



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.642 of 2006

1.Kantham

2.Kala

3.Kannagi

4.Kalyani (died)

... Appellants/Respondents 1 to 4/
Plaintiffs

5.Vijay

6.Iswarya

... Appellants

(A5 & A6 are brought on record as LR's of the deceased A4
vide order dated 24.01.2020 made in C.M.P.(MD)Nos.378, 379 and
380 of 2020)

-Vs-

1.Saraswathi

2.Elango

3.Sivagami

4.Poonkodi

5.Tamizharasi

... Respondents 1 to 5/Appellants /
Defendants 3 to 7

6.Subramani (Died)

7.Kamaraj

...Respondents 6 & 7/Respondents 5&6/
Defendants 1 & 2

8.Meenakshi

9.Ajith

10.Ammu

11.Vadivel

12.Ponmani

13.Maragatham

... Respondents

(Respondents 8 to 13 are brought on record as LR's of the deceased
6th respondent vide Court order dated 23.08.2021 made in
C.M.P.(MD)Nos.6064 & 6066 of 2021)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in A.S.No.36 of 2005, dated 17.10.2005 on the file of the Principal District Judge, Tiruchirappalli reversing the decree and judgment made in O.S.No.388 of 1997, dated 08.11.2004 on the file of the Principal Subordinate Judge, Tiruchirappalli.

For Appellants

: Mr.Raguvaran Gopalan
for Mr.K.Prabhakar

For R1 to R5

: Mr.M.P.Senthil

For R7

: Mr.P.Sivachandran

For R12

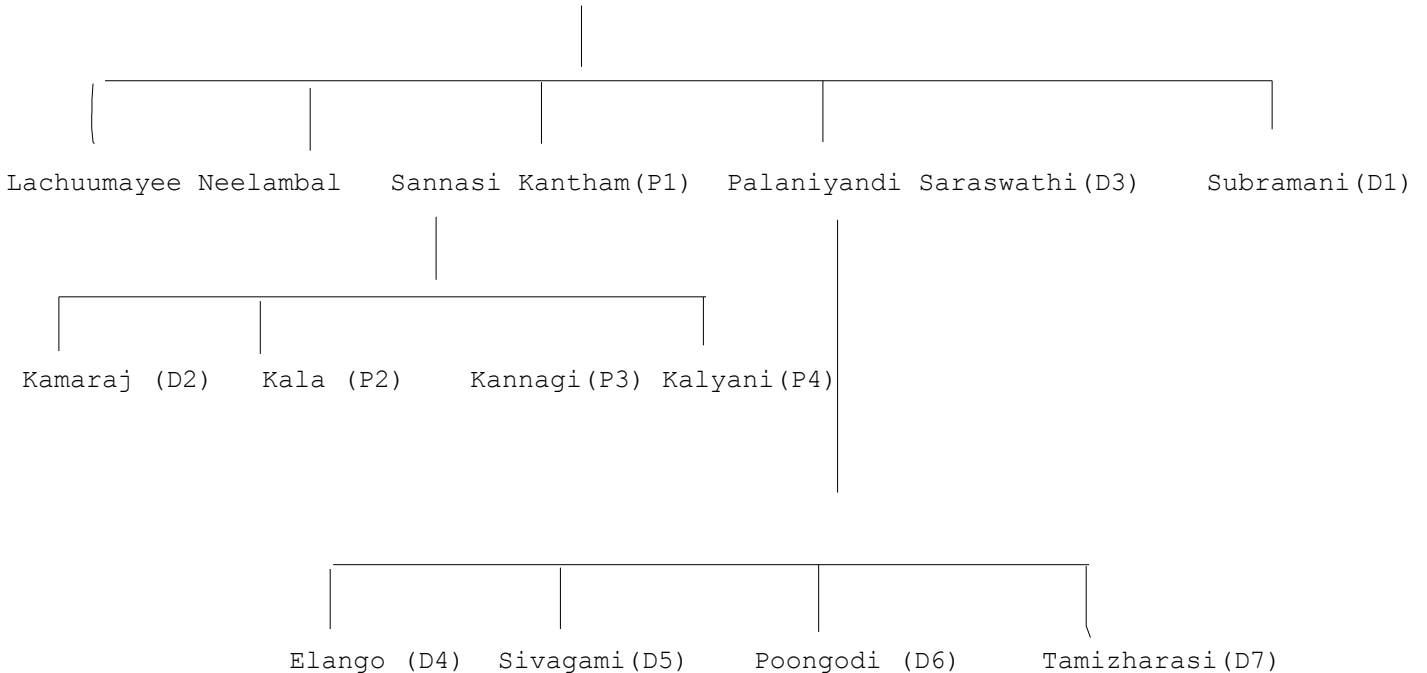
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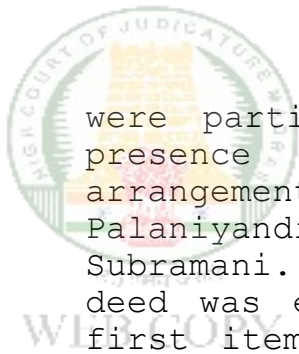
JUDGMENT

The plaintiffs in O.S.No.388 of 1997 on the file of the Principal Sub Court, Tiruchirappalli are the appellants in this second appeal. The appellants 1 to 3 herein along with the deceased fourth appellant filed the said suit for partitioning and allotting 4/15th share in the suit schedule property. The genealogy is as under:-

Chinnathambi



2. The suit items 1 and 2 stood in the name of Chinnathambi Muthiriyar. There is no dispute that the first item was an ancestral property and that the second item was the self acquired property of Chinnathambi Muthiriyar. The case of the plaintiffs is that during his life time, Chinnathambi Muthiriyar executed Ex.A2 dated 27.10.1981 bequeathing both the items in favour of his sons in equal shares. Of-course, the plaintiffs putforth a claim that the suit first item was also the self acquired property of Chinnathambi Muthiriyar. The case of the plaintiffs was that the Sannasi's family was residing in the suit first item and that Planiyandi's son Elango was attempting to interfere with their possession by claiming that the suit first item has been allotted to him in a partition. That necessitated filing of the suit. Palaniyandi's son Elango who was shown as the fourth defendant filed written statement controverting the plaint averments. According to him, the first item was an ancestral property, while the second item was the self acquired property of his grandfather. While admitting the execution of the Will dated 27.10.1981, he claimed that Chinnathambi Muthiriyar could not have dealt with the ancestral property in his testament. Be that as it may, during the life time of Chinnathambi Muthiriyar, a family arrangement was entered into on 16.03.1991. All the three sons herein namely Sannasi, Palaniyandi and Subramani



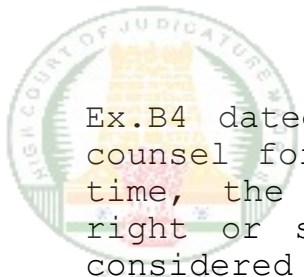
were parties to the said arrangement and it took place in the presence of Chinnathambi Muthiriyar. Pursuant to the said arrangement, the first item of the suit property was allotted to Palaniyandi, while the second item was allotted to Sannasi and Subramani. It was also later given effect to and a family partition deed was entered on 21.05.1997. As per the said partition, the first item was allotted to the branch of Palaniyandi, while the second item was allotted to the other two branches represented by the third son Subramani and the second defendant Kamaraj who was the son of Sannasi. Since the properties had already been divided, the present suit was not maintainable. That was the stand of the fourth defendant. Based on the rival pleadings, the trial court framed the necessary issues. The first plaintiff examined herself as P.W.1. Krishnasamy who was one of the attesting witness of the Will Ex.A2 dated 27.10.1981 was examined as P.W.2. Ex.A1 to Ex.A5 were marked. Subramani examined himself as D.W.3. Elango examined himself as D.W.1. Kamaraj examined himself as D.W.4. Chozharajan was examined as D.W.2. Ex.B1 to Ex.B14 were marked. After a consideration of the evidence on either side, the trial court by judgment and decree dated 08.11.2004 passed preliminary decree as prayed for. Permanent injunction was also granted. Aggrieved by the same, the aggrieved defendants filed A.S.No.36 of 2005 before the Principal District Judge, Tiruchirappalli. Vide judgment and decree dated 17.10.2005, the decision of the trial court was reversed and the suit came to be dismissed. Challenging the same, this second appeal was filed. It was admitted on the following substantial questions of law:-

(1) Whether the first appellate court is right in coming to a conclusion that Ex.A2 dated 16.03.1991 is only an agreement to partition the properties between Sannasi, Palaniyandi and Subramanian when the defendants contended that Ex.B2 is a family arrangement and in pursuance of the same, the defendants have entered into another partition deed dated 21.05.1997 marked as Ex.B4?

(2) Whether the document dated 16.03.1991 between Sannasi, Palaniyandi and Subramanian is inadmissible in evidence for want of registration and stamp duty?

3. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellant and restore the decision of the trial court.

4. Per contra, the learned counsel appearing for the contesting respondents submitted that the suit Will Ex.A2 was superseded and impliedly cancelled by the family arrangement that took place among the three male branches. Ex.B2 marked on the side of the defendants would clearly show that it took place in the presence of Chinnathambi Muthiriyar. Therefore, it cannot be ignored. It was



Ex.B4 dated 21.05.1997. The crux of the argument of the learned counsel for the contesting respondents is that during the relevant time, the daughters of Chinnathambi Muthiriyar did not have any right or share in the suit properties. If both the items were considered as ancestral properties, then, only a male member of the coparcenary would have any right or share therein. If the suit second item was considered as self acquired property, still it would devolve only in terms of the suit Will and again the daughters will not have any right or share in the said item.

5. Looked at from angle, during the relevant time, the daughters did not have any right or share in the suit properties. All the three sons of Chinnathambi Muthiriyar were parties to Ex.B2. Sannasi passed away in the year 1992 itself, While Palaniyandi passed away in the year 1995. Therefore, Kamaraj was the only male member to represent Sannasi Branch. Likewise, Elango was the only male member representing Palaniyandi Branch. Subramani was of course alive. That is why, Kamaraj, Subramani and Elango were parties to Ex.B4 partition deed dated 21.05.1997. Elango had already paid owelty amounts. Since a valid partition had already been enforced, it cannot be re-opened. He also would point out that daughters become members of the coparcenary, if they remained unmarried when the Tamilnadu Amendment Act 1 of 1990 came into force. Admittedly, When Tamil Nadu Amendment Act 1 of 1990 came into force, the two daughters of Chinnathambi Muthiriyar had already got married. Hence, Tamilnadu Amendment Act 1 of 1990 will not have any application to the present case. Like wise, amendment made to Section 6 of the Hindu Succession Act, 1956 by the Central Act will also not confer any right on the daughters of Chinnathambi Muthiriyar, because by then, the properties had already been dealt with. The amendment made to Section 6 of the Hindu Succession Act, 1956 by the Central Act admittedly will not have any implication in respect of the transaction that had already taken place. The first appellate court had given solid and convincing reasons for non-suiting the plaintiffs. He called upon this Court to adopt the said reasoning and answer the substantial questions of law against the appellants and dismiss the second appeal.

6. I carefully considered the rival contentions and went through the evidence on record. It is obvious that the suit first item is an ancestral property, while the suit second item is the self acquired property of Chinnathambi Muthiriyar. From the genealogy, one can notice that he was blessed with three sons namely Sannasi, Palaniyandi and Subramani and two daughters namely Lachuumayee and Neelambal. There is again no dispute that Chinnathambi Muthiriyar executed Ex.A2-Will dated 27.10.1981 bequeathing both the properties in favour of his three sons in three equal shares. Ex.A2 was duly proved by examining the second attesting witness namely P.Krishnasamy. The fourth defendant also

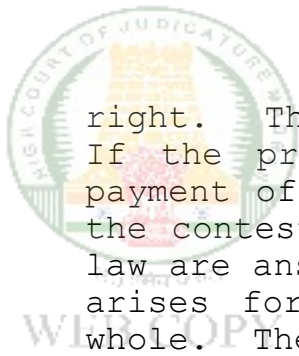


dispute whatsoever in my mind that the suit Will even though not registered had been proved in accordance with law.

7. The first question that arises for my consideration is whether the suit Will can be said to have been superseded by Ex.B2 dated 16.03.1991. Ex.B2 is styled as consent deed (சம்மத பத்திரம்). It was executed only among the three sons of Chinnathambi Muthiriyar. Of-course, it reads that arrangement took place in the presence of Chinnathambi Muthiriyar and his thumb impression is also affixed in the said consent deed. The consent deed is not clearly worded. But from a overall reading, one can conclude that the Sannasi first son and Subramani third son were to jointly execute a document for conveying the suit first item in favour of Palaniyandi or his legal heirs. Likewise, Palaniyandi second son consented for Sannasi and Subramani to take the second item. Sannasi and Subramani received a sum of Rs.5,000/- each towards owelty. The balance amount of Rs.15,000/- was to be paid as balance owelty. Quite a few questions arise regarding Ex.B2 dated 16.03.1991 such as Whether Ex.B2 can be said to have been superseded or revoked Ex.A2 Will dated 27.10.1981? or Whether Ex.B2 is admissible in evidence? or Whether Ex.B2 was acted upon?.

8. Ex.A2, as already pointed out, had been proved in the manner known to law. The requirement set out under Section 68 of the Indian Evidence Act had been fulfilled by examining P.W.2 Krishnasamy. The fourth defendant Elango also admits the execution of Ex.A2. The only question is whether Ex.A2 can be said to have been superseded by Ex.B2. This is for more than one reason. Even when Ex.A2 was executed, Krishnasamy was aged around 80 years. Therefore, it is safe to conclude that when B2 was executed, Chinnathambi Muthiriyar was aged around 90 years. In Ex.B2, there is no reference to the suit Will (Ex.A2). It merely states that Ex.B2 was entered into in the presence of Chinnathambi Muthiriyar. There is nothing on record to show that Chinnathambi Muthiriyar by putting his thumb impression on Ex.B2 had revoked the earlier Will. If that was really revoked, there would have been recitals to that effect therein. Such recitals are absent. There is nothing to show that Chinnathambi Muthiriyar had revoked the earlier Will. Therefore, I come to the conclusion that Ex.B2 did not supersede or revoke Ex.A2 Will. As I have already indicated, Ex.B2 is only styled as 'consent deed'. Consequential steps were to be taken pursuant to Ex.B2. Ex.B2 cannot have any legal effect because as on 16.03.1991, the sons did not have any right or interest in the suit second item. In Ex.B4 partition deed dated 21.05.1997, there is absolutely no reference whatsoever to Ex.B2. If Ex.B2 is considered as an agreement or as a record of an antecedent evident, then, it did not require registration. If as claimed by the contesting fourth defendant, Ex.B2 by itself confers certain rights, then it obviously required registration. Since it has not been registered, it could not have been admitted in evidence. Merely because, owelty was paid by

Ex.B3 and Ex.B5, that would not by itself confer any



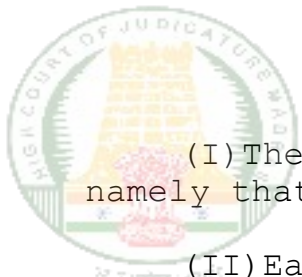
right. The payment of owelty can only be a consequential action. If the primary document itself does not convey any right, mere payment of owelty will not confer any right or advance the case of the contesting fourth defendant. Both the substantial questions of law are answered in favour of the appellant. The next question that arises for consideration is whether Ex.A2 can be sustained as a whole. The answer has to be necessarily in the negative. Since the suit first item was an ancestral property, Chinnathambi Muthiriyar could not have executed any Will in respect of the same. Therefore, Ex.A2-Will is sustained only in respect of the suit item No.2. Since the suit first item is an ancestral property, it has to devolve in equal shares on all the five branches of Chinnathambi Muthiriyar.

9. Of-course, in the suit in question, the daughters of Chinnathambi Muthiriyar had not been arrayed as parties. One does not know as to whether they are interested in the suit first item also. Before me, the branch of the first son Sannasi and third son Subrmani are present. Of-course, the contesting fourth defendant Elango is also before me as the second respondent. The impugned judgment of the first appellate court suffers from an internal contradiction. The left out daughters Lachuumayee and Neelambal would have got right only by virtue of the amendment made by Central Act in the year 2005. The said amendment clearly states that if any partition had already taken place in respect of the ancestral property, that cannot be reopened by virtue of the amendment. There can be no dispute that the properties had already been partitioned between the two branches under Ex.B4 dated 21.05.1997. The two daughters Lachuumayee and Neelambal did not evince interest for all these years. In view of Ex.B4, Lachuumayee and Neelambal will not get any right in suit item No.1.

10. I sustain Ex.B4 only for the purpose of holding that Lachuumayee and Neelambal will not get any right under the amendment. However, in view of the foregoing discussion, Ex.B4 cannot be put against the present appellants. This is more for the reason, none of the appellants were parties to Ex.B4. Chinnathambi Muthiriyar passed away in the year 1994. The rights of the two daughters namely Lachuumayee and Neelambal can be looked at from another angle also. Ex.A2 covers not only the self acquired property of Chinnathambi Muthiriyar but also the ancestral property. Thus, Ex.A2 had not been questioned by both the daughters. Ex.A2 came into force in the year 1994 following the demise of Chinnathambi Muthiriyar. By the time Central Amendment Act came into force, the formal division had already taken place on 21.05.1997 vide Ex.B4.

11. Therefore, looked at from any angle, the left out daughters namely Lachuumayee and Neelambal will not have any right in the suit items. The impugned judgment and decree are set aside and the

<https://hcs.easimons.gov.in/hcs/cases> is passed as follows:-



(I)The suit properties will be divided among the male branches namely that of Sannasi, Palaniyandi and Subramani.

(II)Each of the aforesaid branches will take 1/3rd share in both the items. The parties are entitled to file final decree petition for dividing the suit items 1 and 2 by metes and bounds.

(II)It has been established that Kamaraj/D2 has received a sum of Rs.30,000/- from Elango on 23.05.1997. Kamaraj is directed to return the same to Thiru.Elango/D4 with interest at the rate of 6% per annum. In the event of failure to do so, equities will be adjusted accordingly in the final decree proceedings.

12. The second appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge, Tiruchirappalli.

2.The Principal Subordinate Judge, Tiruchirappalli.

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The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-30414[F] dated 27/09/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-30682[F] dated 29/09/2021)

Judgment made in
S.A.(MD)No.642 of 2006
27.09.2021

kmk (CO)

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