



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.675 of 2008

and

M.P.(MD)No.1 of 2010

WEB COPY

R.Gopalasamy

... 1st Defendant / Appellant /
Appellant

-Vs-

1.R.Seetharaman

2.T.Madasamy

3.V.Thangavelu

4.R.Rajendran

5.R.Rengammal

6.R.Rukmani

7.R.Rajesh

8.R.Rashmi

... Plaintiff & Defendants 2 to 6 /
Respondents / Respondents

(R7 & R8 are brought on record as Lrs of the deceased 5th respondent as per order dated 14.09.2018 in C.M.P.(MD)Nos.11842 to 11844 of 2017)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.10 of 2006 on the file of the Subordinate Judge, Sivakasi, dated 19.06.2007 confirming the judgment and decree passed in O.S.No.53 of 2003 on the file of the District Munsif, Sattur, dated 28.07.2005.

For Appellant : Mr.M.Rajapandi

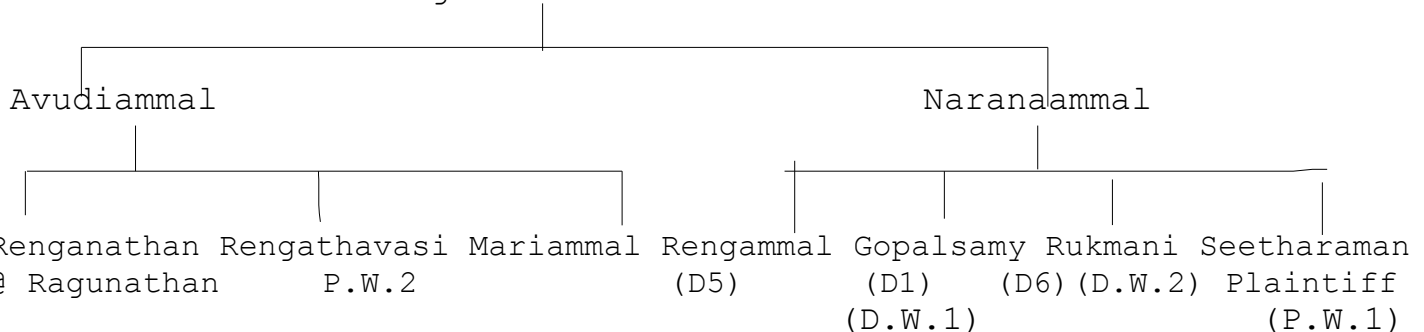
For R2, R4 & R6 : no appearance

For R1 : Shri.Devaraj

JUDGMENT

This second appeal arises out of a suit for partition. The genealogy is as under:-

Rengathavasi Naicker





2. The suit schedule comprises 26 items. The suit properties originally belonged to Thavasi Naicker. He had two sons namely Pethappa Naicker and Rengathavasi Naicker. The partition took place between Pethappa Naicker and Rengathavasi Naicker in the year 1934. Rengathavasi Naicker was blessed with two wives namely Avudiammal and Naranaammal who are sisters. Through Avudiammal, Rengathavasi Naicker begot two sons and one daughter. Through Naranaammal, he begot two daughters and two sons. The younger son Seetharaman is the plaintiff in the present suit. The trial court by judgment and decree dated 28.07.2005 passed preliminary decree allotting 5/12th share in the suit properties in favour of the plaintiff. Aggrieved by the same, the first defendant Gopalasamy brother of Seetharaman filed A.S.No.10 of 2006 before the Sub Court, Sivakasi. By the impugned judgment and decree dated 19.06.2007, the first appellate court dismissed the appeal. Challenging the same, this second appeal came to be filed. The second appeal was admitted on the following substantial questions of law:-

(1) Whether the Courts below were right in concluding that the properties exchanged, which are subject matter of the suit, under Ex.A17-Exchange Deed, dated 01.12.1999, are absolute properties of the plaintiff, despite the specific admission by the plaintiff in his evidence as P.W.1 that the properties exchanged were actually ancestral properties?

(2) Whether the suit is bad for partial partition?

3. Heard the learned counsel on either side.

4. Before the learned counsel appearing for the appellant could argue the matter on merits, the learned counsel appearing for the plaintiff / first respondent submitted that the property which was acquired by the plaintiff under Ex.A17 can also be included in the suit schedule so as to make it amenable to partition. I must note that the second appeal was admitted only on the sole question as to whether the suit was bad for partial partition. The courts below had concurrently found that the property that was exchanged by the plaintiff with Durairaj son of Pethappa Naicker was the separate property of the plaintiff. It is this finding that is assailed in this second appeal.

5. Responding to the offer made by the learned counsel appearing for the plaintiff / R1 herein, the learned counsel appearing for the appellant, on instructions, submitted that the appellant will not have any grievance if the property that was acquired by the plaintiff under Ex.A17 is also included in the suit schedule. The impugned judgment and decree passed by the court below



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is accordingly modified. The second appeal is partly allowed by including the property acquired by the plaintiff under Ex.A17 in the suit schedule. It shall be included as item No.27 in the suit schedule. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Sivakasi.

2.The District Munsif, Sattur.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.DEVARAJ, Advocate (SR-29913[F] dated 22/09/2021)

+1 CC to M/s.M.RAJAPANDIYAN, Advocate (SR-29734[F] dated 21/09/2021)

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RD(7.10.2021) 3P 7C