



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2021

CORAM

**THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**

S.A. (MD) No. 621 of 2007

WEB COPY

1. Valliammai
2. Udaiammai
3. Alagammai

... Appellants/Respondents/  
Plaintiffs

Vs.

1. SP.Lakshmanan Chettiar(Died)

... 1<sup>st</sup> Respondent/Appellant/  
Defendant

2. L.Chellammai
3. L.Subbiah
4. L.Perichiappan

(Respondents 2 to 4 are brought on record as LR's. of the  
deceased sole respondent vide Order dated 09.07.2021  
made in C.M.P. (MD) Nos. 5671 to 5673 of 2021)

... Respondents 2 to 4

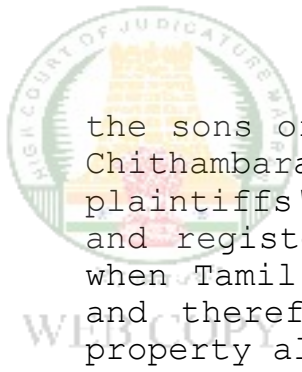
**Prayer:** Second appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 25.10.2006 made in A.S.No.30 of 2005 on the file of the learned District Judge, Sivagangai thereby reversing the judgment and decree dated 16.02.2005 made in O.S.No.136 of 2003 on the file of the learned Subordinate Judge, Devakottai and to allow the above second appeal.

|                |                         |
|----------------|-------------------------|
| For Appellants | : Mr.M.P.Senthil        |
| For R-2 to R-4 | : Mr.V.R.Shanmuganathan |
| R-1            | : Died                  |

### J U D G M E N T

This second appeal arises out of partition suit proceedings.

2. The plaintiffs in O.S.No.136 of 2003 on the file of the Sub Court, Devakottai, are the appellants herein. The case of the plaintiffs is that the suit property is the coparcenary property of the plaintiffs and their father Thenappa Chettiar. According to them, the suit property originally belonged to their grandfather Chithambaram Chettiar. Chithambaram Chettiar through his first wife had begotten four sons, namely, Nachiappan Chettiar, Chithambaram Chettiar, Ramanathan Chettiar and Thenappa Chettiar. Through his second wife, he had begotten four sons. In the year 1952, partition was effected between the sons of the first wife and the sons of the second wife. The suit property was one of the properties allotted to



the sons of the first wife. On 03.04.1975, the other three sons of Chithambaram Chettiar released their shares in favour of the plaintiffs' father Thenappa Chettiar and a release deed was executed and registered on 03.04.1975. The stand of the plaintiffs is that when Tamil Nadu Act 1 of 1990 came into force, they were unmarried and therefore, they would become the members of the coparcenary property along with their father Thenappa Chettiar.

3. When the plaintiffs came to know that their father was attempting to alienate the property, they raised their objections and in fact issued paper publication also to deter prospective buyers from dealing unilaterally with their father. The original defendant Lakshmanan Chettiar who was residing in the opposite house was fully aware of the claims made by the appellants herein. In fact, he knew that the suit property bore the character of coparcenary property. Yet he entered into an agreement with their father Thenappa Chettiar and purchased the suit property on 08.05.2001 vide Ex.B.12. The appellants' father passed away on 17.02.2002. Since the plaintiffs are not parties to the aforesaid sale deed, they are entitled to ignore the same and apply for the relief of partition. With these plaint averments, the appellants herein filed the said suit for partition of 3/4<sup>th</sup> share in the suit properties and allotting them after division by metes and bounds.

4. The defendant/purchaser of the suit property filed written statement controverting the plaint averments. Based on the rival pleadings, the learned trial Judge framed the following issues:-

a) Whether the plaintiffs are entitled to 3/4<sup>th</sup> share in the suit property?

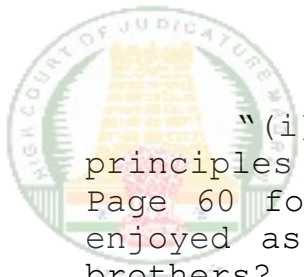
b) Whether the suit is bad for non-joinder of necessary parties?

c) Whether the suit property was sold to the defendant on 08.05.2001 and whether the defendant is enjoying the same ever since by paying house tax etc.?

5. The first and third plaintiff examined themselves as P.W.1 and P.W.2. Ex.A.1 to Ex.A.17 were marked. The defendant examined himself as D.W.1. Ex.B.1 to Ex.B.23 were marked. After consideration of the evidence on record, the trial Court by judgment and decree dated 16.02.2005 granted preliminary decree allotting 3/4<sup>th</sup> share to the plaintiffs. Aggrieved by the same, the defendant filed A.S.No.30 of 2005 before the District Judge, Sivagangai. By the impugned judgment and decree dated 25.10.2006, the decision of the trial Court was reversed and the appeal was allowed and the suit itself came to be dismissed. Challenging the same, this second appeal was filed by the plaintiffs.

6. This second appeal was admitted on the following substantial questions of law:-

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"(i) Whether the Court below is right in applying the principles laid down in the decision reported in 2004 III Law Weekly Page 60 for arriving at a finding that the suit property had been enjoyed as tenants in common by Thenappa Chettiar along with his brothers?

(ii) Whether on partition of ancestral property among the family members, the divided properties allotted to the shares lose their character of an ancestral property?

(iii) Whether the lower appellate Court is right in negating the claim of partition of the plaintiffs in the suit property though they remained unmarried as on 25.03.1989 in view of Section 29(A) of Hindu Succession Act, 1956 as amended by Act 1/90?"

7. The learned counsel appearing for the appellants submitted that there is no dispute that the suit property originally belonged to Chithambaram Chettiar, grandfather of the plaintiffs and that vide Ex.B.23 dated 31.05.1952 the suit property was allotted to the sons born through the first wife of Chithambaram Chettiar. The plaintiffs' father Thenappa Chettiar was one of the four sons born to Chithambaram Chettiar through the first wife. Partition among the four brothers, namely, Nachiyappan Chettiar, Ramanathan Chettiar, Chithambaram Chettiar and Thenappa Chettiar took place on 03.04.1975 (Ex.B.21). The suit property was mentioned as 'B' schedule in the said Ex.B.21. Thenappa Chettiar, father of the plaintiff and vendor of the original defendant was allotted 'B' schedule absolutely. Ex.B.21 was a record of partition that had already taken place among the four brothers. Therefore, it did not require any registration.

8. The learned counsel appearing for the appellants pointed out that since the suit property was allotted to Thenappa Chettiar and the same was acknowledged and recognised under Ex.B.21, it obviously bore the character of the coparcenary property at the hands of Thenappa Chettiar. Of course on 03.04.1975, Thenappa Chettiar did not have any son and therefore the plaintiffs/daughters of Thenappa Chettiar could not have claimed any right by virtue of their birth. However, this Court is obliged to take note of the subsequent statutory developments. In view of the Central Act No.39 of 2005 as interpreted by the Supreme Court in Vineeta Sharma case, the plaintiffs became coparceners by virtue of their very birth. That apart, they were unmarried daughters when Tamil Nadu Act 1 of 1990 came into force. Therefore, the learned counsel appearing for the appellants contended that this Court need not take note of the registered deed of release(Ex.A.1) executed by the three brothers of the plaintiffs' father in favour of Thenappa Chettiar. It was a redundant document. Partition had already taken place and the three brothers of Thenappa Chettiar executed the release deed in favour of Thenappa Chettiar and the same was recognised and acknowledged (Ex.B.21). Therefore, the execution and registration of Ex.A.1 release deed can be safely ignored as redundant and would not make any difference to the situation. His further contention was that the

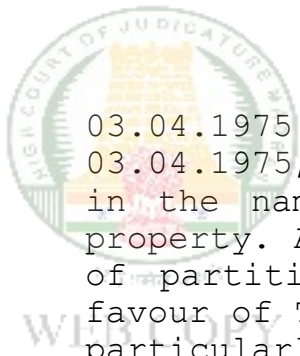


original defendant was in the know of things. As virtually conceded in the written statement itself, even in the suit sale deed, Thenappa Chettiar had described the properties as joint family properties. The defendant can only step into the shoes of Thenappa Chettiar and cannot claim any independent right as such. If Thenappa Chettiar could not have any defence in these proceedings, the original defendant or his legal heirs cannot have any defence before this Court. He submitted that the trial Court had correctly approached the issue and he called upon this Court to answer the substantial question of law in favour of the appellants and set aside the impugned judgment and decree of the first appellate Court and restore the decision of the trial Court.

9. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree passed by the first appellate Court do not call for any interference. According to him, Ex.B.21 Yadhasthu being an unregistered document does not appear to have been acted upon. Between the unregistered document Ex.B.21 and the release deed Ex.A.1, this Court ought to prefer the latter. In any event, the plaintiffs have not made any reference to Ex.B.21 in their plaint. He drew my attention to paragraph No.4 of the plaint. The plaintiffs traced their vendors' title only through Ex.A.1 release deed executed by the four brothers of Thenappa Chettiar. He would also state that the suit alienation had taken place in favour of the original defendant in the year 2001 itself and therefore, the plaintiffs cannot claim their right under the Central Act No.39 of 2005. He would also state that even before the Tamil Nadu Act 1 of 1990 came into force, partition had taken place. He submitted that the suit property was enjoyed by Thenappa Chettiar only as his separate property and that therefore the plaintiff cannot claim any coparcenary right therein. The original defendant did not want any legal complication. That is why, he wanted to involve the plaintiffs also in the sale transaction. It was a *bonafide* act on his part. Merely because the defendant evinced interest in adding the plaintiffs also in the sale transaction, that would not mean that the plaintiffs can claim any pre-existing right in the property as such. The attempt of the defendant to include them in the sale process will not clothe them with any right which they did not otherwise possess. The learned counsel placed reliance on the decision of the Madras High Court reported in (2004) 3 CTC 401 (Kokila V. Swathanthira).

10. I carefully considered the rival contentions and went through the evidence on record.

11. There is no dispute that the suit property originally belonged to the plaintiffs' grandfather Chithambaram Chettiar and that it was allotted to the four sons born to him through the first wife vide Ex.B.23 dated 31.05.1952. There is no dispute that the property was enjoyed by Thenappa Chettiar with effect from



03.04.1975 and the only question is whether with effect from 03.04.1975, the property bore the character of coparcenary property in the name of Thenappa Chettiar or whether it was his separate property. As per Ex.B.1, the suit property was also a subject matter of partition among the four brothers and eventually allotted in favour of Thenappa Chettiar. In view of the subsequent developments, particularly, in view of the Tamil Nadu Act 1 of 1990, the plaintiffs would definitely be coparceners and the property would also be a coparcenary property. But Ex.A.1 cannot be ignored as something redundant. If really Thenappa Chettiar had been absolutely allotted the suit property('B' schedule in Ex.B.21), then there was absolutely no reason for executing Ex.A.1.

12. I went through the contents of Ex.A.1. It states that the other three brothers of Thenappa Chettiar have agreed to receive a sum of Rs.7,875/- in front of the named panchayathars and since the same has been settled, they were relinquishing their  $3/4^{\text{th}}$  undivided share in the suit property. This being a registered document, I am bound to take note of the same. I have to necessarily conclude that while  $1/4^{\text{th}}$  share in the suit property bears the character of the coparcenary property, the remaining  $3/4^{\text{th}}$  share in the suit property bore the character of separate property at the hands of Thenappa Chettiar. So viewed the plaintiffs will have  $3/4^{\text{th}}$  of  $1/4^{\text{th}}$  share of Thenappa Chettiar. The suit sale will have to be confined to Thenappa Chettiar's  $3/4^{\text{th}}$  share +  $1/16^{\text{th}}$  =  $13/16^{\text{th}}$  share. The plaintiffs will be entitled to  $3/16^{\text{th}}$  share. The substantial questions of law are answered accordingly. The impugned judgment and decree is modified to the above extent. This second appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**To:**

1. The District Judge,  
Sivagangai.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Subordinate Judge,  
Devakottai.

3. The Record Keeper, V.R.Section,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.VR.SHANMUGHANATHAN, Advocate ( SR-25035[F] dated  
02/08/2021 )

+1 CC to M/s.M.P.SENTHIL, Advocate ( SR-25000[F] dated 02/08/2021 )

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02.08.2021

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