

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.02.2020
Judgment Pronounced on : 20.03.2020

CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.2060 and 2061 of 2003
and
C.M.P.Nos.18873 & 18874/2003

S.A.No.2060 of 2003:

1.Kettimuthu Gounder

2.Deivanai Ammal (died) .. Appellants 1 & 2/Respondents 1 & 2/
Plaintiffs 1 & 2

3.Arukkani

4.Palanisamy

5.Velusamy

6.Lakshmi (died) (Cause title accepted vide Court order dated
18/11/2003 made in CMP.Nos. 18575 and 18576/2003)

7.Krishnasamy

8.Chitra

9.Priyadharshini (Minor) .. Legal heirs of Late
Ramasamy Gounder/
Respondents/Appellants 3 to 9

[9th appellant rep., by her mother and
natural guardian Chitra, 8th appellant
herein]

10.Saraswathi

11.Minor Sarathkumar

12.Minor Sangeetha

[Minor 11& 12 appellants are represented by
mother Saraswathi, 10th appellant]

13.Paravathan

14.Govindamal

15.Sargunavathi

16.Sathishkumar .. Appellants

[1st Appellant is recorded as LR of the
deceased 2nd appellant, Appellants 10 to 14
are brought on record as LRs of the deceased
2nd appellant and appellants 15& 16 are
brought on record as LRs of the deceased 6th
Appellant vide order dated 28.11.2008 made in
CMP.Nos.1976 to 1979/2008 in
S.A.No.2060/2003]

[Since Ramasamy Gounder expired after the judgment and decree of the lower Appellate Court appellants 3 to 9 are impleaded as per the order passed in CMP.Nos.18575 & 18576 of 2003]

Vs.

1.Muthammal (died)

.. 1st Respondent/
Appellant/2nd Defendant

2.Krishnasamy Gounder

3.Govindasamy

4.Arunachala Gounder

5.R.Lakshmi

6.Govindasamy Gounder

7.R.Venkidapathy

8.S.Eswaran (died)

.. Respondents 2 to 8/
Respondents 4 to 10/
Defendants 1, 3 to 8

(R8 died vide order of Court dated 12/10/2015 made in CMP.473 to 475/15 in SA.2060/2003

9.V.Govindasamy

10.V.Ramasamy (died)

11.R.Saraswathi

12.R.Balasubramaniam

13.M.Malathy

14.R.Kathirvel

.. Respondents

[RR13 and 14 brought on record as LR's of the deceased R10 vide order dated 26.03.2015 in CMP.663 to 665/13 in SA.2061/2003 and CMP.Nos.700 to 702 of 2013]

[RR9 to 12 are brought on record as LR's of the deceased 1st respondent vide order dated 05.03.2007 made in CMP.Nos.647 and 648 of 2007]

S.A.No.2061 of 2003:

1.Kettimuthu Gounder

2.Deivanai Ammal (died)

..Appellants 1 & 2 /Respondents 1&2/
Plaintiffs 1 & 2

3.Arukkani

4.Palanisamy

5.Velusamy

6.Lakshmi (died)

7.Krishnasamy

8.Chitra

9.Priyadharshini (Minor) .. Legal heirs of late Ramasamy
Gounder/Respondents/
Appellants 3 to 9

10.Saraswathi

11.Minor Sarathkumar

12.Minor Sangeetha

Minors rep by Mother Saraswathi

13.Parvatham

14.Govindammal

15.Sargunavathi

16.Sathishkumar .. Respondents

[1st Appellant is recorded as LRs of the deceased 2nd appellant, Appellants 10 to 14 are brought on record as LRs of the deceased 2nd appellant and appellants 15 & 16 are brought on record as LRs of the deceased 6th Appellant vide order dated 28.11.2008 made in CMP.Nos.1980 to 1983/2008 in S.A.No.2061/2003]

[Since Ramasamy Gounder expired after the judgment and decree of the lower Appellate Court appellants 3 to 9 are impleaded as per the order passed in CMP.Nos.18575 & 18576 of 2003]

Vs.

1.Krishnasamy Gounder

2.Arunachala Gounder

3.Govindasamy Gounder

4.R.Lakshmi

5.R.Venkidapathy

.. Respondents 1 to 5/
Appellants 1 to 5 /
Defendants 1, 4 to 7

6.Muthammal (died)

7.P.Govindasamy

.. Respondents 6 & 7/
Respondents 4&5/
Defendants 2 & 3

8.V.Govindasamy

9.V.Ramasamy (died)

10.R.Saraswathi

11.R.Balasubramaniam

12.M.Malathy

13.R.Kathirvel

.. Respondents

[RR12 & 13 are brought on records as

LRs of the deceased R9 vide order dated 26.03.2015 made in CMP.Nos.700 to 702 of 2013 in S.A.No.2060 of 2003 and CMP.Nos.663 to 665 of 2013 in S.A.No.2061 of 2003]

[RR8 to 11 are brought on records as LR of the deceased 6th respondent vide order dated 05.03.2007 made in CMP.Nos.647 & 648/2007]

Common Prayer: These Second Appeals are filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 23.07.2002 passed in A.S.No.4 and 5 of 2002 on the file of the Court of the Additional District Court (Fast Track Court No.IV), Coimbatore at Tiruppur, reversing the judgment and decree dated 10.05.1996 passed in O.S.No.5 of 1995 on the file of the District Munsif Court, Palladam.

For Appellants in both cases : Mr.V.Ayyadurai
Senior Counsel
for Mr.R.Karthikeyan

For Respondents in S.A.No.2060/2003 : Mr.T.R.Rajagopalan
Senior Counsel for
Mr.S.K.Raghunathan
For R2 to R5 & R7
: Ms.K.Bhavatharani
for R9, R11 to R14
R1 & R10 - Died
R8- Died (not pressed)
R6 : No appearance

For Respondents in S.A.No.2061/2003 : Mr.T.R.Rajagopalan
Senior Counsel for
Mr.S.K.Raghunathan
For R4 & R5
: Ms.K.Bhavatharani
for R8, R10 to R13
R1 to R3 : No appearance
R6 & R9 : died
R7- Dispensed with

COMMON ORDER

The plaintiffs are the appellants herein. For the sake of convenience the parties are referred to as per the litigative status before the trial Court.

2. The plaintiffs claim title to the property through their mother Nachiammal, in O.S.No.85 of 1981 before the District Munsif Court, Palladam seeking declaration to declare that the plaintiffs are entitled to declaration of their title over the suit property and for permanent injunction restraining the defendants from interfering with the peaceful possession of the suit property by the plaintiffs. The case was transferred and renumbered as O.S.No.5 of 1995 on the file of the District Munsif Court, Thiruppur.

3. The plaint proceeds on the basis that;

(a) under Ex.A1, dated 04.07.1918 the suit properties originally comprised in S.No.242/2, (2.48 acres) and S.No. 242/5 (3.36 Acres) was purchased by Muthammal from Kumarasamy Gounder & Aathappa Gounder. The sale was also with reference to other properties (properties purchased S.No.243/2 - 3.30 acres, 244/2 - 2.60, 242/2 - 2.48 , 242/5 -3.36 acres - 237/4 - southern half out of total extent of 8.74 acres) i.e., 4.37 acres.

(b) under Ex.A2, dated 05.07.1918, Muthammal creates a usufructory mortgage in favour of karuppa Gounder & Muthu Palani Gounder.

(c) under Ex.A3, dated 06.07.1918, Muthammal as a guardian of her minor sons mortgage an extent of 3.30 acres in S.No.243/2 and an extent of 2.60 acres in S.No 244/2 and an extent of 4.37 acres out of a total extent of 8.74 acres in S.F. No. 237/4 in favour of Subbaraya Gounder. These properties are some of the properties purchased under Ex.A1. Having treated some properties as belonging to her sons. Muthammal was desirous of giving the remaining to her daughter, Nachammal.

(d) under Ex.A4, dated 22.08.1934, Death certificate of Muthammal. On her death, the suit properties devolve on her daughter, Nachammal being the only female heir of Muthammal.

(e) under Ex.A5, dated 19.09.1934, the sons of the Muthammal execute a sale deed in favour of the Komarasamy Gounder & Aathappa Gounder in respect of the properties subject matter of Ex.A3 mortgage.

(f) under Ex.A6, dated 07.06.1951- Nachammal and Amaravathi Gounder sell an extent of 95 cents in S.F.No.243/2 and an undivided 2/5 share i.e., 1.34 acres in an extent of 3.36 acres in S.F.no. 242/5 and 86cents in S.F. No.243/2 to Ramasamy.

(g) under Ex.A7, dated 07.06.1951- Nachammal and Amaravathi Gounder get a Reconveyance executed by Ramasamy.

(h) under Ex.A8, dated 10.03.1952 -Ramasamy sells the properties purchased by him to venkita chettiar together with the liability of Reconveyance.

(i) under Ex.A9, dated 27.07.1956 - Krishna Gounder, the father of appellants 1 and 3 purchases an undivided $\frac{1}{2}$ share of the properties purchased by Venkita chettiar from his sons Ramasamy chettiar and Ponnusamy chettiar i.e., an extent of 0.47^{1/2} cents in S.F.No.242/2 and 67 cents in S.F.No.242/5.

(j) under Ex.A10, dated 27.07.1956- the remaining extent is sold by Venkita chettiar's sons Ramasamy Chettiar & Ponnusamy Chettiar to Ramasamy Gounder, son of Muthu Gounder & Samiammal.

(k) under Ex.A.26, dated 03.10.1956- Sale by Subbammal in favour of Krishnasamy Gounder, the 1st respondent.

(l) under Ex.A.27, dated 20.08.1958- Subbammal executes sale deed in favour of 1st respondent in respect of properties in S.F.Nos.243/2 (21st cents) and S.F.No.237/4 (98.5/8 cents).

(m) under Ex.A.28, dated 21.08.1958 - Nachammal objects to the registration of the sale deed in favour of 1st respondent before Sub registrar, tirupur in respect of properties in S.F.no. 243/2 (43 cents & S.F.No. 237/4 (70 cents).

(n) under Ex.A11, dated 16.05.1963 - Ramasamy Gounder, son of Muthu Gounder sells his half share in properties purchased under Ex.A.10 to the 2nd appellant Deivanaiammal i.e., 24 cents in S.F.No.242/2 & 33^{1/2} cents in S.F.No.242/5. After the sale under Ex.A6 Nachammal continues to be in possession and enjoyment of 1.53 acres in S.F.no. 242/2 and an extent of 2.02 acres in S.F.No. 242/5.

(o) under Ex.A12, dated 06.05.1965 (Ex.A12)- Appellants mortgaged the 3/5th share with their mother, Nachammal retained in favour of Palanisamy Gounder.

(p) under Ex.A.13, dated 02.05.1972 (Ex.A13)-Mortgage discharged.

(q) under Ex.A.14, dated 13.12.1973 - Patta Assigned in favour of appellants after sub-division of the lands. For entire land Salai in S.F.no.242/2C put up by Nachammal and appellants 1 and 3 herein. Thus, the appellants and their mother have been in continuous possession and enjoyment of the suit properties for over several years and the entire revenue records stand in the name of the appellants.

(r) under Ex.B15, dated 22.12.1989 (Ex.B15)- Sale deed executed by 1st respondent in favour of the 7th respondent.

Sale deed in favour of R6 & R8 not binding on the appellants. Hence suit filed for declaration.

4.(a). The first defendant filed written statement resisting the above prayer inter alia contended that the suit for partition should have been filed and plea of adverse possession cannot be granted against co-owner of the property. It is further alleged that the suit properties belonged to the sons of Muthammal as well. Therefore, each children of Muthammal including daughter Nachammal are entitled to 1/5th share each to the properties of Muthammal.

(b) Before the Trial Court, the second defendant (D2) adopted the written statement of D1 and also filed additional written statement alleging that as per the UDR patta, which was given in favour of the first defendant Govindasamy Gounder and his wife. The fourth and fifth defendant have filed a separate written statement having purchased the property of 1/5th share from one Ramasamy Gounder, by sale deed, dated 27.07.1956 and they resisted the case based upon the above said sale deed, which is already extracted in the pleadings of the plaintiff, supra.

(c) The sixth defendant also filed separate written statement. The sum and substance is as stated by the first respondent, they are also purchased 1/5th share from the said Ramasamy Gounder vide sale deed, dated 16.05.1996 and resisting his case entirely upon the sale deed executed by one of the brothers of the said Nachiammal and those sale deeds are clearly spelled out in the summary of the pleadings of the plaintiff supra. In the additional written statement, the defendants D6 and D7 have also raised that the plaintiffs are entitled for only 3/10th share being one of the share holder having sold the property in their favour.

5. Based upon the above pleadings, the trial Court has initially formulated 15 issues and additional issues were formulated on 12.12.2015 and further additional issues were formulated and yet another additional issue was formulated on 29.04.1992. Thus, 24 issues have been framed.

6. Before the trial Court, on behalf of the plaintiff, two witnesses were examined and Ex.A1 to Ex.A23 were marked. On behalf of the defendant five witnesses were marked and Ex.B1 to Ex.B13 were marked. Subsequently, after hearing the arguments for some time, the trial Court has re-framed all the issues and reduced the issues to 21 issues.

7. The trial Court, on consideration of both oral and

documentary evidence, has come to the conclusion that vide Ex.A1 sale deed, dated 04.07.1988, Muthammal, has purchased the suit property and it is a self-acquired property, which has to be treated as sridhana property under the Women's Rights Act and the Nachiammal being the only one daughter of the said Muthammal, she is entitled for the property and hence negatived the contention of the defendants that the suit property is a joint family property and the sale deed effected by the brother of the said Nachiammal is not binding as the same is against the law and hence held that the mother of the plaintiffs 1 to 3 namely, Nachiammal is entitled to succeed the properties of Muthammal, since the suit properties were purchased under Ex.A1, which is the sridhana property and accordingly decreed the suit.

8. The defeated defendants have preferred two appeals namely A.S.No.4 of 2002 by the second defendant and A.S.No.5 of 2002 by the defendants 1,4,5,6 and 7. By a common order, dated 23.07.2002, the learned Additional District Judge (Fast Track Court No.4), Tiruppur, have allowed the appeals and consequently dismissed the suit and hence the above second appeals.

9. The above two second appeals were admitted on the following Substantial Questions of Law:

1. Whether Ex.A6, a sale deed by Nachammal, daughter of Muthammal, along with her brother Amaravathi Gounder, jointly selling some property belonging to the family, would amount to the family, would amount to the property in the hands of Nachammal being characterised as joint family property on the principle of blending and Nachammal divesting herself of her property as shridana property?

2. Have not the appellants in the appeal perfected the title by adverse possession as well, which issue has been decided against the appellants by the lower appellate Court due to non-application of mind to relevant materials?"

10. On applications in C.M.P.Nos.1379 and 1380 of 2010 following Additional Substantial Questions of Law were framed on 28.02.2020.

"1. Whether the Lower Appellate Court was right in rejecting the claim of the appellants in the right of Ex.A5(Sale deed) dated 19.09.1934, wherein the sons of Muthammal had sold their share without reference to Nachammal, through whom appellants claim title?

2. Whether the Lower Appellate Court was right in reversing the Judgment and Decree of the Trial

Court when it had give a finding that the suit property in question was the Sridhana property of Late. Muthammal?

3. Whether the Lower Appellate Court was right, when after giving a finding that there is no evidence that it is a joint family property of Muthammal and in light of earlier findings that it is her Sridhana property, in reversing the Judgment and Decree of the trial Court?"

11. The learned Senior Counsel Mr.Ayyadurai appearing on behalf of the appellants would contend the the lower Appellate Court has committed a blunder in applying the theory of blending to the sridhana property and also failed to note on the facts, the case relates to prior to the commencement of the codified Hindu Succession Act.

12. Per contra, the learned Senior Counsel Mr.T.R.Rajagopalan, appearing on behalf of the respondents would contend that the findings rendered by the lower Appellate Court that Ex.A6-sale deed executed by Nachiammal and her brother could clearly prove the fact that the property was treated as a joint family property and hence the same negatived the contention of the plaintiffs and also stated that the Sridhana property of Muthammal has been distributed among the brothers and they in-turn have effected various sale deeds and draw my attention to Exs.A6, A8, A9, A10, A11, A27, A28, B15, B16, B24 and B25, whereby the $3/4^{th}$ share and $1/10^{th}$ share have changed and further contended that the plaintiffs are entitled to only $3/10^{th}$ share while second defendant is entitled to $3/10^{th}$ share, 6th defendant is entitled to $1/10^{th}$ share and the defendants 7 and 8 are entitled to $3/10^{th}$ share and also contended that the framing of the suit as one for declaration of title is not proper and the suit have been only for partition.

13. After hearing the rival submissions of the learned Senior counsels in respect of both sides and after perusing the oral and documentary evidence adduced before the Trial Court and also taking note of the findings of both the Courts below, this Court finds that;

(a) the factual matrix of the case being the Muthusamy Gounder and Muthammal were husband and wife. They had four sons (1) Venkatachala Gounder (2) Subbarayya Gounder (3) Kuppanna Gounder (4) Amaravathi Gounder and one daughter - Nachammal. The property, measuring, in all to an extent of 5.84 acres (Survey No.242/2 = 2.48acres; Survey No.242/5 = 3.36 acres) was originally purchased by Muthammal, by and under a registered sale deed dated 4.7.1918 and the said Muthammal died on 22.08.1934, leaving behind her children viz., the aforesaid four sons and one daughter viz.,

Nachammal.

(b) The suit in O.S.No.5/1995 was filed by the sons of Nachammal viz., kettimuthu Gounder and Ramasamy Gounder along with Deivanai Ammal, wife of Kettimuthu Gounder, inter alia for declaration that they are the absolute owners of the entire 5.75 acres (as per sale deed dated 4.7.1918 = 5.84 acres) originally purchased Muthammal under the sale deed dated 4.7.18.

(c) Such a relief was sought for on the following two grounds.

(i) That the suit property was purchased by Muthammal under the sale deed dated 4.7.1918 marked as Exhibit A1. The said Muthammal died on 22.8.1934 (i.e., much prior to the coming into force of the Hindu Succession Act, 1956) subsequent to the death of Muthammal, there was a family arrangement amongst her heirs, by and under which the suit property was allotted to Nachammal exclusively.

(ii) That Nachammal and subsequently the plaintiffs have been in continuous possession and enjoyment of the suit property as absolute owner, ever since 1934 and they have perfected title by adverse possession.

(iii) At the time of trial, it was further urged that as per the Hindu law as it stood in year 1934, the property of a female, on her death devolves upon her female heirs only. Applying this Law, on the death of Muthammal, her daughter Nachammal, being her only female heir, inherited the suit property exclusively and absolutely.

(d) On the part of the Defendants, it was urged that on the death of Nachammal, the properties devolved upon all her heirs viz., Four sons and one daughter, each being entitled to 1/5th share each and Nachammal was entitled to 1/5th share only and not the entire extent of property. The exclusive and adverse possession pleaded by the plaintiffs was also refuted.

14. At this juncture, it is relevant to refer to Exs.A6, A8, A9, A10 and A11 to have the factual decision as reflected in those documentary evidence. On a close reading and scrutiny of the above documentary evidence, which are all registered sale deeds said to have been transacted between the parties, this Court finds that the following facts are relevant in this case.

a) It is seen that Nachammal, along with one of her brother viz., Amaravathi Gounder, by and under a registered sale deed dated 7.6.1951, sold and conveyed a specific extent of 0.95 acres in S.F.No.242/2 and 1.34 acres in S.F.No.242/5 to and in favour of one Ramasamy Gounder, son of Muthu Gounder. The sale deed is marked as Document No.Ex.A6.

b) The purchaser, Ramasamy Gounder by a registered sale deed dated 10.03.1952 marked as Ex.A8, sold and conveyed an extent of

0.95 acres in S.F.No.242/2 and 1.38 acres in 242/5 in favour of one Venkatasamy Chettiar.

c) By an further a registered sale deed dated 27.7.1956, marked as exhibit Ex.A9, the heirs of Venkatasamy Chettiar and conveyed 1/2 the aforesaid extent viz., 0.47 1/2 acres in S.F.No.242/2 and 0.67 acres in S.F.No.242/5, in favour of krishna Gounder, husband of Nachammal.

As a result, Nachammal's family got back half of the property originally sold under the sale deed dated 7.6.1951 (Ex.A6) assumes significance, on the background of stand of the defendants in the written statement.

d) As to the other half share (0.47 1/2 acres in S.F.No.242/2 and 0.67 acres in S.F.No.242/5,) the heirs of Venkatasamy Chettiar sold the same to one Ramasamy Gounder and Sammiammal under a registered sale deed dated 27.7.1956, marked as exhibit A10.

e) Out of the extent purchased by the aforesaid purchasers, Ramasamy Gounder by and under a registered sale deed dated 16.5.1963 marked as Ex.A11 sold and conveyed his half share i.e., 0.23 3/4 acres in S.F.No.242/2 and 0.33 1/2 in S.F.No.242/5 in favour of Deivannai Ammal, W/o. Kettimuthu Gounder, the 2nd petitioner in the appeal.

f) As a result, out of the extent sold by Nachammal, only an extent of 0.23 3/4 acres in S.F.No.242/2 and 0.33 1/2 in S.F.No.242/5 - in all an extent of 0.57 acres remained outside, i.e., with Sammiammal, whose sons are Arunachala Gounder and Govindasamy Gounder, Defendants 4 and 5 in the suit.

g) The said defendants 4 and 5 sold and conveyed this property in favour of one Ravi, under sale deed dated 22.12.1989, who in turn sold the same to the 6th defendant in the suit. Mrs.Lakshmi under a registered sale deed dated 14.3.1991.

15. After going through the above sale deeds, this Court finds that on cumulative reading of the above documents reveal that the plaintiffs are entitled to 9/10th share in the properties, while 1/10th share belonged to one Lakshmi-the sixth defendant by purchase. But even in respect of this 1/10th share, the plaintiffs claimed title by virtue of adverse possession on the ground that they continued to be in possession and enjoyment of the share, which is discussed infra. Further more, in support of their case, the plaintiffs have produced Ex.A12-registered mortgage deed, dated 06.02.1965 in and by which the plaintiffs have mortgaged the suit property in favour of Amaravathi Gounder and another. This document would reveal that even in the year 1965, the plaintiffs have exercised their right of absolute and exclusive ownership over the suit property. Further, the plaintiffs have produced revenue records, tax receipts, electricity receipts as exhibits A14 to A120 to show that the suit property has been in their exclusive and continuous

possession all these years.

16. It remains to be stated that the suit is filed for declaration of title and for permanent injunction. The property is situated in Karaiputhur village in Palladam Taluk, while item No.1 refers to two acres of land, item No.2 refers to 39 cents, item No.3 refers to 2.76 acres and item No.4 refers to 60 cents only.

17. On consideration of the above documents the suit property belonged to the said Muthammal and that it was her sridhana are not a matter of dispute. She exercised absolute right over the property. It is categorically held that the suit properties are "Sridhan". Since Muthammal died prior to the passing of Hindu Succession Act, the trial Court applying on the Law as it stood, then held that the properties left behind by Muthammal shall vest with her only daughter Nachammal. Her four sons were not entitled to any share in the estate left behind by Muthammal are well founded and the above finding is hereby confirmed.

18. The learned counsel for the appellants relied on the following judgments:

1. The case of Pushpa Devi vs. Commissioner of Income-tax, New Delhi, reported in 1977 (4) SCC 184 has held that the female member cannot 'blend' her separate property, limited or absolute, with joint family property.

2. The case of R.Rajathy Ammal vs. Commissioner of Wealth Tax, reported in 1986 SCC online Mad 354: (1987) 164 ITR 605, has held that on the question whether there is any throwing of the properties by the widow into the hotchpotch of the joint family properties, we agree with the Tribunal that the contention of the assessee will have to be rejected. Firstly, as held by the Supreme Court in Pushpa Devi v. CIT, (1977) 109 ITR 730, a female member of the joint family could not blend her separate property, even if she were an absolute owner thereof, with the joint family property, and that the right to blend was limited only to coparceners.

3. The case of Narayani Ammal and another vs. Govindaswami Naidu, the full Bench of Madras High Court has held that the textual Hindu law as well as decided cases have clearly laid down that succession to sridhana property is quite different and distinct from succession to the property of a male Hindu, and the difference in the lines of succession is based on different theories or concepts. Succession to sridhana property is based on the blood relationship of the mother to her sridhana heirs. There is no legitimate reason why, when the blood relationship is the basis for 'sridhana succession, we should interpret the word "daughter" in the original texts, (referred to) as confined only to a legitimate daughter.

4. The case of Muthusamy and others vs. A.Maruchamy and another, reported in 2015 SCC online Mad 7240, the Madras High Court has held that the property acquired by woman by any source even by purchase out of her own earnings to be treated as her sridhana property for purpose of inheritance under Mitakshara Hindu Law.

5. The case of K.Natarajan vs. Gopalasundari and others, reported in (2011)5 LW 341, has held that irrespective of the fact that the property was purchased by a Hindu female out of her own funds, the said property shall only be her sridhana property - such sridhana property shall devolve upon her female heirs namely her daughters on her demise and not on her sons.

19. With the above legal position, let us consider the Substantial Questions of Law framed in these Second Appeals.

20. Substantial Question of Law No.1 and Additional Substantial Questions of Law 1, 2 & 3:

After perusing the written statement it appears that the trial Court has correctly come to the conclusion that the defendants have not pleaded any family arrangement and furthermore, when the four sons of Muthammal have sold away portion of the property left behind their mother Muthammal and Ex.A5 sale deed on 19.09.1934. Even assuming without admitting that there was a family arrangement by Muthammal, no one cannot claim their right over the title or suit property. The sridhana share of Muthammal shall pass on to her daughter Nachiammal and she had every right to deal with the property left behind her mother and hence mere execution of A6-sale deed by Amaravathy Gounder will not have any right of the other brothers of Nachiammal and hence the defendants cannot claim any right over the sridhana property. At this juncture, it is to be stated that as per Hindu Law, as it stood in 1934, only female heirs inherit the property left behind by a female. This is supported by the following pretense.

a. MAYNE'S HINDU LAW AND USAGE 14th EDITION AT PAGE 982 AT PARA 658

The order of succession to all other kinds of Sridhana is the same in all the Mitakshara schools except to some extent in Bombay. The Mitakshara says: "Hence, if the mother be dead, daughters take her property in the first instance; and herein the case of competition between married and maiden daughters, the unmarried take the succession; but on failure of them, the married daughters; and here again, in the case of competition between such as are provided and whose who are unendowed, the unendowed take the succession first; but, on failure of them, those who are endowed". The order of succession is therefore as follows:

- (1) Unmarried daughter;
- (2) Married daughter who is un-provided for or an indigent. Just as an un-provided married daughter is preferred to a married provided daughter, so a married daughter who has lost the support of her husband is preferred to a married daughter who has not.
- (3) Married daughter who is provided for, whether she is childless or not. The rule of inheritance as to Sridhana which favours the unmarried to married daughters does not apply to illegitimate daughters. All of them equally share whether married or unmarried when the daughters are equally indigent, there is no occasion for applying the rule that a childless married daughter should be preferred to a daughter with children, and the daughters should share equally.

21. The Lower Appellate Court has come to the conclusion that the property has been treated only as a joint family property consequently held that Nachiammal only have 1/5th right and share therein, while the brothers would have entitled to 4/5th share and much reliance is placed upon Ex.A6 sale deed dated 07.06.1951 executed by her brother Amaravathi Gounder in favour of Ramasamy Gounder, S/o.Muthu Gounder, wherein Nachiammal has joined as a party. On perusal of Ex.A6, it appears that the nature of the property was clearly described misleading and mischievously, namely, as if the property was devolved upon the Amaravathi Gounder (brother of Nachiammal) through Patriarchat as ancestors, which is opposed to the factual matrix of the case as extracted supra.

22. Yet another issue is that whether the sale of Amaravathy Gounder under Ex.A6 wherein Nachimmal is also joined as a party will lead to conclusion that the property is not a sridhana property of the mother Muthammal or treated a joint family property as projected by the respondent/defendant and thus the question arose is that whether the sridhana property can be blended with the family property?.

23. In Pushpalatha's case, stated supra (AIR 1977 SC 2230) the Hon'ble Apex Court has held that the expression 'blending' is inapposite in the case of a Hindu female, who puts her separate property, be it her absolute property or limited estate, in the joint family stock and also held that a Hindu female therefore is not a coparcener, even the right to reunite is limited under the Hindu Law to male and a female member cannot throw her property into the hotchpotch and even her own

assertion will not tantamount to blending or throwing into the hotchpotch.

24. Our High Court in Rajathy Ammal's case cited supra, (1987 ITR MDS 605) has held that a female member of the joint family could not blend her separate property, even if she were an absolute owner thereof, with the joint family property, and that the right to blend with limited only to coparceners. She could achieve the purpose of making it Hindu undivided family property by gifting it to the Hindu undivided family or allowing the Hindu undivided family to purchase it from her. In this case, no throwing into the hotchpotch can be accepted.

25. In the Kuppusamy Naidu's case cited supra, the mere fact that the respondent/plaintiff joined with others in executing the said sale deed shall not be enough to show that she treated plaint 'A' schedule properties as the joint family properties of her father. The fact that the father was allowed to alienate items 3 and 4 to a third party to meet the marriage expenses of the respondent/plaintiff cannot be projected as one supporting the case of the appellant/defendant. Even if a women permits her property to be handled by male members of the family, the same cannot be taken to intend that there was abandonment or gift

26.(a) Thus, based upon the above judicial pronouncement made by the Madras High Court and the Hon'ble Apex Court, this Court has no hesitation to hold that the finding rendered by the lower Appellate Court that there was a blending of the sridhana property with the joint family property is unsustainable in law and hence, the said finding by the lower Appellate Court stands vacated and further more on the factual aspect, it is seen that in the written statement filed by the defendants they have not projected any theory of blending done at the properties of Nachiammal and other family properties. In the absence of any such plea being raised in the written statement, there cannot be any argument or any finding by the lower Appellate Court that Nachiammal had blended her sridhana property with other family properties.

(b) Furthermore, in the absence of anything in the written statement with regard to the alleged family arrangement, wherein the defendants neither raised any such a plea in the written statement or in the evidence, the lower Appellate Court has come to the above said conclusion, which is erroneous and the same is liable to be vacated and hence, this Court finds that the finding rendered by the first Appellate Court that there ought to have been a family arrangement during the lifetime of Nachiammal and based on that only, few alienations of her estates by her sons could have been effected is found to

be unsustainable in law.

(c) Moreover the very fact of Nachiammal joining her one of the brothers in one of the sale deed does not amounts to any such family partition. It remains to be stated that in the absence of any pleadings by the defendants, in the written statement, the Lower Appellate Court has overstretched itself in rendering such a finding and accordingly, such finding is liable to be vacated.

27. In view of the settled prepositions of law as discussed supra and in view of the factual position as discussed in the presiding paragraph, this Court comes to the conclusion that the suit property is the sridhana property of Muthammal, who died on 22.08.1938 and it has been clearly established from the evidence available on record that the property was purchased only by Muthammal in the year 1918 and died on 22.08.1938 before the coming into force of the Hindu Succession Act, 1956. It is needless to point out that the Hindu Succession Act came into force on 18.06.1956. Therefore, the codified Hindu Succession Act, 1956, is not applicable in respect of the suit property left behind by Muthammal on her demise on 22.08.1938, the suit property is a Sridhana property and so it should be inherited only by the female heirs of Muthammal as per the Hindu Law which prevailed prior to the Hindu Succession Act, 1956.

28. A close reading of the above judgments would go a long way to show that irrespective of the fact that the property was purchased by a Hindu female out of her own funds, the said property shall only be her sridhana property and such sridhana property shall devolve upon her female heirs, namely her daughters on her demise and not on her sons. She having died before coming into the force of the codified Hindu Succession Act, her only daughter namely, Nachiammal is entitled to the property and Nachiammal alone is entitled to the property not her brothers, namely, the sons of Muthammal. Consequently, the sons of Nachiammal, namely the plaintiffs are alone entitled to the suit property and hence the findings rendered by the trial Court is restored and finding rendered by the lower Appellate Court is hereby set aside and consequently the Substantial Question of Law No.1 and Additional Substantial Questions of Law 1, 2 and 3 are answered in affirmative in favour of the appellants/plaintiffs against the defendants.

29. Substantial Question of Law No.2:

On the point of second Substantial Question of Law, after hearing the respective learned Senior Counsels on those points, it is seen that the first defendant was examined as DW2. In the cross-examination, the first defendant as DW2 has admitted that

one Kumarasamy Gounder filed O.S.No.784 of 1958 against him and while Ex.A.123 is the copy of written statement filed by him in that suit and the suit was filed in respect of the properties purchased by him under Exs.A26 and A27 and he had not denied that a decree for injunction was granted against him and he had admitted that he did not file any appeal against that decree and a finding was given in that suit that he was not in possession of the properties covered by sale deeds Exs.A26 and A27 and he had not produced any documents to prove his possession. Therefore, the Lower Appellate Court erred in reversing the findings of the trial Court that the first defendant is not in possession of the properties covered by sale deeds Exs.A26 and A27.

30. Yet another point is that the admission of DW4(7th defendant), who has admitted that he does not know as to whom the properties covered by Ex.B16 originally belonged to, who was in possession of the same and he does not know anything about those properties and hence erred in reversing the finding of the trial Court under Exs.A26 and 27 standing in the name of the first defendant are not genuine.

31. Thus, considering the question of adverse possession and failed to see that as far as the properties purchased under Ex.A10 by Samiammal, the mother of the defendants 4 & 5 are concerned, she cannot be considered to be a co-owner with the plaintiffs. The clear admissions of DW3(5th defendant) Ex.A14 Patta, Kist Receipts, Adangal, etc., has rightly held that the plaintiffs are in possession of the properties and the defendants 4 & 5 have not produced any documents to prove either their mother's or their possession. So also, DW3 has clearly stated in his evidence that he has not sold a specified portion to Ravi and there is no documents to show that he is in possession of a specified portion of the properties. It remains to be stated that neither Samiammal, (the mother of the defendants 4 & 5) nor the defendants 4 & 5 are in possession of the properties purchased under Ex.A10 and the plaintiffs have perfected their title to those properties by adverse possession.

32. Yet another point is that the second defendant marked Exs.B1 to B11, Kist receipts relate to the suit properties and Ex.B12 dated 11.09.1987 was issued after the suit and no evidentiary value can be attached to Ex.B12 and thus in view of the admission of DW2 in his cross-examination that he had not questioned about issuance of Ex.A14-patta to the plaintiff by filing the appeal or by a suit, the trial Court appears to have hold that Exs.A14 and A15 were issued to the plaintiffs after due and proper enquiry by Tahsildar, which demonstrate the possession of the plaintiffs to the entire suit property against the defendants herein.

33. Furthermore, the admissions of DW2 and DW4 in the cross examination as extracted supra, coupled with Exs.B14 and B.15 that are covered under Exs.A26 and A27 goes to show that the first defendant has not denied the decree of injunction granted against him and nor filed any appeal and hence those findings have become final. On the contrary, except Exs.B1 to B11 all other documents, namely, Exs.B12 to B26 came into existence only after filing of the suit also assumes significance. Furthermore, under Ex.A28 (of the year 1958) it appears that the said Nachiammal has written an objection letter for the registration of Exs.A26 and A27-sale deed at the earliest point of time also lend support to the case that the Nachiammal's family alone in possession and enjoyment of the suit property.

34. Thus, this Court finds that though the first defendant claims to have right over the property under Exs.A26 and A27-sale deeds, however, as per Ex.A23, written statement filed in O.S.No.784 of 1958, the other party has taken an injunction decree and as against the same, he has not preferred any appeal and even with regard to the registration of Exs.A.26 and 27(sale deeds), the said Nachiammal has objected to the registration of sale deeds-Exs.A26 and A27 and the said objection is filed as Ex.A28. It is of the year 1958 also shows that the Nachiammal's family alone in possession and enjoyment of the property dehors Exs.A26 and 27 sale deeds. The admission of DW.4 also create cloud over the Ex.B16 as extracted supra and thus this Court finds that the claim of adverse possession of D1 to D4 are not proved by any acceptable evidence. On the contrary, in view of Exs.A14, A15, A12 and A28 coupled with the admission of DW.4 and DW.2, the trial Court has rightly come to the conclusion that the properties are still in possession and enjoyment of Nachiammal and after her death, by her son namely, the plaintiffs herein and hence the second Substantial Question of Law is also held in affirmative in favour of the appellants/plaintiffs herein and consequently the judgment and decree of the lower Appellate Court is liable to be set aside and that of the trial Court is to be restored and hence, the Substantial Question of Law No.2 is answered in affirmative in favour of the appellants/plaintiffs and against the respondents/defendants.

35. In fine, the Substantial Questions of Law 1 and 2 and the Additional Substantial Questions of Law 1 to 3 are answered in affirmative in favour of the appellants and hence, both the Second Appeals stand allowed and the judgment and decree of the lower Appellate Court dated 23.07.2002 passed in A.S.No.4 and 5 of 2002 on the file of the Court of the Additional District Court (Fast Track Court No.IV), Coimbatore at Tiruppur, is set aside and the judgment and decree dated

10.05.1996 passed in O.S.No.5 of 1995 on the file of the District Munsif Court, Palladam is restored. No Costs. Connected C.M.Ps are closed.

Sd/-

Assistant Registrar

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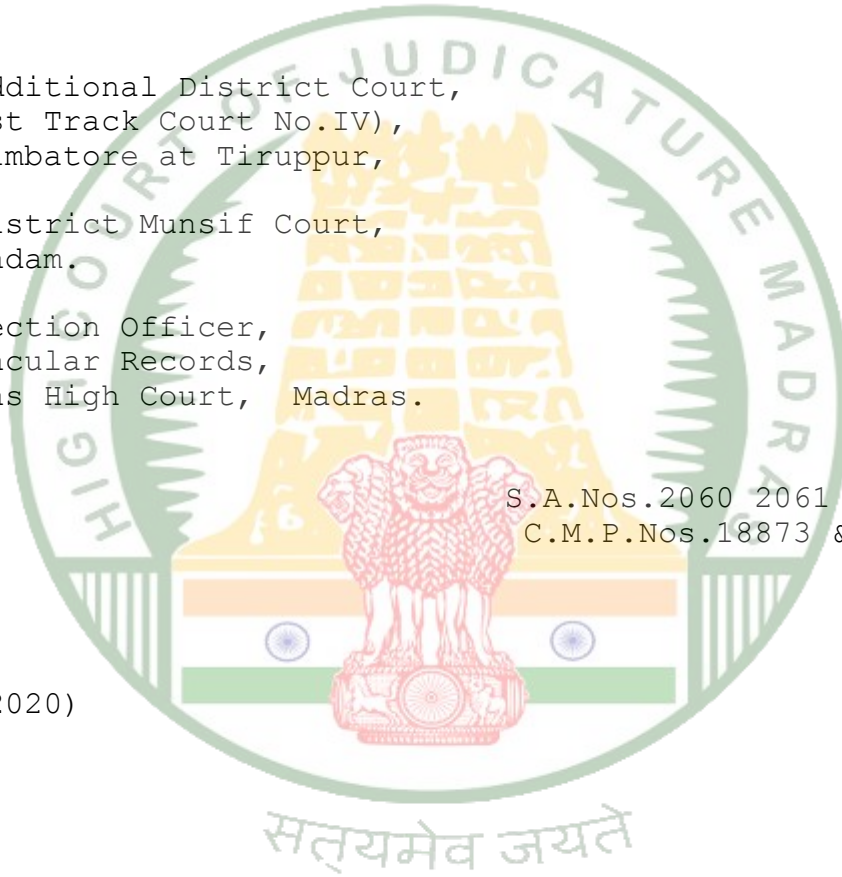
Sub Assistant Registrar

PJL
To

1. The Additional District Court,
(Fast Track Court No.IV),
Coimbatore at Tiruppur,
2. The District Munsif Court,
Palladam.
3. The Section Officer,
Vernacular Records,
Madras High Court, Madras.

S.A.Nos.2060 2061 of 2003 and
C.M.P.Nos.18873 & 18874/2003

VBA (CO)
GN(16/12/2020)



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