

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	08.04.2019
Pronounced On	11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

A.S.Nos.266 & 294 of 2017

and

C.M.P.Nos.10239 & 11028 of 2017

A.S.No.266 of 2017

M/s Deep Jyothi Projects Pvt.Ltd.,
represented by its Authorized Signatory,
K.Sivakumar, having registered office at
MGF-House, 17-B, Aasaf Ali Road,
New Delhi - 110 002. ... Appellant/12th defendant

vs

1.S.Rukumani

2.V.Sandhamani

Chinna Karuppanna Konar (deceased)

3.Eswaran

4.Subramanian

5.Gopal

6.E.Sureshkumar

7.S.Ayyasamy

S.Rajendran (deceased)

8.S.Yagneshwaran

9.G.Paneerselvam

10.Minor G.Jeevanandham

11.S.Kanagamani

... Respondents/Plaintiffs

Prayer: Appeal Suit is filed under Order 41-A r/w Section 96 of CPC, to set aside the decree and judgment passed on 23rd November 2016 (copy received on 28.03.2017) in O.S.No.623 of 2009 on the file of the 1st Additional District Judge of Coimbatore, and dismiss the suit with costs throughout.

For Appellant : Mr.Kaushik N Sharma
For R1 & R2 : Mr.K.Sudhakar
For R3 & R6 : Mr.A.Thiyagarajan
For R5, R9 & R10 : Mr.N.Chinnaraj
For R4, R7, R8 & R11: No appearance

A.S.No.294 of 2017

1.Eswaran
2.E.Suresh Kumar ...Appellants/Defendants 2 & 5

vs

1.S.Rukumani
2.V.Sandhamani
M.Chinna Karupanna Konar (died)

3.Subramanian
4.Gopala
5.S.Ayyasamy
S.Rajendran (died)

6.S.Yagneshwaran
7.G.Pannerselvam
8.Minor G.Jeevanandham

9.S.Kanagamani
10.Deep Jyothi Projects Pvt.Limited
Rep. by its Authorized person
K.Sivakumar,
S/o Late Kalyana Sundara Iyer
Office at MGF - House, 17-B,
Aasaf Ali Road, New Delhi - 110 002.

... Respondents/Plaintiffs

Prayer: Appeal Suit is filed under Section 96 of CPC, to set aside the judgment and decree in O.S.No.623 of 2009 dated 23.11.2016 on the file of the 1st Additional District & Sessions Judge, Coimbatore.

For Appellants : Mr.A.Thiyagarajan
For R1 & R2 : Mr.K.Sudhakar
For R4, R7 & R8 : Mr.N.Chinnaraj
For R10 : Mr.Kaushik N Sharma
For R3, R5, R6 & R9 : No appearance

C O M M O N J U D G M E N T

C. SARAVANAN, J.

By this common order following two appeals are being disposed:-

i.A.S.No.266 of 2017 has been filed by the 12th defendant in O.S.No.623 of 2009. The said appellant claims to be a bonafide purchaser of land which is the subject matter of the aforesaid partition suit; and

ii.A.S.No.294 of 2017 has been filed by the 2nd and the 5th defendants in the above suit. They are the father and son.

2.Aggrrieved by the impugned judgement and decree, the above appeals have been filed by the respective appellants. They have prayed for setting aside the impugned preliminary decree passed by the Trial Court holding that the plaintiffs were entitled 2/5th shares each in the suit schedule property.

3. For the sake of narration of facts, the ranks given to the parties in O.S.No.623 of 2009 are referred in this appeal.

4. By the impugned judgement and decree, the Trial Court has passed a preliminary degree as prayed for by the plaintiffs (respondents No.1 and 2 in the respective appeals).

5. The appellant in A.S.No.266 of 2017 is the 10th respondent in A.S. No.294 of 2017 and was the 12th defendant in the suit. The 12th defendant was impleaded subsequently in the above suit after the trial commenced.

6. 12th defendant claims to be a *bonafide* purchaser of the land to an extent of 0.75 acres from land in Survey No.86/2A 3B vide Exhibit B4 dated 03.02.2006. The said property forms part of the suit schedule property.

7. Before delineating the relevant facts, it would be useful to refer to the relations ships between the plaintiffs and 1st to 11th defendants in the suit.

8.The 1st Defendant is the son of one Pokkali Konar who died during 1941. Pokkali Konar himself was the son of one Raya Konar (N.Rayan). The said Pokkali Konar had two sons namely Periya Karuppana Konar and the 1st defendant Chinna Karuppana Konar.

9. The 1st defendant is the father of the plaintiffs and 2nd, 3rd and 4th defendants. The plaintiffs are the two sisters while the 2nd, 3rd and the 4th defendants are his sons.

10.The 1st defendant sired the plaintiffs and 2nd to 4th defendant (original defendants in the above suit) through two wives.

11.The 2nd defendant is the son of the 1st defendant Chinna Karuppana Konar through his first wife. 5th defendant is the son the of the 2nd defendant. They are the appellant in A.S No.294 of 2017.

12.The plaintiffs and the 3rd and 4th defendants are the children of the 1st defendant Chinna Karuppana Konar through his 2nd wife. 5th to 10th defendants are the children of 2nd, 3rd and 4th defendants.

13.They were impleaded pending suit, as the 1st defendant had allegedly settled some of the suit schedule properties in favour of them pending suit vide Exhibits B7 to B9 dated 26.08.2009. The Trial Court has declined to recognise the same.

14. 3rd, 6th, 7th, 8th and 11th defendants are the 2nd son of the 1st defendant and 3 grandsons of the 1st defendant through the 3rd defendant and his wife namely the 11th defendant respectively.

15. The 11th defendant being the wife of the 3rd defendant was impleaded as class I heir of the 7th defendant who died intestate on 24.06.2014 pending suit. They have also accepted the impugned judgment and decree as no appeal has been filed by them against the impugned judgment and decree.

16. 4th, 9th and 10th defendants in the suit are the 4th, 7th and 8th respondent in A.S.No.294 of 2017 and 5th, 9th and 10th respondent in A.S.No.266 of 2017 respectively.

17. They are the 1st defendant's son and two grandsons through the 4th defendant. They have filed separate affidavits and a joint memo and have agreed to abide by the impugned judgment and decree. Same stands recorded.

18. Thus, barring the appellants in the two appeals i.e 2nd, 5th and the 12th defendants, all the defendants have accepted to abide by the impugned judgment and decree. In other words, the contesting appellants (12th defendant) are the buyer of the property in 2006 in A.S.No.261 of 2017 and the 2nd defendant and his son (5th defendant) in A.S.No.294 of 2017.

19. The 2nd defendant is the son of the 1st defendant Chinna Karuppana Konar through his first wife. 5th defendant is the son of the 2nd defendant. They are the appellant in A.S No.294 of 2017.

20. The plaintiffs and the 3rd and 4th defendants are the children of the 1st defendant Chinna Karuppana Konar through his 2nd wife. 5th to 10th defendants are the children of 2nd, 3rd and 4th defendants.

21. They were impleaded pending suit, as the 1st defendant had allegedly settled some of the suit schedule properties in favour of the. Pending suit, vide Exhibits B7 to B9 dated 26.08.2009. The Trial Court has declined to recognise the same.

22. Having explained the relationships between the parties, we shall refer to necessary and relevant facts.

23. The plaintiff and the defendants claim rights over the suit schedule property through the 1st defendant.

24. Originally the Plaintiffs filed the above suit on 18.8.2009 against the 1st to 4th defendants. These defendants filed their written statement. There is a thumb impression which

is said to be the thumb impression of the 1st defendant in the written statement.

25. After, the written statement was filed, the 1st defendant died at a ripe age of 95 years on 15.01.2010 as is evident from Exhibits B5-9 which was allegedly executed by the 1st defendant before his death. Exhibits 5-6 were allegedly executed before the filing of the suit, Exhibits B7-9 were executed after the suit was filed.

26. The above suit was filed by the plaintiffs on the strength of the amendment to the Hindu Succession Act, 1956 vide Amendment Act of 2005 recognising the rights of the female coparceners.

27. In the plaint, both of the plaintiffs claimed that they had an 1/6th undivided share each in the suit schedule properties along with the 1st to 4th defendants even though they were married. They claimed that they were deemed to be in joint possession and enjoyment of the suit schedule property along with the above said defendants.

28. Details of the properties in respect of which partition was sought for are given below:-

1	2	3	4	5	6
Sl. No	Patta No	Survey No	Periya Karuppanna Konar (in Acre)	Chinna Karuppanna Konar (in Acre)	Total Extent (in Acre)
1	375/1	S.F.86/1 & S.F.86/2	5.21	4.94	10.15 out of 15.66
The above land was originally purchased in the name of the 1 st defendant's brother Periya Karuppanna Konar's Name on 28.06.1941 vide Ex.A4/B2 which were partitioned between them vide Ex.A1/B3 dated 11.12.1962.					
2	78	S.F.86/1	0.27	0.27	0.54
3	149	S.F.238/1	0.53	0.53	1.06

1	2	3	4	5	6
4		S.F.248/4	1.18	1.18	2.36
The above land was in the name of Grandfather N.Rayan Konar of the 1 st defendant and his brother Periya Karuppanna Konar vide C2 and C3 dated 19.06.2014.					
5	212	S.F.236	1.46	1.46	2.92
The above land was in the name of father of the 1 st defendant namely, Pokkali Konar as per Ex.A3 sale deed dated 05.07.1918.					
Total Agricultural Properties in Suit Schedule				8.38	
6	Residential Property				

29.The plaintiffs averred that the suit schedule properties were the residential and agricultural properties and were yielding income and that they used to periodically receive a share in the income from the suit schedule properties when they were under the control of the 1st defendant.

30. Since the first defendant was getting older and was not in control of himself, the 2nd to 4th defendants started dominating in the family affairs and started to usurp the suit schedule properties and income for themselves to the exclusion of the plaintiffs. Therefore, the plaintiffs demanded partition of the suit schedule properties.

31. It was alleged that they had attempted to resolve the dispute amicably with the defendants through their friends and relatives which however failed. The plaintiffs therefore prayed for partition and mesne profits.

32.The plaintiffs averred that they also suspected that these defendants had also managed to get a will to be executed by the 1st defendant to the exclusion of the plaintiffs as the 1st defendant was not in control of his faculties.

33. On 27.07.2009, the 1st defendant had allegedly executed Exhibits B5 & B6 Wills dated 27.07.2009 in favour of the 2nd, 3rd and 4th defendant and plaintiffs bequeathing all the suit schedule property as detailed below:-

Sl. No	Name of the Legatee in the Will	Patta No	Survey Nos	Extent (in Acre)	Exhibit
1	Eswaran (2 nd Defendant) & Subramanian (3 rd Defendant) & Gopal (4 th Defendant)	78	86/1A	0.37	B5
			86/2 A 1	3.47	
			236/1	1.49	
		590	238/1	1.06	
		Residential 1 House	193	-	
		Total		6.39 & Residential House	
2	Shanthamani (1 st Plaintiff)	78	248/ 4 A	1.27	B6
	Rukumani (2 nd Plaintiff)	Total		1.27	

34. Later, a portion of the property from Ex.B5 will to the extent of 3.70 ½ acre was shown as having settled by the 1st defendant in favour of 5th to 10th defendants vide settlement deed marked as Exs.B7 to 9 dated 26.08.2009 as below:-

Executor Name	Beneficiary	Extent	Exhibit
Chinna Karuppana Konar (1 st Defendant)	G.Paneer Selvam	1.23 ½	B7
	G.Geevanandham		

Executor Name	Beneficiary	Extent	Exhibit
Chinna Karuppanna Konar (1 st Defendant)	S.Ayyasamy	1.23 ½	B8
	S.Rajendran		
	S.Yagneshwaran		
Chinna Karuppanna Konar (1 st Defendant)	E.Suresh Kumar	1.23 ½	B9
	Total (From S.No.86/1A : 0.37 Acre & S.No.86/2 A 1 : 3.47 Acres out of 3.84 Acres)	3.70 ½	

35.The above suit was contested. Though, a common written statement dated 31.08.2009 was filed on behalf of the original defendants namely 1st to 4th defendants, it is doubtful whether the 1st defendant had retained his faculties to take a considered decision and affix his thumb impression in the common written statement dated 31.8.2009. In any event, this aspect is irrelevant for the reasons stated in later in this orders.

36.The said written statement merely contained general denials to the allegations made in the plaint. In the said written statement apart from reference to Ex. A1/B.3 Partition deed dated 11.12.1962 between the 1st defendant and his brother Periya Karuppanna Konar, there was no other reference to any other documents which came to be subsequently introduced pursuant to the additional written statements that were filed later.

37.After filing of the written statement dated 31.8.2009, the 1st defendant passed away on 5.01.2010.

38.After the death of the 1st defendant on 15.10.2010, the defendant Nos.2 to 10 filed their additional written statements on 09.8.2011 after 5th to 10th defendants were impleaded.

39. In the additional written statement, these defendants merely informed about the death of the 1st defendant and questioned the arithmetic and the calculation of the extent of the land and claimed that settlement of the property in favour of the 5th to 10th defendant by the 1st defendant vide Ex.B-7-9 dated 26.8.2009.

40. Thereafter, on 19.07.2013, two separate additional written statements were filed by 2nd to 4th defendant and 5th to 10th defendants respectively. In the said additional written statement, 2nd - 4th defendants drew reference to Exs.B5 and B6 wills allegedly executed by the 1st defendant on 27.07.2009 registered as Document No.190 of 2009 and Document No.191 of 2009 respectively.

41. As mentioned above, the properties mentioned therein were bequeathed to Plaintiffs vide Ex B6 and to 2nd to 4th Defendants vide Exhibit B5. Therefore, it was stated that there was no question of the plaintiffs claiming rights over the entire property.

42. The 5th to 10th defendants who are the children of the 2nd to 4th defendants filed their additional written statement dated

19.07.2013 wherein it was stated that the 1st defendant was the absolute owner of the properties and that he had every right to dispose them.

43. They further submitted that during his life time, the 1st defendant had executed three settlement deeds vide Exs.B7 to B9 dated 26.08.2009 in their favour and therefore, they became owners.

44. On 15.12.2014, two separate additional written statements were filed by the defendant Nos.2 to 10 jointly and another additional written statement filed by the 11th defendant who was impleaded as the legal heir/legal representative of the 7th defendant, in her capacity as the mother of the 7th defendant to the effect that she was entitled to succeed to the estate settled in favour of the deceased 7th defendant who died on

26.8.2014.

45.The 5th defendant who is the 2nd appellant in A.S.No.294 of 2017 filed another written statement wherein reference was made to Ex.B4 - sale deed dated 03.02.2006 in terms of which the 1st defendant had sold the property in S.F.No.86/2A 3B to an extent of 0.75 acres vide document No.764 of 2006 to the 12th defendant.

46.The 2nd appellant/5th defendant claimed rights over the property in terms of Exs.B7-9 settlement deeds dated 26.8.2009.

47.Thus, originally a common written statement was filed on 31.08.2009 by the original defendants namely defendant Nos.1 to 4 when the 1st defendant was alive. Thereafter, on 09.08.2011, additional written statements were filed by the defendant Nos.2 to 10.

48.On 19.7.2013, 2nd additional written statement was filed by 2nd to 4th and 5th to 10th defendants. On 19.11.2014, a separate written statement was filed by the 11th defendant and thereafter, additional written statement was filed by the defendant Nos.2 to 10. The 12th defendant filed a separate written statement on 19.04.2016

49.The Court framed the following issues and additional issues which reads as under:-

Issues:-

- i.Whether the plaintiff is entitled for preliminary decree for partition?
- ii.To what other reliefs?

50.After the additional written statements were filed, following additional issues were framed:-

- i.Whether the suit properties in the hands of the first defendant are having an ancestral character?
- ii.Whether the plaintiffs are entitled to 2/5th shares in the suit properties as prayed in the plaint?
- iii.Whether the Wills dated 27.07.2009 bearing Doc.Nos.190/2009 & 191/2009 are true and binding on the plaintiffs?
- iv.Whether the settlement deeds dated 26.08.2009 bearing Doc.Nos.5029/2009, 5030/2009 and 5031/2009 are true and binding on the plaintiff?

51.On behalf of the plaintiffs (the 1st and 2nd respondents in both the appeals), seven documents were filed vide Exs.A1 to 7. On behalf of the plaintiffs, the 1st plaintiff had deposed evidence as PW1 and one Ramasamy as PW2. The said Ramasamy was a senior draftsman.

52.On behalf of defendants, the 3rd defendant was examined as DW1 along with four other witnesses namely Mr.Krishnaraj (third party) as DW2, Natarajan as DW3, Selvanarayanan Samy as DW4 and Mr.S.P.Surendranath Karthik (the authorized signatory of the 12th defendant company employed as Senior Manager) as DW5 which includes the authorised signatory of the 12th defendant/appellant in A.S.No 266 of 2017, 11 documents were filed vide Exs.B1 to B.11 one of which were marked also as plaintiff document.

53.The Court also marked the documents vide Exhibits C1 to C3 namely authorization letter dated 19.06.2014 as Ex.C1, extract of Pages from Resettlement Register for Survey Nos.238 and 248 of Pattanam Village, Sular Taluk as Ex.C2 and Pages in Resettlement Register for Survey No.238 and 248 of Patanam Village, Sular Taluk as Ex.C3.

54.The Court also marked the Photostat copy of Ex.B5 to B9 and Ex.X1 to Ex.X5.

55.We have perused the pleadings namely, plaint, written statements and additional written statements filed by the defendants and their legal heirs. We have also seen the documents and evidence on record and impugned Judgment and decree.

56.We have heard Mr.Kaushik N.Sharma learned counsel for the appellant in A.S.No266 of 2017 and learned counsel for the 10th respondent in A.S.No.294 of 2017 and Mr.A.Thiyagarajan the learned counsel for the appellants in A.S.No.294 of 2017 and the learned counsel for the respondents 3 & 6 in A.S.No.266 of 2017 and Mr.K.Sudhakar, & Mr.N.Chinnaraj learned counsel for the other respondents in both Appeal Suits.

57.The point for determination in these appeals is whether the suit schedule properties were self acquired properties of the 1st defendant and therefore not ancestral in nature as was argued by the Appellants in A.S.No.294 of 2017 and whether the Appellant in A.S.No.266 of 2017 has a valid and a perfect title over 0.75 acres of land out of the suit schedule property sold

by the 1st defendant to it vide Ex.B-4 Sale Deed dated 03.02.2006?

58.We have considered rival submissions of the parties. The principle allegation in the plaint was that the suit schedule properties were ancestral properties and therefore joint family properties and therefore the plaintiffs and the defendants No.1 to 4 had an equal share in the suit schedule property. Since the plaintiffs were married they were deemed to be in possession and enjoyment of the suit schedule properties.

59.The Trial Court has concluded that the suit schedule properties were ancestral properties and therefore question of the 1st defendant executing wills dated 27.7.2009 which were marked as Exhibits B5-6 or having settled through Settlement Deeds dated 26.8.2009 which were marked as Exhibit B7-9 out of Exhibit B5 did not arise.

60. The sequence of events shows that the suit was filed on 18.08.2009. Prior to filing of suit, Exhibit B4 Sale Deed dated 03.02.2006 was executed by the 1st defendant in favour of the 12th defendant (the Appellant in A.S.No.266 of 2017 and the 12th respondent in Appeal No. 294 of 2017).

61. The 12th defendant (the Appellant in A.S.No.266 of 2017 and the 12th respondent in Appeal No. 294 of 2017) was impleaded as the 12th defendant as a portion of the suit schedule property to the extent of 0.75 acres was sold to it vide Ex.B4 sale deed dated 03.02.2006 by the 1st defendant viz., M.Chinna Karuppana Konar during his life time without notice of the plaintiffs/ 1st and 2nd respondents in respective appeals before his death.

62.We are therefore of the view that the Trial Court ought to have recognised the rights of the 12th defendant as the 12th defendant was a *bonafide* purchaser of the property vide Exhibits B4 Sale Deed dated 03.02.2006.

63. Therefore, the suit schedule property to the extent it is covered by Exhibits B4 Sale Deed dated 03.02.2006 shall stand excluded from the property to be partitioned. Therefore, we shall examine whether the order passed by the Trial court upholding the claim of the appellant deserves to be upheld and set aside.

64. While the Plaintiffs claim their share in the suit schedule properties as ancestral properties, the contesting defendants and their children claimed it to be a self acquired property of the 1st defendant who had a right to dispose the same and had indeed disposed them through Exhibits B5 -6 wills dated

27.07.2009 and through Exhibits B-7 to 9 settlement deeds dated 26.08.2009.

65. It was argued on behalf of the 2nd and 5th defendant that the plaintiffs were entitled to only the property as per Ex.B.6 Will dated 27.05.2009 vide Ex.B.6.

66. Exs.B.5 and 6 Will dated 27.07.2009 were executed few days prior to the institution of the suit on 18.8.2009 when the 1st defendant was in an advanced aged of 95 years.

67.DW 3 produced by the defendant has also admitted that though he attested the respective "wills" he had not seen the 1st defendant either at the time of execution of the "will" or at the time of its registration.

68.The plaintiffs have alleged that the 1st defendant was old and had lost his control of his faculties. We are convinced that the respective "wills" marked as Exhibit B5 & 6 dated 27.07.2009 cannot be said to have been proved in the manner known to law. We find that the execution of Exhibits B5 & 6 Wills dated 27.07.2009 were under suspicious circumstances. We therefore do not find any infirmity in the finding rendered by the Trial Court.

69. Exhibits B7 to 9 Settlement Deeds are dated 26.08.2009 just before the 1st written statement was filed. It was not properly witnessed. As per these settlement deeds, a portion of the property was settled in favour of the grand children (D5 to 10) by the 1st defendant i.e. sons of the 1st to 4th defendants.

70.The deed was attested by on Krishna Raj who was examined as DW 2. He has stated that he has merely attested these documents along with another person but was unable to give any details regarding the health conditions of the 1st defendant at the time of execution of the settlement deed.

71.The 1st written statement which was filed on 30.8.2009 is also silent about Exhibits B7-9 settlement deeds. These settlement deeds appear to have been prepared in a hurry after the suit came to be instituted on 18.08.2009 and one month after the date of execution of Exhibits.B5 and B6 Wills and three days prior to the written statement.

72.The fact that the 1st defendant was old also cannot be ignored. There are therefore several factors that raise an air of suspicion. Consequently, we are not inclined to recognise any rights from these 5 documents in favour of the 2nd to 11th

defendants on the strength of Exs.B7, B8 and B9 settlement deeds.

73.The partition which was allowed has been sought for respective properties which came to be partitioned between the 1st respondent's father namely Chinna Karuppana Konar and his uncle Periya Karuppana Konar in the year of 1962 vide Ex.A1/B3 dated 11.12.1962.

74.Exhibit A1/B3 dated 11.12.1962 consists of land divided between the 1st defendant and his brother from:-

- i.Ex.A3- Sale Deed dated 13.07.1918 in the name of their father Pokkali Konar and another person by Kalavada Konar which was equally divided among them. They divided the said properties among themselves.
- ii.From Exs. A4/ B2 dated 28.06.1941 in the name of 1st Defendants bother. The purchase of the said property was financed by executing a mortgage deed vide Ex.A5 dated 27.06.1941. Ex.A.7 is a copy of the mortgage deed executed by Mardhua konan in favour of Pokkali Konar on 12.12.1904.
- iii.Property in the name of their grandfather namely Raya Konar as is evident from C2 and C3 dated 19.06.2014 and Ex.A6 dated 01.08.2013 which is a certified copy of the land Survey Extract Register issued by the District Land Survey Department, Coimbatore.

75.There are no other documents to establish that the lands covered by partitioned deed vide Exhibit A1/B3 dated 11.12.1962 in respect of which partition suit has been filed were purchased individually by the 1st defendant Chinna Karuppana Konar during his life time. The properties covered therein are ancestral properties. Similarly, there are no documents to show that the residential property was a self acquired property of the 1st defendant.

76.All the properties in respect of which the plaintiffs have sought for partition were ancestral properties either through the forefathers of the 1st defendant or purchased out of joint nucleus of the family and inherited by the 1st defendant along with his brother.

77.The properties in EX.A4/B2 dated 24.06.1941 were originally purchased in the name of Periya Karuppana Konar, the elder brother of the 1st Defendant in the year 1941.

78.For purchasing the said property in Exs.A4/B2 dated 28.06.1941, property in the name of Pokkali Konar, the father of the 1st defendant and in the name of the said Periya Karrupa

Konar were mortgaged in Ex.A5 dated 28.06.1941 along with property in patta No.149 in Survey No.236/1 to the extent of 1.06 acres standing in the name of grand father of the 1st defendant namely RayanKonar and land in Survey No.284/4 to the extent of 2.36 acres as is evident from Ex.C2 & C3 and Ex. A3 sale deed dated 05.7.1918.

79.Total extent of property purchased vide Exs.A4/B2 dated 28.06.1941 was 16.22 Acres as detailed below:-

Sl.No	Patta No	Survey No	Extent (in Acre)
1	375/2	86/2	15.68
2	70	86/1	0.54
Total			16.22

80.Details of Exhibit A-5 Mortgage deed dated 28.06.1941 shows the following properties were mortgaged:-

Sl.No	Patta No	Survey No	Extent (in Acre)	Exhibit No	Dated
1	375/2	86/2	15.68	A4/B2	24.06.1941
2	70	86/1	0.54	A4/B2	24.06.1941
3	149	238/1	1.06	C2	19.06.2014
4		248/4	2.36	C3	19.06.2014
Total			19.64		

81.Thus, the property in Exs.A4/B2 at the time of the purchase in 1941 in the name of the 1st defendant's brother

Periya Karuppanna Konar was an ancestral properties having purchased out of the nucleus of the joint family income.

82.The suit schedule properties in Sl.No.1 to 5 were partitioned between the 1st defendant and his brother Periya Karuppanna Konar in 1962 vide Exhibit A1/B3 dated 11/12/1962 (wrongly mentioned as 11.12.1961 for Exhibit A1 in the impugned decree) along with other lands at Sl.No. 2-5 of the above table which are traceable to the father and the grandfather namely Pokkali Konar and N. Rayan Konnar respectively of the 1st defendant and his brother Periya Karuppanna Konar.

83.By Exs.A1/B3 dated 11.12.1962, the properties purchased vide Exs.A4/b2 sale deed dated 28.06.1941 in the name of 1st defendants brother Periya Karuppanna Konar were partitioned between them as follows:-

	Name of the Property & Exhibits	Periya Karuppanna Konar	Chinna * Karuppanna Konar
Patta No. 375/1 S.F. 86/1 & 86/2	(Periya Karuppanna Konar on 28.06.1941) Ex.A4/B2	5.21 Acres	4.94 Acres
Patta No.78 S.F.86/1	-		0.27 Acre
Patta No.149 S.F.238/1	N.Rayan - Ex.C2	0.53 Acre	0.53 Acre
S.F.248/4	N.Rayan - Ex.C2	1.18 Acre	1.18 Acre
Patta No.21 S.F.236	(Pokkali Konar on 13.07.1918) Ex.B3	1.46 Acre	1.46 Acre

	Name of the Property & Exhibits	Periya Karuppanna Konar	Chinna * Karuppanna Konar
Total Extent of Chinna Karuppanna Konar			8.38 Acres

84.Exs.A1/B3 dated 11.12.1962 partition deed also shows that apart from the above properties certain other properties were also partitioned. However, those properties are not part of the suit schedule properties.

85.The defendants have not brought any evidence to show that the residential property has been individually purchased by the 1st defendant so as to take it out of the family property.

86.Therefore, suit schedule properties being ancestral properties, the plaintiffs are entitled to a share in the suit schedule properties. Consequently, the plaintiffs cannot be denied of their share in the aforesaid property as it was an ancestral property in the hands of 1st defendant.

87.Thus, question of the 1st defendant executing Exs.B5 and B.6 Wills or Exs.B7 to 9 Settlement Deed in respect of the suit schedule properties does not arise.

88.Further as per the decision of the Hon'ble Supreme Court **in Baljinder Singh vs Ratan Singh** (2008) 16 SCC 785, any gift of undivided share in co-parcenary property is impermissible.

89.The Court recognised the object of this strict rule against alienation by way of gift is to maintain jointness of ownership and possession of the co-parcenary property, while observing " it is true that there are no textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but it is for the purpose of preventing a Joint Hindu Family from being disintegrated".

90. The Hon'ble Supreme Court referred to the catena of decisions and passages from Mulla's Hindu Law, 15th edition, 17th edition and Mayne's Hindu Law, 14th edition and the decision of the Supreme Court in **Thamma Venkata Subbamma vs Thamma Rattamma** (1987) 3 SCC 294 wherein it was concluded that Joint family properties cannot be renounced in favour of one of the coparceners as such renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made. Thus, gift made by Rami Reddy to his brother Veera Reddy was construed as renunciation of his undivided interest in the coparcenary in favour of Veera Reddy and children of Veera Reddy who were the remaining coparceners. The gift was valid construing the same as renunciation or relinquishment by Rami Reddy of his interest in the coparcenary and accordingly, the consent of other coparceners was immaterial.

91. In para-12 *Pavithri Devi vs Darbari Singh and another* (1993) 4 SCC 392, the Hon'ble Supreme Court held as under : -

2. In *Dwarampudi Nagaratnamba Kunukur amayya* [(1968) 1 SCR 43 : AIR 1968 SC 253] this Court held that under the Madras School of Mitakshara law by which V was governed, he had no power to make gift of his undivided interest in the coparcenary property to his concubine. But a gift by one coparcener of his undivided share to another coparcener, to the exclusion of the others is not invalid (*Thamma Venkata subbamma v. Thamma Rattamma* [(1987) 3 SCC 294 : AIR 1987 SC 1775]). This Court in *Mukund Singh v. Wazir Singh* [(1972) 4 SCC 178] held that a gift of coparcener's property by a member is void. In other words it is settled law that a disposition intra vivos by gift of coparcenary property except either with the consent of other coparceners or between coparceners or in exceptional circumstances is void. Since the gift being not for consideration is void in toto and operates eo instanti during the lifetime of the donor, it is not a testamentary succession under Section 30 of the Act. Section 30 of the Act, therefore, brought about change in law of testamentary disposition of a Hindu coparcener of his interest in coparcenary property governed by Mitakshara school of Hindu Law worked out in accordance with Section 55 read with Schedule III of Indian Succession Act or any other law in force to the above extent. The appellant, donee acquires no interest by devolution under the gift to represent

the interest of the deceased plaintiff under Order 22 Rule 10 of CPC. Therefore, though for different reasons, we uphold the finding of the High Court in this behalf that the appellant is not a successor-in-interest by devolution by operation of Order 22 Rule 10. Accordingly we reject the claim of the appellant on that premise"

92. That apart the 4th, 9th, and the 10th defendants/ Respondent Nos.4, 7 and 8 in A.S.No.294 of 2017 have agreed to submit to the decree. They have also filed separate affidavits and a joint memo and have agreed to abide by the impugned judgement and decree which recorded in this order earlier. The 3rd defendant and his children have not challenged the impugned judgement and decree.

93. As the properties are ancestral properties, the plaintiffs are therefore entitled to a share in the above said properties. Further, Exs.B.5 and B.6 Wills and Exs.B.7 and B.8 and B.9 Settlement deed having been executed under suspicious circumstances cannot confer any rights in favour of the 2nd, 3rd and 4th defendants or their children. Therefore, the finding of the Trial judge cannot be assailed.

94. Thus, we find no reasons to interfere with the preliminary decree passed by the 1st Additional District holding the plaintiffs right over the properties.

95. However, since Ex. B4 dated 03.02.2006 came to be executed in the year 2006 itself and since the 12th defendant is a bonafide purchaser of the said property as observed above, we are inclined to hold that the property purchased by the said party was bona fide and to that extent the judgement and decree passed requires interference.

96. The sale made by the 1st defendant to stands confirmed and same shall be treated as having sold for the benefit of the family.

97. Consequently, the learned 1st Additional District and Sessions Judge, Coimbatore, is therefore directed to proceed and pass a final decree in the above suit within a period of six months from the date of receipt of a copy of this order. The property sold to the 12th defendant in the suit (10th respondent in A.S.No.294 of 2017 and the appellant in A.S.No.266 of 2017) shall not be disturbed but reckoned to work out equities in favour of the property.

98. In fine,

i.A.S.No.266 of 2017 is hereby partly allowed as above to the extent of sale made in favour of the 12th defendant vide Ex.B-4 dated 03.02.2006.

ii.A.S.No.294 of 2017 is hereby dismissed. No costs.

iii.Connected Miscellaneous Petitions are also closed.

-Sd/-

Assistant Registrar(CSVII)

//True Copy//

Sub Assistant Registrar

jen

To

1.1st Additional District & Sessions Judge, Coimbatore.

2.The Section Officer, V.R. Section, High Court, Madras.

+2 cc to Mr.Chinnaraj, Advocate sr.48153,48154

+2 cc to Mr.K.Sudhakar Advocate sr 47627,47678

+2 cc to Mr.A.Thiyagarajan Advocate sr 47075 dt 05/09/2019

+1 cc to Mr.Kaushik N.sharma Advocate sr 46790

A.S.Nos.266 & 294 of 2017

and

C.M.P.Nos.10239 & 11028 of 2017

svl(co)

aa04/09/2019

सत्यमेव जयते

WEB COPY