relationship between the plaintiffs and the defendants 1 and 2 is not in dispute. According to the plaintiffs, the suit property was owned by Ponnikannan till his demise on 14.07.1978 and Ponnikannan died intestate leaving the plaintiffs and the defendants 1 and 2 as his legal heirs. The third plaintiff is the wife, the plaintiffs 1 and 2 are the daughters and the defendants 1 and 2 are the sons of deceased Ponnikannan. Now according to the plaintiffs, the suit property was owned by Ponnikannan and in the plaint, the plaintiffs would also aver that the suit property is ancestral in nature. Inasmuch as the suit property was owned by Ponnikannan, according to the plaintiffs, as his legal heirs, they are also entitled to the equal share in the suit property and inasmuch as the defendants 1 and 2, without their knowledge and consent had alienated the same in favour of the third defendant on 05.03.1999, according to the plaintiffs, they had been necessitated to lay the suit against the defendants for appropriate reliefs.

10. It is only the third defendant, who had contested the plaintiffs' suit. According to the third defendant, the defendants 1 and 2 had alienated the suit property to her for a valid consideration on 05.03.1999 with the consent and knowledge of the plaintiffs and the plaintiffs are very well aware of the abovesaid sale transaction and the third defendant has also pleaded that the sale consideration had been received both by the plaintiffs and the defendants 1 and 2 and hence, according to the third defendant, the plaintiffs are not entitled to challenge the sale transaction dated 05.03.1999 and the suit is liable to be dismissed.

11. Considering the nature of the suit laid by the plaintiffs, it is found that it is mainly laid for the relief of partition in respect of the suit property, which had come to be alienated by the defendants 1 and 2 in favour of the third defendant on 05.03.1999. According to the plaintiffs, the suit property was owned by Ponnikannan, their predecessor in interest. Though the plaintiffs would also state that the suit property is ancestral in nature, however, no clear pleas or materials had been projected in the matter as to how the suit



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property is ancestral in nature. But considering the pleas set out in the plaint, it is found that the suit had been laid by the plaintiffs only on the footing that the suit was originally owned by Ponnikannan and that the suit property was owned by Ponnikannan has also been admitted by the third defendant during the course of her evidence. Accordingly, even during the course of chief examination, the third defendant has clearly admitted that the plaintiffs and the defendants 1 and 2 were the absolute owners of the suit property and that she had purchased the same only from the defendants 1 and 2 by way of the registered sale deed 05.03.1999. During the course of cross examination, the third defendant, examined as D.W.1, has further clearly admitted that she had not verified the Encumbrance certificate at the time of purchase and admitted that the defendants 1 and 2 represented at the time of sale that the suit property belonged to their father Ponnikannan and that the patta stood in their name and on that assurance, she had purchased the suit property. Furthermore, also admitted that in the suit property, others were also residing and also admitted that the suit property belonged to Ponnikannan and however, feigned ignorance as to whether the plaintiffs are entitled to obtain 1/5 share each in the suit property as the legal heirs of Ponnikannan. Subsequently admitted that she is entitled only to 2/5 share in the suit property and that the plaintiffs are entitled to 3/5 share in the suit property. Thus from the evidence of D.W.1 and the pleas set out in the plaint and the written statement, it is found that the suit property originally belonged to Ponnikannan and accordingly, the third defendant has also admitted that both the plaintiffs and the defendants 1 and 2 were the owners of the suit property and accordingly, the third defendant has also pleaded in the written statement that the defendants 1 and 2 had alienated the suit property in her favour with the consent and knowledge of the plaintiffs. However, the abovesaid case of the third defendant is unacceptable. If really, the plaintiffs had the knowledge about the sale transaction and given consent to the same, nothing prevented the third defendant from obtaining the sale deed executed even from the plaintiffs along with the defendants 1 and 2. Therefore, the abovesaid plea of the third defendant is found to be false. The third defendant would also plead in the written statement that the sale consideration was received by both the plaintiffs and the defendants 1 and 2. However, there are no recitals pointing to the same in the sale deed dated 05.03.1999, the copy of which is marked as Ex.A1. If really the sale transaction dated 05.03.1999 had been entered into with the consent of the plaintiffs and the plaintiffs had also received the sale transaction, necessary recitals to that effect would have been incorporated in Ex.A1 sale deed. Furthermore, according to the third defendant, she had purchased the suit property without verifying the Encumbrance Certificate. It is further seen that the third defendant had purchased the



suit property based on the assurance put forth by the defendants 1 and 2 that they are having patta in respect of the suit property. The alleged patta in the name of the defendants 1 and 2 has not been produced by the third defendant. Accordingly, unable to disown or dispute the entitlement of the plaintiffs to the suit property, it is found that the third defendant has, during the course of evidence, clearly admitted that the plaintiffs and the defendants 1 and 2 were the owners of the suit property as the legal heirs of Ponnikannan, accordingly, she has also put forth the pleas in the written statement that only with the knowledge and the consent of the plaintiffs, the defendants 1 and 2 had alienated the suit property to her. But, as above discussed, the abovesaid plea of the third defendant is found to be false and untenable.

12. As above pointed out, there is no material on the part of the plaintiffs to hold that the suit property is ancestral in nature. Considering the available materials on record, as above discussed, at the most, it could only be inferred and determined that the suit property belonged to Ponnikannan. There is no dispute with reference to the same as such. Following the demise of Ponnikannan, it is found that the plaintiffs and the defendants 1 and 2 would be entitled to obtain equal share in the suit property. In such view of the matter, it is seen that the defendants 1 and 2 are not entitled to alienate the suit property in favour of the third defendant excluding the plaintiffs and without their knowledge and consent. In such view of the matter, the sale transaction dated 05.03.1999 is invalid as far as the share of the plaintiffs in respect of the suit property. As the legal heirs of Ponnikannan, it is found that the plaintiffs are each entitled to obtain 1/5 share in the suit property.

13. The trial court has held that the plaintiffs are entitled to obtain 1/5 share each as the legal heirs of Ponnikannan to whom the suit property originally belonged to. As above pointed out, though the plaintiffs had pleaded that the suit property is ancestral in nature, however, there is no material as such to safely conclude that the suit property is ancestral in nature. On the other hand, as above pointed out, on the basis of the evidence adduced in the matter, the suit property could only be held to be owned by Ponnikannan. The first appellate court had proceeded to hold on the basis of the plaint pleas that the suit property is ancestral in nature and thereby determined that, at the most, the plaintiffs would be entitled to secure only 1/15 share each in the suit property and the defendants 1 and 2 are entitled to 6/15 share each in the suit property. However, as above noted, when there is no material on record to hold that the suit property is ancestral in nature and on the other hand, the materials indicate that the



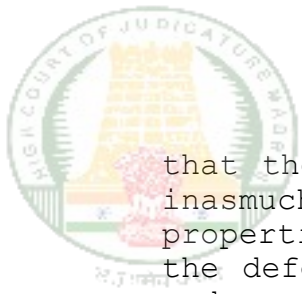
suit property only belonged to Ponnikannan, in such view of the matter, on the demise of Ponnikannan, it is found that the plaintiffs are entitled to obtain 1/5 share each in the suit property.

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14. The first appellate court, even after holding that the plaintiffs are entitled to obtain 1/15 share each in the suit property, had failed to grant the relief of partition in favour of the plaintiffs as regards the abovesaid share. On the other hand, the first appellate court had proceeded to hold that as regards the alienation of their shares in the suit property by the defendants 1 and 2 to the third defendant, the plaintiffs have to work out their remedy only against the defendants 1 and 2 and on that reasonings, proceeded to dismiss the plaintiffs' suit. The abovesaid approach of the first appellate court is found to be totally unacceptable and untenable in the eyes of law. After holding that the plaintiffs are entitled to obtain 1/15 share each in the suit property, atleast, on that conclusion, the first appellate court should have granted the relief of partition in favour of the plaintiffs in respect of the suit property, particularly, when there is no material to hold that the suit property had been alienated with the knowledge and the consent of the plaintiffs on the part of the third defendant. It is not the case of the third defendant that she has prescribed title to the suit property by way of the adverse possession. No such plea has been raised in the written statement. Therefore, there is no question of any limitation for the plaintiffs to lay the suit. Furthermore, immediately on coming to know of the sale transaction, the plaintiffs have levied the suit seeking appropriate reliefs. Even prior to the institution of the suit, the plaintiffs had issued the legal notice claiming partition. Despite the receipt of the same, the defendants had not responded to the notice. In such view of the matter, it is found that plaintiffs' suit is not barred by limitation.

15. Furthermore, considering the discussions abovemade, when it is seen that the suit property was only owned by Ponnikannan and there is no material to determine that the suit property is ancestral in nature, in the light of the above position, the plaintiffs are entitled to obtain their due share in the suit property as above pointed out, and therefore, the sale deed executed by the defendants 1 and 2 in favour of the third defendant conveying the entire suit property on 05.03.1999 is found to be null and void as regards the share of the plaintiffs in the suit property. In the light of the above position, it is found that the plaintiffs are entitled to obtain the reliefs prayed for in the suit.

16. The counsel appearing for the third defendant contended



that the suit having been laid by the plaintiffs for partition, inasmuch as the plaintiffs had failed to include all the properties owned by the family consisting of the plaintiffs and the defendants 1 and 2, their suit is bad for partial partition and on that ground alone the suit is liable to be dismissed. However, the abovesaid defence version put forth by the third defendant's counsel is unacceptable. In the additional written statement, though the third defendant would claim very vaguely that there are some other properties left out by the plaintiffs in the suit for partition, she has not come forward clearly as to what are the properties left out by the plaintiffs to be included in the suit and what are the properties which had been already sold by the defendants 1 and 2 and omitted to be included by the plaintiffs and when with reference to the same only vague pleas have been raised and furthermore, when the third defendant examined as D.W.1 has not even adduced any evidence on that score that the suit laid by the plaintiffs is bad for partial partition and furthermore, when there is no material on record on the part of the third defendant as to what are the other properties available for partition amongst the plaintiffs and the defendants 1 and 2 other than the suit property, in such view of the matter, based on such vague pleas and bereft of materials pointing to the same, the contention of the counsel appearing for the third defendant that the suit laid by the plaintiff is bad for partial partition, as such, cannot be countenanced and liable to be rejected. If really any properties had been omitted to be included by the plaintiffs in the suit, clear particulars with reference to the same would have been averred by the third defendant and when with reference to the same, only vague pleas had been raised and the said vague pleas are also not supported by evidence on the part of the third defendant as such and also no material has also been put forth by her to substantiate the same. In such view of the matter, it has to be held that the third defendant is disentitled to put forth such a plea for rejecting the plaintiffs' suit and therefore, I am unable to countenance the same.

17. In addition to that, the suit laid by the plaintiffs is not a comprehensive suit for partition. The plaintiffs has laid the suit only as regards the property alienated by the defendants 1 and 2 in favour of the third defendant on 05.03.1999. Inasmuch as the plaintiffs has laid the suit claiming their share in the suit property which had been sold to the third defendant by the defendants 1 and 2 depriving their share in the same, it is found that such a suit laid by the plaintiffs is maintainable and in such a suit, the plaintiffs are not required to include all the family properties of Ponnikannan, if any available.

18. With reference to the abovesaid position of law, I had



an occasion to consider the same in the decision rendered by me in the Second Appeal No.3 of 2011 dated 18.12.2017 and the position of law has been considered by me taking into consideration the decision reported in 1933 65 MLJ 696 (Kandaswami Goundan (Deceased) vs. Venkatarama Goundan and Ors) as well as the Full Bench decision of the Madras High Court reported in (1920) I.L.R. 34 Mad. 269 (Iburamsa Rowthan vs. Thiruvenkatasamy Naick as well as the decision reported in (1948) 2 MLJ 181 (Nalluri Subbarayudu vs. Ranpati Ramanaiah and ors). The reasonings and conclusions arrived at by me in the abovesaid decision, extracted below, would go to show that considering the vague pleas and lack of material on the part of the third defendant to sustain her plea of partial partition, as above discussed and furthermore, when the suit has been laid by the plaintiffs only claiming their share in the suit property, which had been alienated to the third defendant by the defendants 1 and 2 depriving the share of the plaintiffs, the plea of partial partition projected by the counsel appearing for the third defendant is found to be totally untenable and unsustainable in the eyes of law.

"12. The next plea raised by the defendants to thwart the plaintiffs' case is that the suit laid by the plaintiffs is bad for partial partition and according to them, the family of Narayanasami Maniam owns other properties other than the suit properties and the failure of the plaintiffs to include all the properties in the suit would result in the dismissal of the suit, on the ground of partial partition. In this connection, the Chitta and A register copies marked as Exs.B10 and B11 are pressed into service. However, it is seen that the above said documents do not stand in the name of Narayanasami Maniam as such or in the name of the first plaintiff. It stands in the name of the fourth defendant and others and on the basis of the same, we cannot safely conclude that the properties described therein are belonging to the family of the Narayanasami Maniam as such. Though the defendants would claim that certain family properties had been sold to one Ponnusamy and Muthusamy, with reference to their above plea, there is no material forth coming. In the light of the above position, when the defendants have not placed any acceptable and reliable materials to safely hold that the family of Narayanasami Maniam had owned other properties also as putforth in Ex.B10 and B11, it cannot be held that the suit is bad for partial partition.

13. Further according to the plaintiffs'



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counsel, the above plea of partial partition cannot be given legal credence for dismissing the plaintiffs' suit, as according to her, inasmuch as the plaintiffs have laid the suit claiming their share in the suit properties, which had been sold to the defendants 5 to 8 by the defendants 1 to 4, depriving the share of the plaintiffs thereby in respect of the same, according to the plaintiffs' counsel, the suit laid by the plaintiffs for the partition of the above said properties alone is maintainable and in such a suit, the plaintiffs are not required to include all the family properties of Narayanasami Maniam and in this connection, strong reliance is placed upon the decision reported in 1933 65 MLJ 696 (Kandaswami Goundan (Deceased Vs. Venkatarama Goundan and Ors) where the position of law, as regards the above issue, is discussed and determined as follows:-

6. The real contending defendant is riot the 1st defendant but the 8th defendant, a purchaser from him. In these circumstances the question arises, because it has been argued by the learned advocate for the respondent, whether the suit merely for a share of the Alasandapuram lands is maintainable. In view of the fact that the plaintiff has claimed an alternative relief for a general partition, the question is academic apart from the question of proper court-fees payable by the plaintiff. But the point has been argued, and we are of opinion that the suit for partition of merely Alasandapuram lands apart from a general partition is sustainable. We proceed to give reasons for this conclusion. Mr. Padmanabha Aiyangar contended that the suit for a share of the Alasandapuram lands is not' maintainable because it is a suit for partial partition. Now cases establish two or three well-recognised principles. Firstly, as between members of a joint family no suit for partial partition lies. Secondly, a member or members of a joint family may sue an alienee from a member or members of the joint family for his or their share of the property alienated without suing for a general partition. In so doing they affirm the sale by the other member or members but the real basis of the rule is that as the



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rule against partial partition is a rule for the protection of the joint family against being harassed by multiplicity of suits at the instance of alienees from recalcitrant members, they can waive the benefit of it and they can bring a suit to separate themselves from the undesirable stranger. The remarks in *Iburamsa Rowthan v. Thiruvenkatasami Naick* (1920) I.L.R. 34 Mad. 269 : 20 M.L.J. 743 (F.B.) show that the rule is recognised on the ground that it has been acted upon in a series of cases, and it is too late to examine whether the foundation of the rule is sound or unsound. So it is unnecessary to analyse the reasons for the rule. It is enough to say that the rule exists as between members of a joint family and an alienee from a member of members. We have got the actual decision in *Iburamsa Rowthan v. Thiruvenkatasami Naick* (1920) I.L.R. 34 Mad. 269 : 20 M.L.J. 743 (F.B.) where the plaintiff is an alienee from one member and the defendant is an alienee from another member of the joint family. The suit was held to be maintainable.....

The truth is that once you recognise the right of a member of a coparcenary to bring a suit against an alienee, the right of an alienee from a coparcener to sue another alienee immediately follows as a corollary and the distinction between first alienee and second alienee is entirely irrelevant.

None of these cases supports the distinction sought to be drawn that the rule in *Iburamsa Rowthan v. Thiruvenkatasami Naick* (1910) I.L.R. 34 Mad. 269 : 20 M.L.J. 743 (F.B.) should be confined to a second alienee and cannot be followed with reference to a first alienee from a member of the family. Apart from all this, in this particular case there is no more joint family, it being conceded by all the parties that there is a division in status. Though in such a case, as between members of the family there ought to be one suit in respect of all the items as held by *Kumaraswami Sastri, J. in Yerukola v. Yerukola* (1922) I.L.R. 45 Mad. 648 : 42



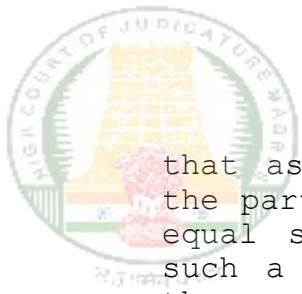
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M.L.J. 507 (F.B.), still as between two strangers who are alienees from members of the family we do not see any reason why there could not be a suit for partition of those items in respect of which the contending parties to the suit are tenants-in-common. We think that the suit even in respect of the Alasandapuram lands is therefore maintainable.

A perusal of the above said decision would go to show that, as rightly contended by the plaintiffs' counsel, a member or members of the joint family may sue an alienee from a member or member of the joint family for his share or their share of the properties alienated without suing for a general partition. The principles of law outlined in the above said decision about the entitlement to the claim of partition by a member or members of the joint family only in respect of the properties alienated to third parties has been discussed in the above said decision as above, based upon the remarks of the Full Bench decision of the Madras High Court reported in 1920 ILR 34 Madras 269.

14. The above decision has also been followed by our Madras High Court in the decision reported in (1948) 2 MLJ 181 Nalluri Subbarayudu Vs. Ranpati Ramanaiah And Ors. In the light of the above said authorities pronounced, it is found that the present suit laid by the plaintiffs for partition against the alienees namely, the defendants 5 to 8 by impleading the other co-owners as parties for their shares of the alienated properties cannot be defeated on the footing that, the plaintiffs have failed to include all the family properties of Narayanasami Maniam. When it is found that the suit for partition of the plaintiff is not a suit for general partition only amongst the members of the family, it is seen that the plaintiffs would be entitled to maintain the suit, even assuming for the sake of arguments that the other family properties of Narayanasami Maniam had not been included in the suit properties. It is thus found that the first appellate Court has erred holding that the suit laid by the plaintiffs is bad for partial partition".

19. The plea has been raised by the plaintiffs' counsel



that as per the Coramandal Hindu Customary law applicable to the parties in Puducherry, the plaintiffs are entitled to obtain equal share in the suit property. However, with reference to such a case, as rightly put forth by the defendant's counsel, there is no specific plea in the plaint. In any event, considering the determination that the suit property belonged to Ponnikannan and when there is no material to hold that the suit property is ancestral in nature, in such view of the matter, it is found that as per the Hindu Succession Act, 1956, which is held to be applicable to the plaintiffs after 01.10.1963 as per the decision reported in 2018-1-L.W.209 (Muthaiyan vs. Poongothai & others), in all, it is found that dehors the applicability of Coramandal Hindu Customary law to the case at hand, it is found that the plaintiffs are entitled to obtain 1/5 share each in the suit property as determined by the trial court and also entitled to seek and obtain the other reliefs as prayed for.

20. In support of his contentions, the counsel for the plaintiffs placed reliance upon the following decisions reported in

1. 2010-1--L.W 172 (Maanvizhi (a) Manavijie vs. Venkatachalam (a) Vingudasalam & others)
2. 1980 (1) MLJ 350 (Ramalingam vs. Manicka Gounder and others)
3. 2004-2-L.W. 259 (Viswanathan and another vs. Savarimouturayan & others)

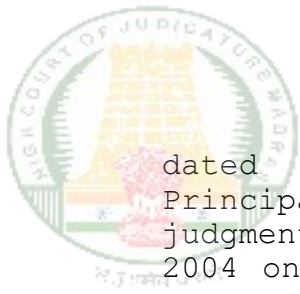
The counsel for the respondent in support of his contentions, placed reliance upon the following decisions reported in

1. 2018-1-L.W.209 (Muthaiyan vs. Poongothai & others)
2. AIR 1960 Supreme Court 1272 (Dattajirao Bahirojirao Ghorpade vs. Vijayasinhrao and another)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

21. In the light of the abovesaid discussions, the substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiffs and against the defendants.

22. For the reasons aforestated, the judgment and decree



dated 15.07.2015 passed in A.S.No.2 of 2013 on the file of the Principal District Court, Puducherry, are set aside and the judgment and decree dated 27.11.2012 passed in O.S.No.199 of 2004 on the file of the Principal Subordinate Court, Puducherry are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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Copy to

1. Principal District Judge,
Puducherry.
2. Principal Subordinate Judge,
Puducherry
3. The Section officer,
V.R. Section, High Court, Madras

+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No. 51847
+1cc to Mr.S.Vadivel, Advocate, S.R.No. 51570

S.A.No.90 of 2016

NMI (CO)
GN(16/12/2019)