



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.1132 of 2014  
and M.P.No.1 of 2014

1. Subramaniam
2. Murugan
3. Jayakodi
4. Sangeetha

...Appellants/Appellants/Defendants 8, 23 to 25

Vs.

1. Chinnammal
2. Pappayee
3. Thilagam
4. Mari
5. Selvam
6. Sellammal
7. Chinnapillai
8. Venkatachalam
9. Anbu
10. Vasantha
11. Chandra
12. Myilsamy
13. Sengamalai
14. Jeyammal
15. Srinivasan
16. Raja
17. Maragatham
18. Kamala
19. Maily
20. Bakkiyam
21. Pachiammal
22. Murugan
23. Dhanam
24. Ravi

...Respondents/Respondents 2 to 24/Plaintiff/  
Defendants 2 to 7 and 10 to 22

(Respondents 2 to 24 have given up)



PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 31.07.2013 in A.S.No.21 of 2011 on the file of the Subordinate Judge, Mettur, confirming the judgment and decree dated 11.04.2011 in O.S.No.141 of 2004 on the file of the District Munsif, Mettur.

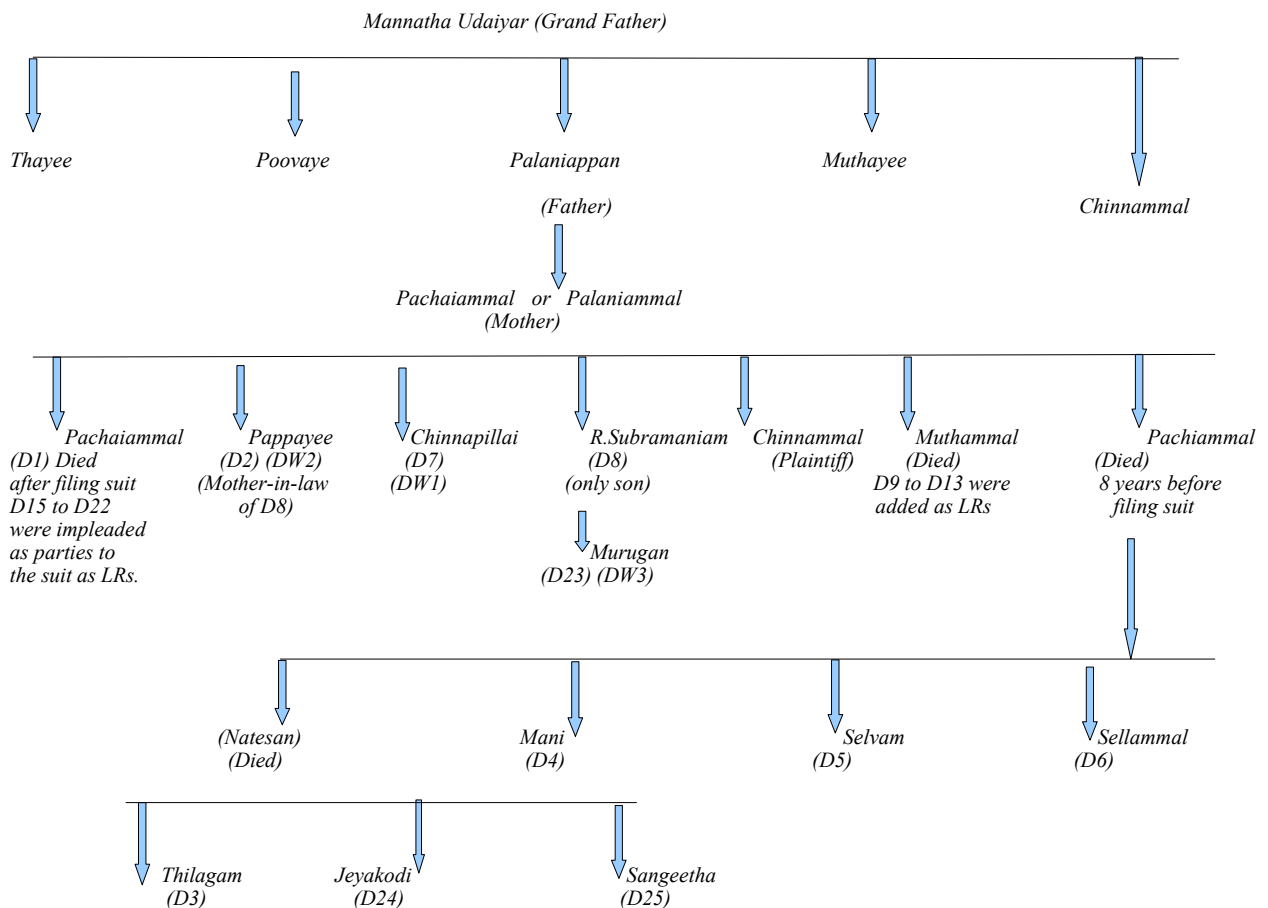
For Appellants : M/s.A.Shujath  
For 1<sup>st</sup> Respondent : Mr.C.Prabhakaran

### J U D G M E N T

The defendants 8, 23, 24 and 25 are the appellants. Having suffered the concurrent finding of the Courts below, they have preferred the present Second Appeal.

2. The first respondent/plaintiff filed a suit for partition and for mense profits. According to the plaintiff, one Mannatha Udaiyar had five children. His son Pazhaniappa Udaiyar married Pachaiaammal. Pazhaniappa and Pachaiaammal had seven children.

#### Genealogy Tree





3. The plaintiff/1<sup>st</sup> respondent is one of the daughters of Pachaammal. She filed a suit for partition of the properties. The plaintiff issued legal notice dated 08.06.2000 to the 8<sup>th</sup> and 14<sup>th</sup> defendants as they attempted to alienate the properties and thereafter, she filed a suit for partition claiming 1/14<sup>th</sup> share in the ancestral property and 1/7<sup>th</sup> share in the self acquired property.

4. The 8<sup>th</sup> defendant filed a written statement denying the claim made by the plaintiff. The plaintiff and other legal heirs being female and they were married 45 years back. The parents have given them Sreedhana and solemnized their marriage by spending huge amount and thereby, they are not entitled to any share. Further, the claim for partition cannot be made after a period of 25 years. Even otherwise, the defendant is entitled to adverse possession and that he settled the property in favour of his son on 23.06.2004 by virtue of registered settlement deed registered as Document No.1283 of 2009. Thereafter, the suit is filed and hence, it is liable to be dismissed.

5. After framing appropriate issues, the trial Court held that the claim of the 8<sup>th</sup> defendant that he inherited the property by virtue of Will executed by the mother dated 30.05.1990 is false and the Will was not proved in the manner known to law and pendente lite transfer is not sustainable and decreed the suit.

6. The appellants herein have preferred an appeal against the decree and judgment of the trial Court. The First Appellate Court, after elaborately discussing the evidence and perusing the materials placed before it, dismissed the appeal and confirmed the decree passed by the trial Court. Aggrieved over the same, the appellants are before this Court.

7. The Second Appeal is admitted on the following substantial questions of law:-

1. Whether the Courts below erred in decreeing the suit, when the suit properties are not proved to be joint family properties?
2. Whether the Courts below were correct in decreeing the suit, when the 8<sup>th</sup> defendant, after getting the properties in his name, disposed a portion of the same, by exercising his right, which proved that he is the absolute owner of the suit properties and the same does not have the character of 'joint family property'?



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3. Whether the Courts below were correct in decreeing the suit, when the 2<sup>nd</sup> appellant viz., the 23<sup>rd</sup> defendant in the suit got a portion of the properties, by way of a Registered Settlement Deed, which has not been challenged in the manner known to law?

4. Whether the Courts below were right in decreeing the suit, even assuming without admitting as if the properties are joint family property, when the 8<sup>th</sup> defendant has acquired title of the suit properties, by adverse possession also?

8. The learned counsel for the appellants would vehemently contend that the plaintiff without knowing the details of the legal heirs and without knowing that she has no rights over the properties, has preferred the suit on assumptions and presumptions. The Survey Numbers given in the schedule are wrong. The plaintiff failed to prove that she is in joint possession of the property and also failed to prove that it is a joint family property. The marriage of the plaintiff and other legal heirs were solemnized 45 years back that is to say in the year 1989 and therefore, they cannot claim any right over the property. Further, the Settlement Deed executed by the 8<sup>th</sup> defendant in favour of his son on 23.06.2004 was not at all challenged and therefore, the plaintiff is not entitled to any share in the property and the suit is bad for non-joinder for parties. The Courts below failed to note that the first appellant has inherited the property by virtue of Will executed by his mother and therefore, the Courts ought not to have granted a decree for partition in view of that.

9. I have considered the submissions.

10. Admittedly, there are ancestral properties and self-acquired properties belonging to the family. The first appellant herein claimed that he inherited the property by virtue of the registered Will executed by his mother Pachaiaammal on 30.05.1990, but, unfortunately, he has not examined the Attestors of the Will. Therefore, the Courts have concurrently found that the Will was not proved and therefore, the first appellant is not entitled to the inheritance as claimed by him. In that event, all the legal heirs are entitled to equal share in the property.



11. Secondly, it is an admitted fact vide Ex.A5, mother of the parties purchased the property by way of registered sale deed. Once it is found that the Will is not proved, it should be construed that she died intestate and all the legal heirs are entitled to equal share.

12. Though the appellant claims exclusive ownership through continued and uninterrupted possession, he has not proved as to how the other co-sharers were ousted of their rights. Mere mutation of revenue records in his favour will not confer any title. Onus is cast upon the appellant to prove that the patta was granted with the acknowledgment of his title by the other co-sharers. The Courts below have categorically discussed about the circumstances, in which, Ex.A7, Patta, issued to the first appellant/ 8<sup>th</sup> defendant.

13. The appellant has not explained much less pleaded in the written statement as well as in the Settlement Deed marked as Ex.B12 as to how he is entitled to exclusive title through Ex.A7. Even though the appellants herein have taken a stand that they are entitled to adverse possession, it has not been specifically pleaded and proved from which date their possession has become adverse and as to how the co-sharers are ousted and excluded from claiming right over the property. From the above, it would be seen that the materials placed before this Court, do not prove adverse possession and ouster of other co-sharers. The Will obviously was not proved and Attestors of the Will were not examined. The plaintiff has issued a legal notice on 08.06.2000 and the suit was filed on 26.07.2000. The Settlement Deed came to be executed on 23.06.2004. That is to say during the pendency of the suit. In other words, it is a pendente lite document. Therefore, the Settlement Deed will not have any impact on the claim for partition made by the respondents herein. When the Genealogy is admitted that Mannatha Udaiyar possessed certain properties and certain properties were purchased by Pachaiyammal, mother of the parties, it goes without saying that the suit properties belong to the joint family. When the mother died intestate, it is automatic that all the first class legal heirs are entitled to equal share. The claim of the 8<sup>th</sup> defendant that he inherited the property by Will is not proved in accordance with Section 68 of the Evidence Act. In that way, the substantial questions of law do not stand the test of scrutiny of law and are answered against. The judgment and decree passed in O.S.No.141 of 2004 dated 11.04.2011 on the file of the District Munsif, Mettur, as confirmed in A.S.No.21 of 2011 dated 31.07.2013 on the file of the Subordinate Judge, Mettur, is hereby confirmed.



In the result, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,  
Mettur.
2. The District Munsif,  
Mettur.
3. The Section Officer  
VR Section  
High Court, Madras 104.

+1 CC to Mr.C.Prabhakaran, Advocate Sr. 54959.

S.A.No.1132 of 2014  
and M.P.No.1 of 2014

AK(CO)  
SRG(25/02/2022)