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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.326 of 2016 &
C.M.P. No.6829 of 2016

Mr.S.Kandasamy

...Appellant/Plaintiff

Vs.

1.Smt.P.Velammal

2.Smt.S.Lakshmi (C.Rajamani (died))

3.Smt.C.Geethamani

4.Mr.C.Ramesh Kannan

...Respondents/Defendant

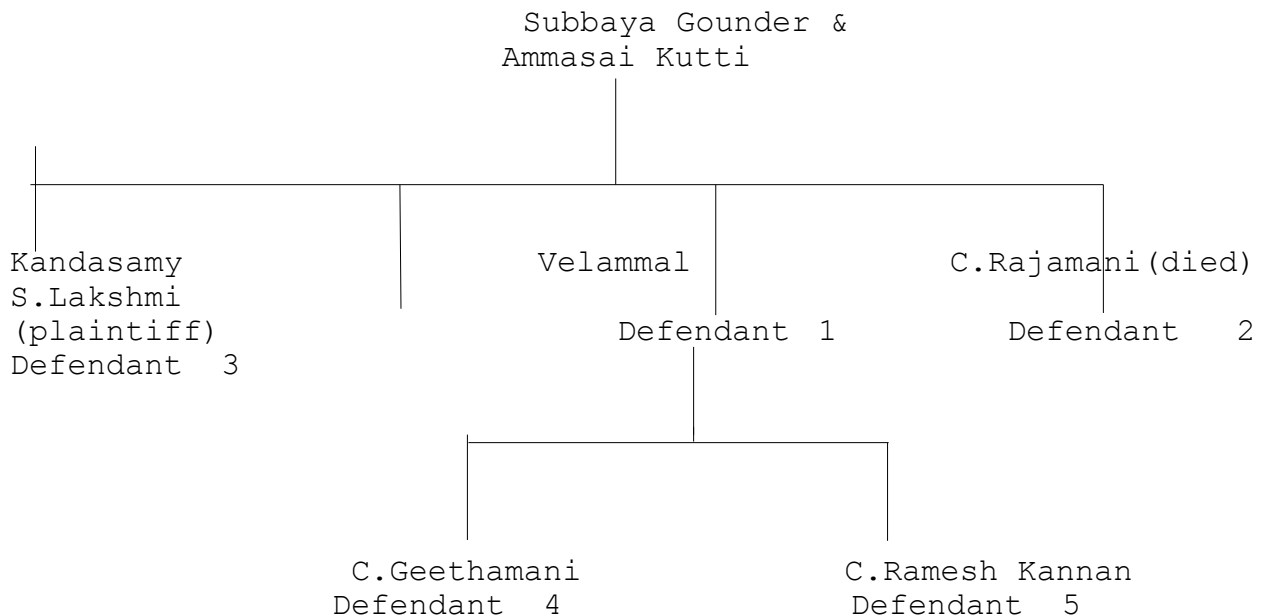
PRAYER: This Appeal Suit is filed under Section 96 of C.P.C. R/W. Order 41 Rule (1) of C.P.C. against the Judgment and Decree dated 22.12.2015 passed in O.S.No. 193 of 2008 on the file the learned III Additional District and Sessions Judge, Coimbatore.

For Appellant : Dr.C.Ravichandran

For Respondents: Mr.Sriram for R1 & R4

J U D G M E N T

The plaintiff in a suit for partition has filed this first appeal challenging the share allotted to him. Before proceeding to discuss the facts of the case, the Genealogical Tree of Subbaya Gounder is being re-produced herein below in order to appreciate the relationship between the parties.





2. The plaintiff and defendants 1 to 3 are siblings and children of Subbaya Gaunder and Ammasai Kutty. Pending the suit, the second defendant had died and her legal representatives were brought on record as defendants 4 and 5. The suit in question is one for partition of the plaintiff's 5/8 share in the suit schedule property and for an injunction restraining the defendants from alienating the same.

Plaintiff's Case.

3. It is the case of the plaintiff that the properties in question belong to his father Subbaya Gounder, who died intestate on 31.08.2000 and his mother predeceased his father and therefore, the properties devolved on himself and the defendants herein. He would however contend that the suit properties are the ancestral properties and therefore, he was by birth entitled to a half share and after the demise of his father, he was entitled to $\frac{1}{4}$ th share in his father's half share. Therefore, he was entitled to $\frac{5}{8}$ th share in the suit properties. He would further submit that the parties had been jointly enjoying the properties and despite his request for an amicable division, the defendants were not coming forward to do so. Therefore, he was left with no other alternative, except to approach this Court.

Written Statement.

4. The defendants had filed a written statement inter alia contending that the suit property was the self-acquired property of their father Subbaya Gaunder and their mother Ammasai Kutty, who had purchased the same under a sale deed in December 1953. They would express their surprise as to how the plaintiff is contending that the suit properties are ancestral in nature. Since, the properties are the self-acquired of Subbaya Gounder and Ammasai Kutty, the plaintiff and the defendants as they are the only the legal heirs, are entitled to $\frac{1}{4}$ share each. The defendants would deny the allegation of the plaintiff that they were attempting to alienate the suit properties. They would submit that this allegation was made only with the view to prejudicing the mind of the Court. They would therefore contend that each of them were entitled to a $\frac{1}{4}$ share, but, the defendants had sought for dismissal of the suit.

Trial Court

5. The learned III Additional District and Sessions Judge, Coimbatore, before whom the suit A.S. No.193 of 2008 was pending, had, on the basis of the pleadings, framed the following issues:



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(i) whether the Plaintiff is entitled for 5/8th share in the suit properties?

(ii) Whether the Plaintiff is entitled for permanent injunction?

(iii) To what other relief the Plaintiff is entitled for?

6. The plaintiff had examined himself as P.W.1 and had marked Ex. A1 to A13. The 3rd defendant examined herself as D.W.1 and had marked Ex.B1 to B6. On considering the oral evidence of the defendants and the plaintiff with particular reference to the evidence of P.W.1 that the property belonged to his Grandfather Kutty Gounder, the learned Judge would state that the plaintiff has not been able to prove this contention. On the contrary, the Court below has taken note of Exs. B-4, B-5 and B-6, which are the revenue records standing jointly in the names of the plaintiff and the defendants which would clearly show that the property belonged to Subbaya Gaunder and on his demise, the property devolved upon the plaintiff and the defendants. Ultimately, the Learned Judge had decreed the suit by allotting a $\frac{1}{4}$ share each to the plaintiff and defendants 1 to 3. The 4th and 5th defendants were jointly entitled to 1/3 share of their mother, second defendant who died.

Submissions.

7. The entire arguments of Dr.C.Ravichandran, learned counsel appearing on behalf of the appellant/plaintiff is that the property is the ancestral properties of Subbaya Gounder and therefore, the plaintiff is entitled to a larger share. He would further submit that the defendants who claimed that the properties had been purchased by their parents have not let in evidence to prove the same and even the sale deed of December 1953, is not before the Court. He would further submit that a perusal of Exs. A10 to A13, would clearly show that the property stood in the name of the predecessor in title to the plaintiff and defendant. But the property had been alienated in favour of one Muthakkal by the plaintiff's grandfather Kutty Gounder as evidenced by Ex.B1. The said Muthakkal had also exercised her rights by executing a mortgage deed in favour of Palaniammal on 29.05.1942. It is the case of the defendant that their mother Ammasai Kutty is the daughter of Muthakkal. Therefore, they would submit that on the demise of the Muthakkal, Ammasai Kutty became entitled to the property and therefore, the said property is not ancestral in nature but has become the self-acquired property by reason of his purchase.

The points for consideration that arises in this appeal is:

"Whether the plaintiff is entitled to 5/8th share treating the suit properties to



be ancestral or to $\frac{1}{4}$ th share being a self acquired property as held by the trial Court?"

8. The argument as to whether the property is ancestral or self-acquired is immaterial now. In the light of the recent Judgment of the Hon'ble Supreme Court reported in the case of VINITHA SHARMA V. RAKESH SHARMA & OTHERS reported in 2020 (5) CTC 302. By reason fo the aforesaid judgment, daughters would also acquire coparcenary rights to the property. Therefore, applying the ratio of the above judgment, each of the sharers, viz., the plaintiff and defendants 1 to 3 would be entitled to a $\frac{1}{4}$ th share in the property. The trial Court has granted a decree in respect of the same.

9. Therefore, I do not find any reason to interfere with the Decree and Judgment of the Trial Court, and consequently, the appeal is dismissed. However, there shall be no order as to costs. The connected M.P. is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kal/shr

To

The III Additional District and Sessions Judge,
Coimbatore.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Dr.C.Ravichandran, Advocate sr 45106.

+1 CC to Mr.M. Sriram, Advocate sr 45417.

A.S.No.326 of 2016
& CMP No.6829 of 2016

SSV(CO)
SP(22/10/2021)