

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2021

PRONOUNCED ON : 07.09.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

S.A.NOS.1553 AND 1560 OF 1996

AND

C.M.P.NOS.15409 OF 1996, 15537 OF 1996,
5370 OF 1999, 9 OF 2001 AND 5823 OF 2006

1. Kolakappa Reddy (Deceased)
2. Dilli
3. Kasi Reddy (Deceased)
4. Krishnaveni
5. Sundar Raj
6. Madina
7. Chinnaponnu *
8. Dhanalakshmi
9. Jagannathan
10. Kasthuri

* 7th appellant and appellants 8 to 10
brought on record as LRs of the deceased
1st and 3rd appellants respectively vide
Order of Court dated 24.03.2014 made
in C.M.P.Nos.286 to 291 of 2009

... Appellants/Defendants 2,3 & 6
in S.A.No.1553 of 1996

1. Kasi Reddy (Died)
2. Bhaghyammal
3. Devika
4. Velu
5. Manjula
6. Sasi Kumar *

... Appellants/Plaintiffs
in S.A.No.1560 of 1996

* Appellants 2 to 6 brought on
record as LRs of the deceased sole
appellant viz., Kasi Reddy vide order
of Court, dated 20.01.2021 made in
C.M.P.No.6849 to 6851 of 2016

Versus

1. Kasi Reddy (Died) **
2. Bhaghyammal
3. Devika
4. Velu
5. Manjula
6. Sasi Kumar

... Respondents/Plaintiffs
in S.A.No.1553 of 1996

** RR2 to 6 brought on record as
LR's of the sole deceased respondent
viz., Kasi Reddy, vide order of the
Court dated 20.01.2021 made in
C.M.P.Nos.16650 to 16652 of 2016

1. Kalakappa Reddy (Died)
2. Delhi
3. Rajammal
4. Kolaki
5. Kasi Reddy (Died)
6. Krishnaveni
7. Sunder Raj
8. Mathina
9. Chinnaponnu
10. Dhanalakshmi
11. Kasturi
12. Jagannathan **

... Respondents 1 to 5/
Defendants 2 to 6 in
S.A.No.1560 of 1996

** R9 and RR10 to 12 brought on
record as Lrs of the deceased
1st and 5th respondent respectively
vide order of Court dated 24.03.2014
made in C.M.P.Nos.319 to 324 of 2009

PRAYER IN S.A.NO.1553 OF 1996:-

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree of the Subordinate Judge, Tiruvallur in A.S.No.37 of 1993 dated 30.04.1996 partly reversing the judgment and decree in O.S.No.613 of 1986 on the file of the District Munsif, Tiruvallur dated 31.03.1993.

PRAYER IN S.A.NO.1560 OF 1996:-

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.37 of 1993 on the file of the Subordinate Judge, Tiruvallur, dated 30/04/1996 thereby confirming the decree and judgment passed in O.S.No.613 of 1986 dated 31.03.1993 on the file of District Munsif and dismissed the suit in respect of the Schedule 1 & 2 Properties.

For Appellants : Mr.R.Mukundan
in S.A.No.1553 of 1996

For Appellants : Mr.T.S.Baskaran
in S.A.No.1560 of 1996

For Respondents 2 to 6 : Mr.T.S.Baskaran
in S.A.No.1553 of 1996

For Respondents : Mr.R.Mukundan
2, 6 to 8, 9 to 12 For M/s.N.S.Varadachari
in S.A.No.1560 of 1996

For respondents 3 & 4 : Served - No appearance
in S.A.No.1560 of 1996

For respondents 1 & 5 : Died steps due
in S.A.No.1560 of 1996

COMMON JUDGMENT

(Heard Video Conference)

Second Appeal No.1560 of 1996 has been preferred by the plaintiff in O.S.No.613 of 1986 on the file of the District Munsif Court, Tiruvallur challenging the rejection of his claim for partition in respect of suit item Nos.1 and 2. Pending the appeal, the plaintiff died and his Legal heirs were brought on record. Similarly, challenging the decree for partition in respect of suit item Nos.3 to 5, the defendants in O.S. No.613 of 1986 on the file of the District Munsif Court, Tiruvallur preferred the Second Appeal No.1553 of 1996. Pending the appeal, the defendants 1 and 2 died and their Legal Heirs were brought on record.

2. Heard Mr.R.Mukundan, learned counsel for the Appellants in S.A.No.1553 of 1996 as well as for the respondents 2, 6 to 8,

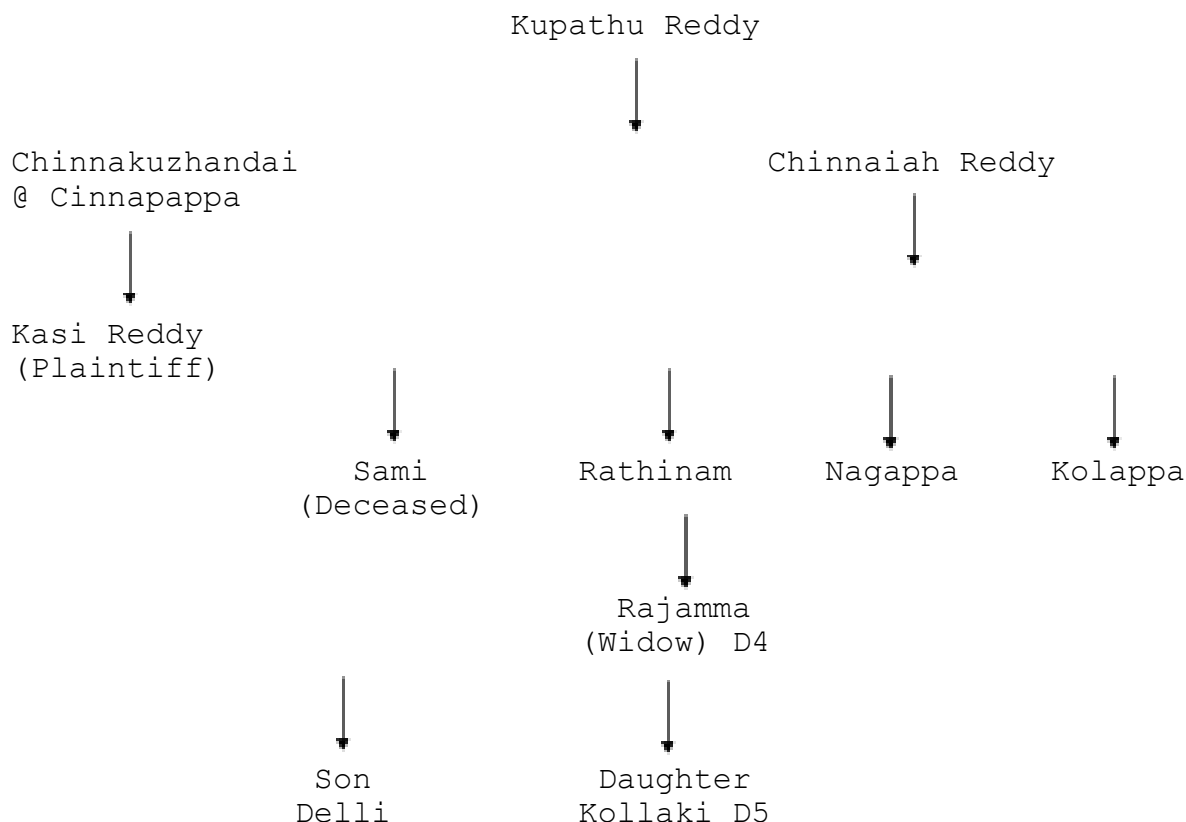
9 to 12 in S.A.No.1560 of 1996 and Mr.T.S.Baskaran, learned counsel for the Appellants in S.A.No.1560 of 1996 as well as for the respondents 2 to 6 in S.A.No.1553 of 1996.

3. In the forthcoming paragraphs the parties are described as per their litigative status in the suit.

4. The suit was filed for partition in O.S.No.613 of 1996 on the file of the District Munsif Court, Tiruvallur for partition and separate possession of items 1 to 3 in the plaint schedule properties. Subsequently, by order dated 19.12.1989 in I.A.No.1448 of 1988, items No.4 and 5 were added.

5. The deceased plaintiff Kasi Reddy filed the suit in O.S.No.613 of 1986 on the file of the District Munsif Court, Tiruvallur for the relief of partition and separate possession. The plaintiff filed the suit against the defendants, who are the sons of paternal uncle Chinnaiah Reddy.

6. The genealogy tree is given below :-



7. According to the plaintiff, the suit property originally belongs to Kupathu Reddy, who is the grand father of the plaintiff. The said Kupathu Reddy had two sons viz.,

Chinnakuzhandai alias Chinnapappa and Chinnaiah Reddy. According to the plaintiff, he is the son of Chinnakuzhandai. The defendants are the legal heirs of the deceased Chinnaiah Reddy.

8. It is the case of the plaintiff that after the demise of Kupathu Reddy, the suit schedule properties devolved upon his two sons Chinnakuzhandai and Chinnaiah Reddy. It is the case of the plaintiff that both the sons of Kupathu Reddy are entitled to half share in the suit schedule properties. According to the plaintiff, after the death of his father Chinnakuzhandai, he became entitled to entire 1/2 share in the suit schedule properties and the remaining half share belongs to the defendants who are the Legal Heirs of the deceased Chinnaiah Reddy.

9. According to the plaintiff, he was only a child when his father Chinnakuzhandai died. According to the plaintiff, he is the co-owner of the suit schedule properties along with the defendants and therefore according to him, the alienation of item Nos.1, 2 and 3 of the suit schedule properties by Chinnaiah Reddy and his sons in favour of the father of the 6th defendant will not bind the plaintiff. It is also the case of the plaintiff that the defendants are also trying to alienate item Nos.4 and 5 of the suit schedule properties.

10. However, as seen from the written statement filed by the defendants, it is their case that the suit schedule properties were purchased by Chinnaiah Reddy under a sale deed dated 22.12.1944. Thereafter, the defendants alienated the suit item Nos.1, 2 and 3 in favour of the father of the 6th defendant under a Sale deed dated 24.04.1970, 24.09.1974 and 29.07.1982. It is also the case of the 6th defendant that he is in absolute possession of item Nos.4 and 5 in the suit schedule properties for more than 12 years and has become the absolute owner by way of adverse possession.

11. A re-joinder was also filed by the plaintiff to the written statement filed by the defendants. In the rejoinder, the plaintiff has stated that the father of the defendants 1 and 2 sold the suit schedule property under a registered sale deed dated 4.01.1930 for a sale consideration of Rs.235/- and according to them, the sale is sham and nominal.

12. It is the case of the plaintiff that the property sold for Rs.235/- in the year 1930 was obtained by Chinnaiah Reddy i.e., the father of the 2nd defendant under a sale deed dated 22.12.1944 for a sum of Rs.100/-, which according to him will establish that the entire transaction is sham and nominal. According to the plaintiff, item Nos.1, 2 and 3 of the suit schedule properties are joint family properties and not the

exclusive properties of Chinnaiah Reddy. It is the case of the plaintiff that the suit schedule properties were purchased by Chinnaiah Reddy only from the income of the joint family assets.

13. The trial Court framed issues and after trial gave a finding that the sale deed dated 04.01.1930 marked as Ex.A6 and the subsequent sale deed dated 22.12.1944 marked as Ex.A7 are not sham and nominal. As originally, the property belongs to the father of the defendants 1 and 2 viz., Chinnaiah Reddy, the Trial Court has also held that the father of the 6th defendant purchased the property in the years 1970 and 1974 under sale deeds dated 24.04.1970 (Ex.B2) and 24.04.1974 (Ex.B3) and therefore, the 6th defendant perfected the title by adverse possession as the suit was filed only in the year 1986. After rendering the aforesaid findings, the suit O.S. No.613 of 1986 was dismissed by the District Munsif Court, Tiruvallur in its judgment and decree dated 31.03.1993.

14. Aggrieved by the dismissal of the suit, the plaintiff preferred a regular first appeal before the Sub Court, Tiruvallur in A.S.No.37 of 1993. The First Appellate Court held that the defendants sold the item Nos.1 and 2 to the father of the 6th defendant under Exs.B2 and B3, which are dated 24.04.1970 and 24.09.1974 respectively and since the suit was filed only in the year 1986, the 6th defendant has perfected his title over item Nos.1 and 2 by adverse possession as the sale was made twelve years prior to the filing of the suit. In respect of item Nos.3, 4 and 5 of the suit schedule properties, the First Appellate Court granted the relief of partition in favour of the plaintiff. Therefore, the appeal in A.S. No.37 of 1993 was partially allowed by the Sub Court, Tiruvallur in favour of the plaintiff.

15. Aggrieved by the judgment and decree dated 30.04.1996 passed by the Sub Court, Tiruvallur in A.S.No.37 of 1993, the plaintiff in the suit has preferred S.A.No.1560 of 1996 challenging the rejection of his claim for partition in respect of item Nos.1 and 2 of the suit schedule properties. S.A.No.1553 of 1996 has been preferred by the defendants in the suit challenging the decree for partition granted in favour of the plaintiff in respect of item Nos.3 to 5 in the suit schedule properties.

16. Since both the Second Appeals arise out of the very same suit for partition, both the Second Appeals are disposed of by a common judgment.

17. Second Appeal viz., S.A.No.1553 of 1996 was admitted by this Court on 28.11.1996 by formulating the following substantial questions of law.

"1. Whether the First Appellate Court has committed an error in holding that the property sold away to third parties and again purchased individually by a member continue to retain the character of joint family property?

2. Whether the claim of the plaintiff in respect of item 3 to 5 of the plaint schedule property was barred by limitation?"

18. Second Appeal viz., No.1560 of 1996 was admitted by this Court on the very same day by formulating the following substantial question of law.

"Whether the First Appellate Court was right and justified in law in holding that the 6th defendants had perfected his title to items 1 and 2 of the schedule properties by adverse possession when the 6th defendant's claim was based only on the sale deeds Exs.B2, B3 and B4?"

19. Item Nos.1 to 3 of the suit schedule properties measuring an extent of one acre and 48 cents in Survey No.297/2 was sold to Baskara Naidu under a sale deed dated 04.01.1930 (Ex.A6). Thereafter, the said property was sold to Chinnaiah Reddy, the plaintiff's father only under sale deed dated 22.12.1944 (Ex.A7). Admittedly, both the aforementioned sale deeds remain unchallenged till date. No evidence has been produced by the plaintiff before the Trial Court to prove that Chinnaiah Reddy purchased the property in the year 1944 out of the joint family funds. When a categorical stand has been taken by the defendants in the suit that Chinnaiah Reddy purchased the properties in the year 1944 out of his own funds, the onus lies on the plaintiff to prove that Chinnaiah Reddy did not purchase the properties out of his own funds, but has purchased the property out of the joint family funds. The plaintiff has failed to discharge his burden to prove the same. The suit O.S.No.613 of 1986 was filed only in the year 1986 and on the date of the filing of the suit, the plaintiff was aged 47 years. Even though he may have been a Minor when the sale deed dated 22.12.1944. (Ex.A7) was executed, even after attaining the majority and within three years thereafter, he has not filed the suit but instead chose to file a suit for partition much beyond the period of twelve years thereafter. No documentary evidence has also been produced by the plaintiff to prove that he has been in possession of the suit schedule properties. A consistent stand has been taken by the defendants in the suit that they and their predecessors in interest are in continuous possession and enjoyment of the suit schedule properties ever since 1944.

20. Before the Trial Court, the defendants have also filed patta and kist receipts for the suit schedule properties which have been marked as Exs.B5 to B9 to prove that they are in possession of the suit schedule properties.

21. Insofar as items nos.4 and 5 of the suit schedule properties measuring 2 acres and 7 cents in Survey Nos.294/2 and 295/2 are concerned, the said properties were purchased by the plaintiff's uncle Chinnaiah Reddy by sale deed dated 29.05.1951 from Namasiyva Mudaliar long after the death of the plaintiff's father Chinnakuzhandai Reddy alias Chinnapappa.

22. The Trial Court based on the materials and evidence available on record as well as the pleadings dismissed the suit by its judgment and decree dated 31.03.1993 in O.S.No.613 of 1986 on the ground that the suit is barred by law of limitation.

23. The Trial Court has also given a finding that the suit schedule properties are self acquired properties of Chinnaiah Reddy, the plaintiff's uncle.

24. The Lower Appellate Court in its judgment and decree dated 30.04.1996 in A.S. No.37 of 1993 held as follows :-

a) Item Nos.1 and 2 of the suit schedule properties have been in the possession of the 6th defendant and b) He has been in possession of the said properties ever since his purchase c) The plaintiff was aged 47 years on the date of the plaint and he having not agitated his rights within three years from the date of his attaining majority, his claim is barred by limitation. However, the Lower Appellate Court with regard to the item Nos.3 to 5 in the suit schedule properties granted a decree for partition in favour of the plaintiff by giving the following reasons :-

" That Item No.3 has been sold to the father of the 6th defendant in the year 1982 viz., 29.07.1982 as per Ex.B4 and the said sale deed was executed by the third defendant that was only in respect of 29 cents out of one acre and 48 cents in Survey No.297/2. As regards item Nos.4 and 5, the Lower Appellate Court held that no documents were produced to show that item Nos.4 and 5 were purchased by Chinnaiah Reddy and therefore, the claim cannot be said to be barred by law of limitation".

25. Before this Court CMP No.5823 of 2006 has been filed by the appellants in S.A.No.1553 of 1996 for receiving the original sale deed dated 29.05.1951 standing in the name of Chinnaiah

Reddy with regard to item Nos.4 and 5 of the suit schedule properties. As seen from the affidavit filed in support of CMP No.5823 of 2006, the defendants have not produced the sale deed dated 29.05.1951 before the Lower Courts since the same was not traceable. According to the defendants, they were able to trace the sale deed dated 29.05.1951 only after filing of these Second Appeals. No counter affidavit has also been filed by the plaintiff or by his Legal Representatives in CMP No.5823 of 2006.

26. The original sale deed dated 29.05.1951 standing in the name of Chinnaiah Reddy has also not been disputed by the plaintiff as seen from the submissions made by the learned counsel for the plaintiff. This Court has also perused and examined the original sale deed. Therefore, this Court will have to necessarily allow CMP No.5823 of 2006 and the sale deed dated 29.05.1951 executed by Namasivaya Mudaliar in favour of Chinnaiah Reddy (registered as document No.2418 of 1951 in the office of the SRO, Tiruvallur) has to be marked as Ex.B10 as the said document is a vital document to prove that the defendants are the absolute owners of the item Nos.4 and 5 of the suit schedule properties also. Accordingly, CMP No.5823 of 2006 is allowed by this Court. Since the sale deed dated 29.05.1951 standing in the name of Chinnaiah Reddy marked as Ex.B10 by this Court was not available before the Lower Appellate Court by an erroneous finding, the Lower Appellate Court has decreed the suit for partition in favour of the plaintiff for item Nos.4 and 5 of the suit schedule properties though the sale deed dated 29.05.1951 marked as Ex.B10 before this Court clearly proves that the plaintiff's father Chinnakuzhandai alias Chinnapappa was never the owner of item Nos.4 and 5 but only his uncle Chinnaiah Reddy was the owner of the said properties. By total non application of mind to the pleadings and to the evidence available on record, the Lower Appellate Court has reversed the findings of the Trial Court by granting the partition decree in favour of the plaintiffs for item Nos.4 and 5 of the suit schedule properties. Hence, this Court is of the considered view that the said finding has to be set aside as it is a perverse finding.

27. Insofar as item No.3 of the suit schedule property is concerned, the said property has gone out of the family in 1930 by sale deed dated 04.01.1930 (Ex.A6). Thereafter, item No.3 was purchased by Chinnaiah Reddy, uncle of the plaintiff under sale deed dated 22.12.1944 (Ex.A7), the sale of item No.1 in 1982 is only in respect of a portion measuring 29 cents out of the extent of one acre and 48 cents in Survey No.297/2.

28. Admittedly, the sale deed dated 22.12.1944 for item No.3 stands in the name of Chinnaiah Reddy. The plaintiff has filed the suit only in the year 1986 and he has also not filed

the suit within three years from the date of attaining the age of majority. At the time of filing of the suit, the plaintiff was aged 47 years. The Lower Appellate Court has erroneously by non application of mind has taken into consideration the date of sale of a portion of item No.3 in 1982, whereas, item No.3 was purchased by the plaintiff's uncle Chinnaiah Reddy in the year 1944 itself. By erroneously taking into account the sale of item No.3 as 1982, the Lower Appellate Court has granted a partition decree in favour of the plaintiff for item No.3. Having not challenged the sale deed dated 22.12.1944 standing in the name of his uncle Chinnaiah Reddy, within a period of three years after he having attained majority, the plaintiff's suit for partition in respect of Item No.3 is also barred by law of limitation.

29. The judgement relied upon by the learned counsel for the appellants in S.A.No.1553 of 1996 in case of

(a) Mahavir Singh and others Vs. Naresh Chandra and another reported in 2001 1 SCC 309.

(b) Varadhan versus N. Govindasamy reported in 2009 SCC Online Mad 1753 and

(c) S.N.Hasan Abubucker Vs. Kottikulam St.Mohideen Pallivasal Therkku Mohindeen Pallivasan, Nirvagi and another reported in 2000 (III) CTC 193.

supports the case of the defendants for reception of the sale deed dated 29.05.1951 standing in the name of Chinnaiah Reddy as an additional piece of evidence as the said document is vital to render complete justice by this Court.

30. For the foregoing reasons, this Court is of the considered view that the Lower Appellate Court by total non application of mind and by a perverse finding has granted partition decree in favour of the first appellant in S.A.No.1560 of 1996, insofar as, Item Nos.3, 4 and 5 of the suit schedule properties are concerned. As according to this Court, the Trial Court based on the materials and evidence available on record has rightly dismissed the suit O.S. No.613 of 1986 on the ground of limitation and also on the ground that the plaintiff has not proved by oral and documentary evidence that the suit schedule properties are joint family properties.

31. The substantial questions of law formulated in S.A. No.1553 of 1986 and S.A. No.1560 of 1996 are answered in favour of the defendants, by holding that the First Appellate Court has erroneously granted partition decree in favour of the plaintiff

for item Nos.3, 4 and 5 in the suit schedule properties. In the result, the judgment and decree passed by the learned Subordinate Judge, Tiruvallur in A.S. No.37 of 1993 is hereby set aside and the judgment and decree passed by the Trial Court, viz., District Munsif, Tiruvallur in O.S. No.613 of 1986, dated 31.03.1993 is hereby confirmed.

32. Accordingly, Second Appeal No.1553 of 1996 is allowed and Second Appeal No.1560 of 1996 is dismissed by setting aside the Judgment and decree dated 30.04.1996 passed by the Subordinate Court, Tiruvallur in A.S.No.37 of 1993 and by confirming the Judgment and decree dated 31.03.1993 passed by the District Munsif Court, Tiruvallur in O.S.No.613 of 1986. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(TNMCC)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Subordinate Judge,
Tiruvallur.
2. The District Munsif,
Tiruvallur.

+2ccs to M/s.N.S.Varadachari, Advocate, S.R.Nos.45020 & 45021
+2ccs to Mr.T.S.Baskaran, Advocate, S.R.Nos.44976 & 44977

S.A.NOS.1553 AND 1560 OF 1996

PP(CO)
PBS/07/03/2022