



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	16.07.2021
Pronounced On	08.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.224 of 2015

and

M.P.No.1 of 2015

(Through Video Conferencing)

Rajendran

... Appellant/1st Respondent/
Plaintiff

Vs.

1.Sellamuthu

...1st Respondent/Appellant/7th defendant

2.Kaliammal

Srinivasan(died)

3.Ramasamy

4.Chinnaraju

5.Parameswari

6.Minor Deepa (Minor rep.by mother Parameswari)

7.Venkatachalam

...2 to 7 Respondents/Respondents 2 to 7/
Defendants 1 to 6 and 8

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 31.10.2014 made in A.S.No.23 of 2011 on the file of the Sub Court, Sankari reversing of the Judgment and Decree dated 05.09.2011 made in O.S.No.130 of 2008 on the file of the District Munsif Court, Sankari.



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For Appellant : Mr.N.Manokaran
For R1 : M/s.Jeenath Begum
For R3 to R7 : No appearance
R2 : Died

J U D G M E N T

This Second Appeal has been filed against the impugned Judgment and Decree dated 31.10.2014 passed by the Sub-Court, Sankari (hereinafter referred to as First Appellate Court) in A.S.No.23 of 2011. This appeal was admitted on 30.04.2015. Following substantial questions of law were framed in this appeal for being answered at the time of final hearing:-

- i. Whether the vendors of the appellant were entitled to 3/6th share over the property of their father late Munia Nadar who died intestate as per Sec.8 of Hindu Succession Act, if so, the first appellate court correct in law in dismissing the suit for partition filed by the appellant in respect of the shares of the three daughters of late Munia Nadar?
- ii. When Ex.A3 dated 15.05.1995 and Ex.A4 dated 13.09.2001 are not binding on the vendors of the appellant, since they did not sign the sale deeds, whether the first appellate court is correct in law in non-suiting the appellant's claim under the sale deed dated 17.09.2007 (Ex.A5)?
- iii. Whether the First Appellate court is correct in law in ignoring the legal right of plaintiff's vendors under Sec.8 of Hindu Succession Act, 1956?"

2. By the impugned Judgment and Decree dated 31.10.2014, the First Appellate Court had allowed A.S.No.23 of 2011 filed by first respondent (seventh defendant). A.S.No.23 of 2011 filed by first respondent (seventh defendant) against Judgment and Decree dated 05.09.2011 in O.S.No.130 of 2008 and had reversed the aforesaid Judgment and Decree of the District Munsif Court, Sankari (Trial Court).



3. To understand the scope of the dispute and to answer the questions of law raised and framed, it will be useful to refer to the factual background of the case. The ranks of the parties before the Trial Court in O.S.No.130 of 2008 shall be referred for the sake of convenience.

4. O.S.No.130 of 2008 was filed by the plaintiff (appellant herein) against the defendants (respondents herein) to partition the suit schedule property into 6 equal shares and to allot three of such shares to the plaintiff (appellant herein).

5. The Trial Court by its Judgment and Decree dated 05.09.2011 decreed O.S.No.130 of 2008 and passed a preliminary decree in favour of the plaintiff (appellant). Aggrieved by the same, the seventh defendant (first defendant) had filed A.S No.23 of 2011 which was allowed.

6. The dispute centers around property measuring an extent of 1.51 Acres in Re-Survey No.375/4C-1 in Vellarivalli Village in Salem District (hereinafter referred to as the Suit Schedule Property). It was earlier purchased in the name of late Munia Nadar during his life time in the years 1964 and 1967 vide Ex.A1 dated 08.04.1964 and Ex.A2 dated 03.05.1967.

7. The total extent as per these two documents was 1.60 Acres. The plaintiff (appellant) claimed 50% share in the suit schedule property through his vendors, namely, the three daughter of late Munia Nadar and his wife Kaliammal (first defendant/ second respondent herein) named Thangammal, Nallammal and Marakkal (also referred to as plaintiff's vendors) vide Ex.A5 dated 17.09.2007.

8. Prior purchase of the undivided share in the suit schedule property by the plaintiff (appellant), entire extent in Ex.A1 dated 08.04.1964 and Ex.A2 dated 03.05.1967 were sold in two parcels to the seventh and eighth defendants vide Ex.A3/B4 dated 15.05.1995 and vide Ex.A4 dated 13.09.2001 respectively.

9. The three daughters of late Munia Nadar and the first defendant (second respondent) named Thangammal, Nallammal, Marakkal were not party to either of the two sale deeds in Ex.A3/B4 dated 15.05.1995 and vide Ex.A4 dated 13.09.2001.

10. Thus, when the plaintiff's vendors later sold 50% of the land to the plaintiff (appellant) vide Ex.A5 dated 17.9.2007, the property was outside the family fold and had been already



conveyed to the seventh and eighth defendants vide Ex.A3/B4 dated 15.05.1995 and vide Ex.A4 dated 13.09.2001 respectively.

11. The above suit was filed by the plaintiff under Section 44 of the Transfer of Property Act 1882 long after the Suit Schedule Property had been sold in favour of the seventh and eighth defendants vide Ex.B4 Sale Deed dated 15.05.1995 and vide Ex.A4 Sale Deed dated 13.09.2001 by their vendors.

12. The suit was predicated on the premises that the Suit Schedule Properties in Ex.A1 dated 08.04.1964 and Ex.A2 dated 3.5.1967 were self-acquired properties of late Munia Nadar and therefore the plaintiff's vendors, the three daughters were entitled to 1/6th share along with the other legal heirs of late Munia Nadar who died on 08.01.1992.

13. Only the seventh defendant (first respondent) filed a written statement. In his written statement, the seventh defendant stated that he purchased an extent of 37 $\frac{3}{4}$ cents of land from the deceased Raju. It was stated that it was a joint family property of Rama Nadar along with his two sons namely late Munia Nadar and Sengoda Nadar.

14. The seventh defendant (first respondent) who was the appellant before the First Appellate Court had earlier purchased an extent of 37 $\frac{3}{4}$ cents of land in Re-Survey No.375/4C-1 in Vellarivalli Village way back on 15.05.1995 vide Ex.A3/B4 from one Raju since pre-deceased. The deceased Raju was one of the grandsons of late Munia Nadar and Kaliammal, the first defendant (the second respondent herein) through their first son Muthusamy who had earlier pre-deceased.

15. The deceased Raju sold an extent of 37 $\frac{3}{4}$ cents of land in Re-Survey No.375/4C-1 in Vellarivalli Village as shareholder in the ancestral property in Re-Survey No.375/4C-1 in Vellarivalli Village to the seventh defendant (first respondent).

16. It was therefore submitted that the sale effected vide Ex.A3/B4 sale deed dated 15.05.1995 by late Raju, the deceased grandson of Munia Nadar and Kaliammal (first defendant) through their first son late Muthusamy and his wife Sellammal was perfectly in accordance with law and cannot be assailed.

17. It was further stated that first defendant and late Munia Nadar had no daughters and they had only two sons namely Muthusamy Nadar and Srinivasan Nadar.



18. Under these circumstances, it was submitted that the sale deed executed by three vendors (the daughters of the first defendant Kaliammal and late Munia Nadar) vide Ex.A5 dated 17.09.2007 was not a valid document in the eye of law and therefore the suit filed for partition under Section 44 of the Transfer of Property Act, 1882 was not maintainable.

19. It was further stated that the total extent of 1.60 Acres of land in Survey No.375/4C-1 was in possession of the seventh and eighth defendants and therefore the plaintiff had no right over the property. Therefore, the plaintiff cannot seek for partition of the suit schedule property which had already been transferred in favour of these two defendants.

20. The eighth defendant purchased the Suit Schedule Property from the first to sixth defendants along with wife of late Muthusamy namely Late Sellammal and the siblings of Munia Nadar namely Pechiammal and Sengoda Nadar Vide Ex.A4 Sale Deed dated 13.09.2001 and other legal heirs of late Munia Nadar.

21. Balance land measuring an extent of 1.14 Acre was later sold by first to sixth defendants along with sellammal to the eighth defendant (seventh respondent) vide Ex.A4 dated 13.9.2001.

22. Recital in Ex.A5 dated 17.09.2007 states that the property in Ex.A1 dated 08.04.1964 and Ex.A2 dated 03.05.1967 were self-acquired properties of their father late Munia Nadar and therefore the plaintiff's vendors had 50% share in the same.

23. The eighth defendant (seventh respondent) remained exparte before the Trial Court. Even though the suit was decreed, the eighth defendant (seventh respondent herein) also did not file any appeal.

24. Before the Trial Court, the first defendant (second respondent) tacitly supported the case of the plaintiff (appellant). The plaintiff's vendors were not parties to the suit who tendered evidence as plaintiff's witnesses.

25. It was jointly executed by the first to sixth defendants (i.e., the first respondent wife of late Munia Nadar and their descendants other than the plaintiffs vendors), by Sellammal w/o late Muthusamy (the first son of the late Munia Nadar and the first defendant) and by one Sengoda Nadar and one Pechiammal (the brother and sister of late Munia Nadar).



26. Only the seventh defendant (first respondent) defended himself before the Trial Court and had later filed the appeal A.S No.23 of 2011 as the Trial Court decreed the suit. The Appellate Court allowed the appeal. It is under these circumstances that the plaintiff has filed this Second Appeal before this Court.

27. Two of the others vendors in Ex.A4 sale deed dated 13.9.2001, namely Sengoda Nadar and Pechiammal (the brother and sister of late Munia Nadar) were also not made as parties to the suit by the Plaintiff (appellant) though they were also necessary parties to the suit.

28. The contesting defendant namely the seventh defendant (first respondent herein) had contested the suit stating that the suit schedule properties were ancestral properties of the family and therefore the sale by his vendor namely Late Raju was valid. It was further stated that the plaintiff's vendors were not the daughters of late Munia Nadar and the first defendant (first respondent herein) and therefore they had no rights to sell the properties to the plaintiff' vide Ex.A5 dated 17.09.2007.

29. The other defendants ie. Second to the sixth defendants who executed 1.14 Acre of land were shown as the co-vendors of the property to eight defendant in Ex.A4 dated 13.9.2001 remained exparte. The vendors of the said extent were the second defendant named Srinivasan (the second son of Kaliammal, the first defendant and late Munia Nadar), the third and fourth defendants who are the sons of second defendant. The fifth and sixth defendants were the granddaughter-in-law of Kaliammal and late Munia Nadar through their first son and their great granddaughter.

30. Before the Trial Court, it was the contention of the plaintiff (appellant) that the suit schedule property was a self-acquired property of late Munia Nadar and therefore the plaintiff's vendor namely three daughters Thangammal, Nallammal and Marakkal were thus entitled to sell their undivided share in the suit schedule property in S.No.375/4C, Re-S.No.375/4C-1 in Vellarivalli village.

31. The first defendant in her written statement stated that the plaintiff's vendors were her daughters, but, at the same time admitted having sold an extent of only 62½ Cents of land to the eight defendant on 13.09.2001.



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32. The first defendant denied that her grandson late Raju through her first son late Muthusamy through whom the seventh defendant had purchased an extent of 37¾ Cents of land vide Ex.A3/B4 dated 15.05.1995 had any right to sell the property.

33. The first defendant in her deposition further admitted that her daughter's (Thangammal, Nallammal and Marakkal) were entitled to 1/6th share each in the suit schedule property and thus tacitly supported the case of the plaintiff.

34. The Trial Court framed the following issues:

- i. Whether it is true that the plaintiff is entitled to ½ undivided share in the suit property?
- ii. Whether the plaintiff is entitled to the relief of preliminary decree for partition as prayed for?
- iii. To what other relief, the plaintiff is entitled to?

35. Before the Trial Court, the plaintiff examined himself as P.W.1 and other four witnesses were examined as P.W.2 to P.W.5 namely Mr.R.Balan, Mrs.Thangammal, Mrs.Marakkal and Mrs.C.Ranganayaki and also eight documents were marked as Exs.A1 to A8.

36. Ex.X1 was filed as a third-party document. It is the admission register for the year 1960-1961 of Vettuvapatty Panchayath Union Elementary School to establish that Balakkal @ Marakkal was a daughter of the Munia Nadar. The first defendant was examined as D.W.1. The seventh defendant was examined himself as D.W.2 and eight documents were marked as Exs.B1 to B8 through the seventh defendant.

37. The Trial Court by its Judgment and Decree dated 05.09.2011 passed a preliminary decree and decreed the suit as prayed for by holding that the plaintiff was entitled to 3/6th share in the suit schedule property measuring to total extent of 1.51 Acres.

38. The Trial Court rejected the defence of the seventh defendant (first respondent herein) that the suit schedule property was an ancestral property of late Munia Nadar and Sengoda Nadar and their father Rama Nadar and therefore concluded that the vendors of the appellant had a right over the aforesaid property as it was a self-acquired property of late Munia Nadar.



39. The Trial Court also rejected the defence of the seventh defendant that the plaintiff's vendor namely Thangammal, Nallammal and Marakkal were not the daughters of late Munia Nadar and the first defendant namely, Kaliammal.

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40. The Trial Court also concluded that the first defendant Kaliammal was competent to give a statement regarding the legitimacy of her daughters who were the vendors of the plaintiff.

41. The Trial Court further concluded that the total extent of the land in S.No.375/4C-1 measured to an extent of 0.60 Hectare (1.51 Acres) and that the five legal heirs of Munia Nadar i.e. The first defendant, the three daughters (vendors of the plaintiff) and the two sons namely, late Muthusamy Nadar, the second defendant Srinivasan Nadar were entitled to equal share measuring an extent of 25 Cents each.

42. The Trial Court also concluded that the family of late Muthusamy Nadar had only an undivided share of 25 Cents from the total extent and therefore grandson late Raju could convey only 8.5 Cents to the seventh defendant and therefore the sale effected vide Ex.A3/B4 sale deed dated 15.05.1995 cannot be accepted.

43. Before the Trial Court, the eighth defendant also remained exparte. The Trial Court concluded that the seventh defendant (first respondent- the successful appellant before the First Appellate Court) could not claim an extent of land more than his vendors namely deceased Raju grandson of late Munia Nadar and first defendant (Kaliammal) could convey.

44. The First Appellate Court after considering the evidence and records upheld the contention of the seventh defendant (first respondent herein) by holding that the property in Survey No.375/4C1 was an ancestral property of late Munia Nadar and therefore the plaintiff could not have purchased the property from the daughters of late Munia Nadar in view of Section 8 of the Hindu Succession Act, 1956.

45. While allowing the first appeal, the First Appellate Court noted that neither the plaintiff's vendor (Thangammal, Nallammal and Marakkal) nor late Munia Nadar's siblings namely, Pechiammal and Sengoda Nadar were made party to the proceedings.

46. The First Appellate Court also noted that one of the vendors of the plaintiff's namely Thangammal (PW3) during her



cross-examination admitted that there was no partition of the suit schedule properties between the legal heirs of Rama Nadar namely, Munia Nadar and Sengoda Nadar.

47. It further noted that the plaintiff (appellant) has also not established that the suit schedule property was a self-acquired property of late Munia Nadar so as to infer that the plaintiff's vendors had a valid right to sell the suit schedule property to the plaintiff (appellant).

48. The First Appellate Court also has noted that the evidence of P.W.3. Thangammal and P.W.4. Marakkal (two of the vendors of the plaintiff/ daughter of late Munia Nadar and first defendant) admitted that there was no partition between the legal heirs of late Rama Nadar namely, Munia Nadar and Sengoda Nadar.

49. The First Appellate Court further concluded that the suit schedule property was an ancestral property as admitted by P.W.3. Thangammal and P.W.4. Marakkal, two of the vendors of the plaintiff.

50. The First Appellate Court also has noted that the first defendant namely Kaliammal had executed Ex.A4 dated 13.09.2001 in favour of the eighth defendant along with other defendants and conveyed an extent of 1.14 Acres of the suit schedule property.

51. The First Appellate Court had rejected the contention of the plaintiff that the plaintiff was entitled to 3/6th share (50%) of the suit schedule property in Survey No.375/4C-1 as the suit schedule properties had been conveyed vide Ex.A3/B4 dated 15.05.1995 and Ex.A4 dated 13.09.2001 to the seventh and the eighth defendant. Thus, the conveyance in Ex.A5 dated 17.09.2007 infavor of the plaintiff was not valid.

52. The First Appellate Court also has noted that neither the plaintiff had proved that the properties were self-acquired properties of the late Munia Nadar nor had proved that the property was in joint possession of the family.

53. The learned counsel for the appellant submits that the first defendant (second respondent) and her two sons could have sold only a total extent of 62½ Cents of land available to the eighth defendant (seventh respondent herein) and the daughters had 50% of the undivided share and therefore the appellant/plaintiff filed a suit for partition in terms of Section 44 of the Transfer of Property Act, 1882.



54. Further, the learned counsel for the appellant submits that the First Appellate Court erred in reversing a reasoned Judgment and Decree of the Trial Court. It is submitted that the burden of proof was on the contesting defendant namely the seventh defendant to establish that the suit property was not a self-acquired property but an ancestral property.

55. It is further submitted that it was incumbent on the part of the appellant herein to establish that Ex.A1 and Ex.A2 properties were purchased out of the funds of the joint family and in absence of any evidence, it has to be construed that the properties were self-acquired properties of late Munia Nadar.

56. He submits that each of the legal representatives of Late Munia Nadar are entitled to only 26.66 Cents. The learned counsel for the appellant further submits that this Court by its recent decision rendered in S.A.No.69 of 2014 dated 16.09.2019 has categorically held that it is not necessary to set aside the registered documents in favour of alienies in the case of partition.

57. The learned counsel for the appellant further submits that in the case of joint family property, the appropriate remedy is only to file a suit for partition and therefore places reliance on the following decisions:-

- i. Ramdas Vs Sitabai, 2009 (7) SCC 444.
- ii. T.P. Kathiresan (died) and others Vs R. Ramadass (died) and others, 2020 (5) MLJ 748.
- iii. Umamaheswari Vs Murugesan, 2021 (2) CTC 167.

58. The learned counsel for the appellant also referred to the decision of the Hon'ble Supreme Court in Gaja Vishnu Gosavi Vs. Prakash Nanasaheb Kamble and others, 2009 (5) CTC 380, wherein, in Paragraph Nos.9 to 11, it was held as under:-

9. In Kartar Singh v. Harjinder Singh, AIR 1990 SC 854, this Court held that where the shares are separable and a party enters into an agreement even for sale of share belonging to other co-share, a Suit for specific performance was maintainable at least for the share of the executor of the agreement, if not for the share of other co-shares. It was further observed:

'As regards the difficulty pointed out by the High Court, namely, that the decree of



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specific performance cannot be granted since the property will have to be partitioned, we are of the view that this is not a legal difficulty. Whenever a share in the property is sold, the vendee has a right to apply for the partition of the property and get the share demarcated."

In recent judgment in *Ramdas v. Sitabai&Ors.*, JT 2009 (8) SC 224 to which one of us (Dr. B.S. Chauhan, J.) was a party placing reliance upon two earlier judgments of this Court in *M.V.S. Manikayala Rao v. M. Narasimhaswami&Ors.*, AIR 1966 SC 470; and *Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh &Ors.*, AIR 1953 SC 487, this Court came to the conclusion that a purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property.

10. There is another aspect of the matter. An agricultural land belonging to the coparceners/co-sharers may be in their joint possession. The sale of undivided share by one co-sharer may be unlawful/illegal a various statutes put an embargo on fragmentation of holdings below the prescribed extent.

11. Thus, in view of the above, the law emerges to the effect that in a given case an undivided share of a co-parcener can be a subject matter of sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a Court in a partition Suit, or by settlement among the co-shares."

59. The learned counsel for the appellant submits that the appellant was not required to separately sue for cancelling the sale in favour of the seventh defendant (first respondent) executed vide Ex.A3/B4 dated 15.05.1995 and sale executed vide Ex.A4 dated 13.09.2001 in favour of the eighth defendant (seventh respondent).



60. The learned counsel for the appellant submits that the First Appellate Court erred in holding that the suit schedule property was an ancestral property, and the suit was fatal for not arraying vendors as parties to the suit.

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61. He further submits that merely because the brother and sister of Late Munia Nadar namely Sengoda Nadar and Pachiammal were not made a party to the proceedings would not render the suit for partition without jurisdiction. In this connection, he refers to Section 99 and Order 1 Rule 9 of C.P.C. He submits that non-impleading of these persons would not have merely altered the decisions.

62. It is further submitted that in absence of any categorical evidence to substantiate that the suit schedule property was an ancestral property, the question of impleading the other members of the family who are not concerned with the property cannot be countenanced.

63. The learned counsel for the appellant further submits that two out of three vendors of the plaintiff (appellant) were also examined as P.W.3 and P.W.4. It is submitted that merely because they have been stated that there was no partition of property between the legal representatives of their grandfather Rama Nadar and the branches representing three children of Rama Nadar namely Munia Nadar, Sengoda Nadar and Pachiammal cannot be fatal. It is further submitted that the property has not been divided even as on date and therefore the seventh and eighth defendants (first and seventh respondents herein) have not filed a suit for partition in terms of Section 44 of Transfer of Property Act, 1882.

64. The learned counsel for the appellant also relied on the following decisions of the Hon'ble Supreme Court and of this Court in respect of the following propositions:-

- i. R.Deivanai Ammal (Died) and another Vs G.Meenakshi Ammal and others, 2004 (4) CTC 208.
- ii. Eureka Builders and others Vs Gulabchand, (2018) 8 SCC 67.
- iii. Vidya Devi @ Vidya Vati (Dead) by Lrs Vs Prem Prakash and others, (1995) 4 SCC 496.
- iv. G.Radhakrishnan and another Vs Kanna Pillai and others, 2014 (5) CTC 275.
- v. N.Padmamma and others Vs S.Ramakrishna Reddy and others, (2015) 1 SCC 417.



65. The learned counsel for the appellant (plaintiff) therefore prays that the Court may be pleased to allow this appeal by answering the substantial questions of law raised in favour of the appellant/plaintiff.

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66. Defending the impugned Judgment and Decree, the learned counsel for the first respondent (seventh defendant) submits that Ex.A3/B4 was executed as early as on 15.05.1995 and therefore the rights of the seventh defendant (first respondent) cannot be disturbed.

67. It is submitted that the co-sharers of the property ought to have been arrayed as parties to the suit and failure to make them party to the litigation was fatal to the suit filed for partition.

68. The learned counsel for the first respondent submits that in absence of a suit to declare Ex.A3/B4 dated 15.05.1995 as null and void, the suit for partition in O.S.No.130 of 2008 was bad.

69. She further submits alternatively the case may be remitted back to the Trial Court to ascertain whether the property purchased vide Ex.A1 and Ex.A2 were ancestral in nature or self-acquired property of late Munia Nadar.

70. It is further submitted that the plaintiff (appellant) had failed implead the children and their descendants as parties to the proceedings and in absence of a proper issue being framed, the Trial Court committed an error in decreeing the suit and thus the First Appellate Court has correctly reversed the Judgment and Decree of the Trial Court.

71. She drew attention to the statements recorded during the cross examination of P.W.3 and P.W.4, wherein, it was confirmed that there is no partition of the parties between the descendants of late Rama Nadar.

72. The learned counsel for the first respondent submits that one of the witnesses, namely, P.W.4 Balakka @ Marakkal was not even able to remember the date of execution of Ex.A5-Registered Sale Deed.

73. By way of rejoinder, the learned counsel for the plaintiff (appellant) submits that the correct remedy was only to file a suit for partition and not suit for declaration inasmuch as there was no demarcation of the property by metes and bound.



74. He further submits that the three vendors are rustic village women and no serious fault can be attributed to them for not remembering the date of execution of Ex.A5-Registered Sale Deed dated 17.09.2007.

76. Before proceeding further, it will be useful to refer to law on the subject. Devolution on the death of a coparcener before 1956 used to be only by survivorship.

78. The rights and interests of the joint hindu family members over the property is determined by the either law of Succession or Survivorship. Female Members of the family had limited rights viz of maintenance and marriage expenses of the unmarried daughters. Further, every joint hindu family does not necessarily have a coparcener.

- i. Ancestral property
- ii. Separate property of coparceners thrown into



common coparcenary stock.

80. Coparcenary is a narrower institution. It included only three male lineal descendants from the last holder of the property. There is a four-generation Rule i.e. Males within four generations from, and inclusive of the eldest member of the family. Only males were recognised as only coparceners and after 2005 amendment to Hindu Succession Act, 1956 the daughters were given a limited right to be a coparcener. Otherwise, a coparcenary comes to an end when all the male members or coparceners die.

81. In a Coparcenary, the existence of property is very essential. A coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. A coparcener has no definite share in the coparcenary property, but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. Till partition of an ancestral property, it remains in the hand of a single person. It has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son was subsequently born, the alienation made before the birth could not be questioned. The moment a son is born, the property becomes a coparcenary property, and the son would acquire interest in that and become a coparcener.

82. Rule of survivorship is followed. It is not the law of succession as on the death of a coparcener. The interest in the property devolves on surviving coparceners. The rights of coparceners have right to demand partition, and right to alienate. Each coparcener is the owner of the entire property, but no one can set up an individual title to any part of the property. Every coparcenary is a joint hindu family.

83. Under Section 8 of the Hindu Succession Act, 1956, the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own family.

84. In Commissioner of Wealth Tax, Kanpur Vs. Chander Sen and Others, (1986) 3 SCC 567, it was held that under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore



whenever the father gets a property from whatever source from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him.

85. In Rohit Chauhan Vs. Surinder Singh and Others, (2013) 9 SCC 419, it was held that coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property.

86. After 1956, women could also inherit in exigencies mentioned in the proviso to understand Section 6. Section 6(5) as proposed in the original Bill of 2004 read thus:

"6. (5) Nothing contained in this section shall apply to a partition, which has been effected before the commencement of the Hindu Succession (Amendment) Act, 2004."

87. In Vineeta Sharma Vs. Rakesh Sharma, (2020) 9 SCC 1, it was held as under:-

(i) It is also settled proposition of law that without partition, only undivided share can be sold out but not specific property, nor joint possession can be disrupted by such alienation. Whether the consent of other coparcener is required for sale or not, depends upon by which School of Mitakshara law, parties are governed, to say, in Benares School, there is a prohibition on the sale of property without the consent of other coparceners.

(ii) Shares of coparceners can undergo a change in coparcenary by birth and death unless and until the final division is made. The body of coparcenary is increased by the operation of law as daughters were not coparceners.

(iii) In case coparcenary is continued, and later



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on between the surviving coparceners partition takes place, it would be necessary to find out the extent of the share of the deceased coparcener. That has to be worked out with reference to the property which was available at the time of death of deceased coparcener whose share devolved as per the proviso and Explanation I to Section 6 as in case of intestate succession.

88. The Court also held that severance of status may take place from the date of filling of a suit. However, a decree is necessary for working out the results of the same, and there may be a change of rights during the pendency of the suit for allotting definite shares till final decree is passed. There are cases in which partition can be reopened on the ground of fraud or mistake, etc., or on certain other permissible grounds. In appropriate cases, it can be reopened at the instance of minor also. Ultimately, the Court summarized as under:-

137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding



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that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

138. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

139. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in *Prakash v. Phulavati* [*Prakash v. Phulavati*, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] and *Mangammal v. T.B. Raju* [*Mangammal v. T.B. Raju*, (2018) 15 SCC 662 : (2019) 1 SCC (Civ) 300]. The opinion expressed in *Danamma v. Amar* [*Danamma v. Amar*, (2018) 3 SCC 343 : (2018) 2 SCC (Civ) 385] is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits.

89. I have considered the arguments of the learned counsel for the appellant and the learned counsel for the first respondent (seventh defendant). I have also perused the documents along with the depositions of two vendors of the plaintiff (appellant) namely *Thangammal & Balakka @ Marakkal* and the first and the seventh defendants (the first and second respondents herein).



90. The suit was filed by the plaintiff (the appellant) in O.S.No.130 of 2008 to essentially to direct the seventh and eighth defendants (first and seventh respondents) to divide the suit property into 6 equal share and allot 3 such share to the plaintiff (appellant) and deliver vacant possession by making provisions for pathway and other easementary rights by appointing a commissioner though previous owners of the property were also named as defendants.

91. At the time of institution of O.S.No.130 of 2008, the age of the first defendant (the second respondent) has been given as 70 years. The plaintiff (appellant) has traced his right over the suit schedule property from Ex.A1 dated 08.04.1964 and Ex.A2 dated 03.05.1967 which were purchased in the name of late Munia Nadar, the husband of the first defendant (second respondent) and the father of the plaintiff's vendors and the second defendant.

92. The total extent of land purchased in the name of late Munia Nadar in the year 1964 vide Ex.A1 dated 08.04.1964 and in the year 1967 vide Ex.A2 dated 03.05.1967 was 1.60 Acres (50 Cents + 1.10 Acres). However, the Trial Court has determined the total extent of purchase vide Ex.A1 and Ex.A2 as 1.51 Acres (0.61 Hectors).

93. The late Munia Nadar purchased the suit schedule property from two sons of Sengoda Chettiar, namely, Marriappa Chettiar and Pongianna Chettiar by the aforesaid sales deeds. 50 Cents of land in S.No.375/4C was purchased from Marriappa Chettiar vide Ex.A1 dated 08.04.1964 and later 1.10 Acres of land vide Ex.A2 dated 03.05.1967 from Pongianna Chettiar in the same S.No.375/4C.

94. The first defendant (the second respondent) would have been approximately age of 26 years at the time of execution of Ex.A1 dated 08.04.1964 and 29 years at the time of execution of Ex.A2 dated 03.05.1967. As per the Ex.B1, Death Certificate dated 08.01.1992, age of late Munia Nadar has been given as 75 years. It can therefore a presumption draw that late Munia Nadar would have been aged at least 47 years.

95. Therefore, it is also quite reasonable to infer that at the time of execution of Ex.A1 dated 08.04.1964 and Ex.A2, late Munia Nadar would have had sufficient income to purchase these properties. However, there are no independent evidence to suggest that late Munia Nadar was leading an independent life away from the joint family.



96. Whether the suit schedule properties were ancestral properties or self-acquired properties of late Munia Nadar is a question of fact. The evidence on record indicates that even though these properties were purchased in the year 1964 and 1967 vide Ex.A1 and Ex.A2 in the name of late Munia Nadar, they were treated as ancestral properties by all the members of families of late Munia Nadar except by the appellant's vendors in the year 2007 when they stepped into sell their purported share in the property to the plaintiff (appellant).

97. The facts also indicate that the family of late Munia Nadar along with his descendants and two siblings and his wife, namely, the first defendant (the second respondent) have treated all the property as an ancestral property in the hands of late Munia Nadar. While effecting sale to the eighth defendant vide Ex.A4 dated 13.09.2001.

98. If the properties purchased in the name of late Munia Nadar vide Ex.A1 dated 08.04.1964 and Ex.A2 dated 03.05.1967 were ancestral in nature, automatically, the plaintiff's vendors right to the property would have stood excluded as per the provisions of the Hindu Succession Act, 1956 as it stood till 2005.

99. If the suit schedule properties were ancestral properties, the plaintiff's vendors who were part of the joint family of Late Munia Nadar prior to their marriage, had no right over the aforesaid properties. As Hindu women, they were merely entitled to only maintenance from and out of the income out of the ancestral properties prior to their marriage.

100. After their marriage, the plaintiff's vendors became part of the Hindu Undivided Family of their respective husbands. If they were already married before 1989, the limited rights recognised under the amendments to the provisions of the Hindu Succession Act, 1956 in Tamil Nadu also would not have been available to them.

101. If the suit schedule properties were ancestral properties in the hands of late Munia Nadar, only the surviving males as coparceners would have been entitled to a share the property as coparceners prior to the amendment to the Hindu Succession Act, 1956 in the year 2005.

102. Thus, after the death of late Munia Nadar, late Muthusamy and Srinivasan (the second defendant) and their male children would have been the only surviving coparceners who could



demand partition. Only after September 2005, the daughters also would have been treated as coparceners property as there was no prior disposition prior to 20.12.2004.

103. Late Munia Nadar had only 2 sons, namely Muthusamy (since deceased) and Srinivasan (the second defendant) and three daughters (the appellant/ plaintiff's vendors).

104. Out of total extent of 1.51 Acres (0.61 Hec.), the two sons of late Munia Nadar and the first defendant Kaliammal, i.e., late Muthusamy and second son Srinivasan (the second defendant) each would have been entitled to 50% share in the suit schedule property measuring a total extent of 1.51 Acre if they desired a partition between them.

105. Thus, the family of late Muthusamy (the first son) would have been entitled to 75.5 Cents from and out of these suit schedule properties if a partition was demanded. The second son, namely Srinivasan and his family would have been entitled to the balance of 75.5 Cents from and out of the suit schedule properties.

106. Ancestral properties could thus have been divided in a partition only between the male progenies of late Munia Nadar and the first defendant, namely late Muthusamy (first son) and Srinivasan (second defendant - second son) and their respective sons if they desired partition.

107. If a further partition was affected between the two sons of late Muthusamy, i.e., Ramalingam and late Raju as coparceners, each would have been entitled to 37.75 Cents i.e., 50% of the 75.5 Cents allotted to their parents (75.5 cents).

108. There appears to have been an oral partition which entered into between the family members and was acted upon, pursuant to which, first sale was affected by late Raju i.e., the second son of late Muthusamy grandson of late Munia Nadar and first defendant Kaliammal in favour of the seventh defendant (the first respondent) vide Ex.A3 dated 15.05.1995.

109. Thus, the first conveyance to an extent of 37 $\frac{3}{4}$ Cents from the suit schedule property made by late Raju, the grandson of kaliammal (the first defendant/ second respondent) and late Munia Nadar through their second son of late Muthusamy and his wife Sellammal to the seventh defendant (the first respondent herein) cannot be questioned.



110. The facts indicate that the first to sixth defendants along with late Munia Nadar's brother and sister, namely Sengoda Nadar and Pachiammal sold the land in S.No.375/2 measuring an extent of 2.31 Acres along with 21 Cents of land in S.No. 375/2 and S.No.365/7 together with the balance land measuring an extent of 1.14 Acres in S.No.375/4C vide Ex.A4 dated 13.09.2008 to the eighth defendant (seventh respondent).

111. The plaintiff's vendors, namely, Thangammal, Nallammal and Marakkal were not parties to the sale deed in Ex.A4 dated 13.9.2001. The recital of Ex.A4 dated 13.09.2001 clearly indicates that a total extent of 3.66 Acres was conveyed. It consisted of 2.31 Acres in S.No.375/2, 1.14 Acres in S.No.375/4C-1 and 21 Cents in S.No.365/7 and was sold as an ancestral property to the eighth defendant (seventh respondent herein).

112. Ex.A4 sale deed dated 13.9.2001 was a composite sale deed. It not only consisted of balance land measuring an extent of 1.14 Acres in Re-Survey No.375/4C-1 in Vellarivalli Village but also certain other parcels of the abutting land measuring an extent of 2.31 Acres in Survey No.375/2 and land measuring 21 Cents in Survey No.365/7 in the same village. The recital in the sale deed in Ex.A4 dated 13.09.2001 indicates that the family of Late Munia Nadar treated all the lands as ancestral property in above three Survey Numbers.

113. The sale deed in Ex.A3 dated 15.05.1995 also confirms that the sale was made to seventh defendant (first respondent) by late Raju as a shareholder. The plaintiff (the appellant herein) has not produced any evidence to substantiate that the properties were self-acquired properties barring the evidence of Kaliammal, the first defendant (second respondent herein). However, the said witness has contradicted herself during cross examination.

114. Further, after effecting sale in Ex.A4 dated 13.9.2001, the first defendant (second respondent herein) as a defendant witness (D.W1) cannot take a different stand to dispute the characteristic of the properties. Therefore, the property has to be treated as an ancestral property tracing its origin from the time of late Rama Nadar, the father of late Munia Nadar, Sengoda Nadar, Pachiammal the property had all the characteristic of an ancestral property though was purchased in the name of late Munia Nadar vide Ex.A1 dated 08.04.1964 and Ex.A2 dated 03.05.1967.



115. After the death of late Munia Nadar in the year 1992 on 08.01.1992, an oral partition appears to have taken place and was acted upon by the family members. This is evident from the conduct of the parties and subsequent events. Particularly, in the light of the fact the first sale vide Ex.A3 dated 15.05.1995 by late Raju, the grandson of late Munia Nadar and the first defendant through their first son late Muthusamy vide in favour of the seventh defendant (first respondent) for an extent of 37.75 Cents in the suit schedule property.

116. The second sale of the suit schedule property vide Ex.A4 dated 13.09.2001 effected by the family of the second son Srinivasan of late Munia Nadar and the first defendant Kaliammal (along with his sons) and the legal other surviving legal heir of first son late Muthusamy ie. latter's their wife, son's daughter-in-law and their daughter. This sale indicates that the family has treated the entire suit schedule property as an ancestral property. An extent of 37.75 Cents was sold by Sellammal, the wife of late Muthusamy (grandson of late Munia Nadar and the first defendant Kaliammal) along with their daughter-in-law and granddaughter vide Ex.A4 dated 13.09.2001 along with the balance allotted to the second son Srinivasan of late Munia Nadar and the first defendant Kaliammal and his family (Ramasamy and Chinnaraju, the seventh respondent / eighth defendant) in favour of the eighth defendant vide Ex.A4 dated 13.09.2001.

117. The family of the second son Srinivasan (along with his sons) who had 50% (75.5 cents) right over the suit schedule property along with other members of the family of late Ramalingam S/o late Muthusamy and Sellammal (grandson of late Munia Nadar and the first defendant Kaliammal) sold their share.

118. If there was an oral partition among the family members, the two sons of late Munia Nadar namely Muthusamy and Srinivasan would have been entitled to 1/3rd share each along with their mother Kaliammal the second respondent (the first defendant) and the appellant's vendors.

119. Thus, the sale effected by late Raju, the second son of late Muthusamy to the seventh defendant (first respondent herein) vide Ex.A3 dated 15.05.1995 cannot be questioned. Likewise, the sale effected by the rest of the members of the joint family to the eighth defendant vide Ex.A4 dated 13.09.2001, also cannot be questioned. The appellant has purchased a property over which his vendors had no clear title. A person who does not have a share in such property cannot obviously be a party to a partition.



120. The appellant is a subsequent purchaser of the suit schedule properties from his vendor, namely the 3 daughters namely Thangammal, Nallammal and Marakkal has deliberately invested in a property to unsettle the family arrangement and a partition which was acted upon between the family members.

121. The First Appellate Court also noted that one of the vendors of the plaintiff's namely Thangammal (PW3) during her cross-examination admitted that there was no partition of the suit schedule properties between the legal heirs of Rama Nadar namely, Munia Nadar and Sengoda Nadar.

122. The First Appellate Court also has noted that the evidence of P.W.3. Thangammal and P.W.4. Marakkal (two of the vendors of the plaintiff/ daughter of late Munia Nadar and first defendant) admitted that there was no partition between the legal heirs of late Rama Nadar namely, Munia Nadar and Sengoda Nadar.

123. The First Appellate Court further concluded that the suit schedule property was an ancestral property as was admitted by P.W.3. Thangammal and P.W.4. Marakkal, two of the vendors of the plaintiff.

124. During the cross examination before the Trial Court in her depositions, the daughter of the late Munia Nadar and the first defendant (second respondent herein) has contradicted herself.

125. The first defendant (the second respondent) who deposed evidence as D.W.1 before the Trial Court has contradicted herself. The first defendant in her written statement admitted that an extent of 62½ Cents was sold to the eighth defendant (seventh respondent) vide Ex.A4 dated 13.09.2001 though the recital in Ex.A4 dated 13.09.2001 clearly indicates that the conveyance of 1.14 Acres of land in S.No.375/4C-1.

126. These lands were sold by the first to sixth defendants, Sellammal W/o late Muthusamy (the first son of Munia Nadar and first defendant) along with late Munia Nadar's brother and sister, namely Sengoda Nadar and Pachiammal, to the eighth defendant (the seventh respondent herein).

127. That apart, during the cross examination, the first defendant (second respondent) has also admitted that the land was conveyed through Ex.A4 dated 13.09.2001 as an ancestral property though she has stated that the suit schedule properties were not



purchased out of the income from an ancestral income by her husband late Munia Nadar.

128. The first defendant (second respondent) in her deposition at the time of cross examination has also admitted to the execution of Ex.A4 dated 13.09.2001 to the eighth defendant (seventh respondent) was after the boundaries were marked.

129. The first defendant (the second respondent) having accepted that the property in Ex.A4 dated 13.09.2001 was sold as an ancestral property cannot either turn around and dispute the extent of sale in Ex.A4 dated 13.09.2001 to the eighth defendant (seventh respondent) or the characteristic of the property. Having sold the property as an ancestral property, it was not open for the first defendant (the second respondent) to depose that property in Ex.A1 dated 08.04.1964 and Ex.A2 dated 03.05.1967 were self-acquired property.

130. The first defendant (the second respondent) has merely denied the extent of land conveyed in Ex.A4 dated 13.09.2001 during her cross-examination. However, it is to be noticed that Section 92 of the Indian Evidence Act clearly prohibits a witness to depose evidence on content of the documents. Recently also the Hon'ble Supreme Court in Placido Francisco Pinto (D) eighth Vs. Jose Francisco Pinto and another, 2021 SCC Online SC 842, in para 25, held as under:-

A reading of the aforesaid judgment would show that it was open to the plaintiff to assert that the document was never intended to be acted upon and the document is a sham. Such question arises when one party asserts that there has been a different transaction altogether than what is recorded in the document. It is for that purpose oral evidence is admissible.

131. The recital of Ex.A4 dated 13.09.2001 clearly indicates that a total extent of 3.66 Acres was conveyed. It consisted of 2.31 Acres in S.No.375/2, 1.14 Acres in S.No.375/4C-1 and 21 Cents in S.No.365/7 and was sold as an ancestral property to the eighth defendant (seventh respondent herein). The deposition of first defendant (second respondent) that the land conveyed through Ex.A4 dated 13.09.2001 was a self-acquired property of her husband late Munia Nadar and that the property conveyed through Ex.A4 dated 13.09.2001 as an ancestral property cannot be countenanced and such evidence was contrary to Section



92 of the Indian Evidence Act.

132. The sale deed in Ex.A3 dated 15.05.1995 also confirms that the sale was made to seventh defendant (the first respondent) by late Raju as a shareholder. Therefore, the property has to be treated as an ancestral property tracing its origin from Rama Nadar the father of late Munia Nadar, Sengoda Nadar, Pachiammal though it was purchased in the name of late Munia Nadar vide Ex.A1 dated 08.04.1964 and Ex.A2 dated 03.05.1967.

133. The balance $1/3^{\text{rd}}$ share would have been divided on the legal heirs by way of inheritance and the aforesaid $1/3^{\text{rd}}$ share would have been divided equally among all the legal heirs of late Munia Nadar.

134. The manner in which the grandson of the late Munia Nadar the late Raju sold the land measuring an extent of $37\frac{3}{4}$ Cents to the first respondent/ seventh defendant clearly confirms that the family had treated the property as ancestral property between the late Munia Nadar and Sengoda Nadar.

135. Merely because the seventh defendant (the first respondent herein) or the eighth defendant (the seventh respondent herein) did not sue for partition of the suit schedule properties under Section 44 of the Transfer of Property Act, 1882 because there was no allegedly physical division of the suit schedule property as has been stated by the appellant is of no consequence. In any event, the first defendant (the second respondent herein) in her deposition has admitted that boundaries were drawn at the time of sale to the eighth defendant.

136. Thus, sale vide Ex.A3 dated 15.05.1995 in favour of the seventh defendant (the first respondent herein) by late Raju, the second son of late Muthusamy to the seventh defendant (the first respondent herein) and the subsequent sale vide Ex.A4 dated 13.09.2001 infavour of the eighth defendant (the seventh respondent herein) by his vendors can be countermanded.

137. A oral partition appears to have taken place between of two sons late Munia Nadar and 50% of the share Muthusamy in the land was allotted to the first son of late Munia Nadar and



first defendant (the second respondent) 50% of the aforesaid share was sold by his son late Raju to the seventh defendant (the first respondent).

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138. The balance 1.14 Acres of land was sold by the first to sixth defendants [the second to sixth respondents and Srinivasan (second defendant)] along with Sellammal wife of the first son Muthusamy of Munia Nadar vide Ex.A4 dated 13.09.2001 along with the land to an extent of 2.31 Acres in S.No.375/2, and 21 Cents in S.No.365/7 to the eighth defendant (the seventh respondent). Thus, the facts indicate that the property was treated as an ancestral property by the legal heirs of the late Munia Nadar including the first defendant (the second respondent) and sold by them. The appellant's vendors had also accepted the partition.

139. The appellant (plaintiff) who was purchased the property from the three daughters of late Munia Nadar and his wife first defendant (second respondent herein) after these properties were out of the bounds of the family after it was transferred to the seventh defendant (first respondent) and to the eighth defendant (seventh respondent). Therefore, the appellant (plaintiff) was not entitled to file any suit for partition of property which does not exist within fold of the family. That being the case, the decision of the Trial Court has been correctly reversed by the First Appellate Court, though on altogether a different ground. In case, the plaintiff (appellant) wanted to perfect his title over the property, the plaintiff (appellant) should have filed a suit in time to set aside to sale vide Ex.A3/B4 Sale Deed and Ex.A4 infavour of the seventh and eighth defendants (first and seventh respondents herein).

140. Since, family has treated the entire suit schedule property as an ancestral property and in the light of the above discussion, there is no merits in the present Second Appeal. There is also no point to remitting the case back to the Trial Court for fresh determination. The appellant (plaintiff) having purchased the property without proper title to the same, he cannot ask for partition.

141. In the light of the above, the substantial questions of law raised by the appellant (plaintiff) are answered against the appellant (plaintiff). The Judgment and Decree of the Appellate Court reversing the Judgment and the Decree of the Trial Court stands confirmed.



142. Accordingly, this Second Appeal filed by the successful plaintiff in O.S.No.130 of 2008 and an unsuccessful respondent in the first appeal in A.S.No.23 of 2011 is dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1.The Sub Judge,
The Subordinate Court, Sankari.

2.The District Munsif Court, Sankari.

Copy to:

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

+1cc to Mr.N.Manokaran, Advocate SR.No.53119

+2cc to M/s.Zeenath Begum, Advocate SR.No.53259, 52961

S.A.No.224 of 2015
and M.P.No.1 of 2015

SJ(CO)
CB(12/01/2022)