



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.258 of 2014

Sri Raman

... Appellant / Appellant /
Plaintiff

Vs.

1. Balakrishnan (Died)
2. Parasuraman
3. Subbulakshmi
4. Minor Nagarani
5. Minor Subash @ Venkatesh
(Minor 4th and 5th respondents are represented
through their mother and guardian 3rd respondent)

6. Thayammal
7. Central Bank of India,
through its Branch Manager,
Kizhapavoor,
Alangulam Taluk,
Tirunelveli District.

8. Pandyan Grama Bank,
Through its Branch Manager,
Surandai,
Veerakelampudur Taluk,
Tirunelveli District.

... Respondents / Respondents /
Defendants

9. Keetharamani
10. Renganayahi
11. Babyrani
12. Suresh Kannan
13. Rajkannan
14. Sitalakshmi
15. Mageshkannan

... Respondents

(Respondents 9 to 15 are brought on record as LR's. of the
deceased 1st respondent vide Order dated 31.08.2021 made in
C.M.P. (MD) Nos. 5948 and 5950 of 2021)

Prayer: Second appeal filed under Section 100 of C.P.C., against the
Judgment and Decree of the learned III Additional District and
Sessions Judge, Tirunelveli, in A.S. No.68 of 2012, dated 04.09.2013
confirming the Judgment and Decree of the learned Principal Sub
Judge, Tenkasi, in O.S. No.45 of 2010, dated 15.02.2011.

For Appellant : Mr.S.Vellaichamy
For Respondents : Mr.G.Prabhu Rajadurai
R2 to R6
for R8 : Mr.M.Thirunavukkarasu

* * *

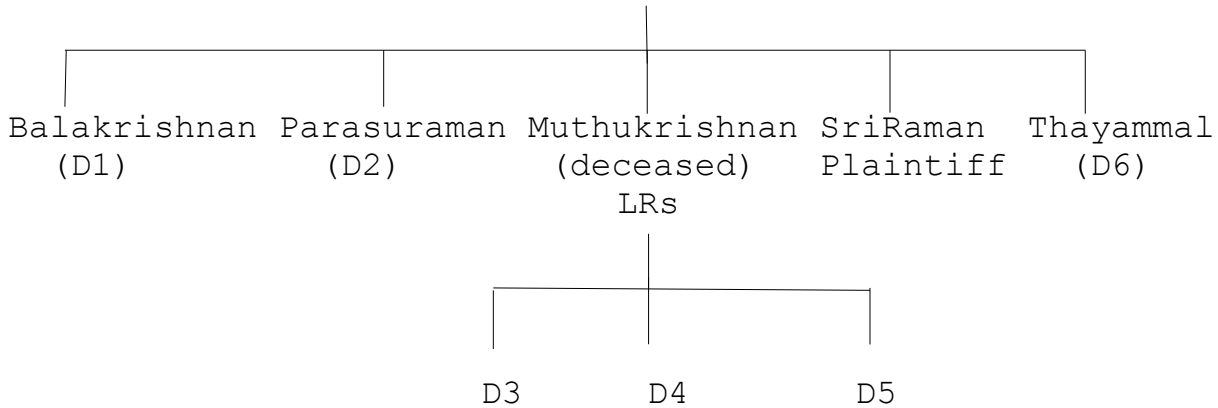
**J U D G M E N T**

The plaintiff in O.S.No.45 of 2010 on the file of the Principal Subordinate Judge, Tenkasi, is the appellant herein.

2. The suit was one for partition. The genealogy is as under:-

Subbiahkone (Deceased)

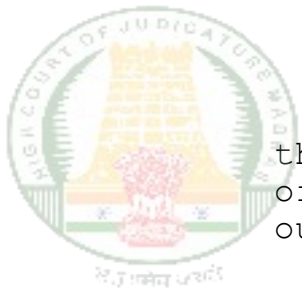
Wife Rajammal (Died)



3. Though there are four suit items, the contest revolves around the suit items 1 and 2. There is no dispute that the suit first schedule is an ancestral property. The suit second schedule comprises four houses and one land. The specific case of the plaintiff as projected in the plaint is that the suit second schedule was the self-acquired property of his father Subbiahkone. Subbiahkone passed away intestate on 08.07.1995. He died leaving behind his wife Rajammal and four sons and one daughter. Rajammal passed away in the year 2005. The plaintiff's brother Muthukrishnan also died leaving behind his legal heirs, namely, defendants 3 to 5. The plaintiff admitted that he had gone out of the joint family in the year 1989 after executing a deed of release and after taking a gift of one house and a sum of Rs.10,000/-. The plaintiff therefore sought 1/30th share in the suit first schedule and 1/5th share in the suit second schedule. The defendants filed written statements controverting the plaint averments. The trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.6. The first defendant Balakrishnan was examined as D.W.1 and Ex.B.1 to Ex.B.5 were marked. After a consideration of the evidence on record, the trial Court by judgment and decree dated 15.02.2011 granted 1/100th share in favour of the plaintiff in the suit first and second schedule and dismissed the suit as regards the suit third and fourth schedules. Aggrieved by the same, the plaintiff filed A.S.No.68 of 2012 before the III Additional District and Sessions Judge, Tirunelveli. By the impugned judgment and decree dated 04.09.2013, the first appellate Court dismissed the appeal and confirmed the decision of the trial Court. Challenging the same, this second appeal came to be filed.

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

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" 1. Whether the Courts below is correct in holding that the plaintiff is not entitled to his share in view of the fact that he had relinquished his shares and gone out of the family?

2. Is not the plaintiff entitled to his share in the suit properties by inheritance? "

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5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and took me through the exhibits, particularly, Ex.B.4 and called upon this Court to answer the substantial questions of law in favour of the appellant and to enhance the share granted to him.

6. Per contra, the learned counsel appearing for the respondents/defendants submitted that admittedly the first item is an ancestral property and since the plaintiff had gone out of the family by executing a release deed dated 16.11.1989(Ex.B.2), he cannot claim any share therein as a member of the joint family. Of course, he will be entitled to get some share by virtue of being a legal heir of the mother Rajammal which was granted by the Courts below. Therefore, the impugned decrees do not call for any interference or modification.

7. As regards the suit second schedule, he pointed out that though the plaintiff pleaded in the plaint that the suit second schedule was the self-acquired property of Subbiahkone, he gave up the said stand during trial. To a specific question put in the cross examination, he conceded that the suit second schedule is also a joint family property. The Courts below went only by the aforesaid admission. Therefore, the same logic which governed the allotment of the plaintiff's share in the suit first schedule would also govern as regards the suit second schedule. He also pointed out that purchase of the suit second schedule properties was funded by the income generated by the joint family business. All the sons excluding the plaintiff took active part in the business. Therefore, in fact Subbiahkone also treated the suit second schedule properties as joint family properties, though they stood in his name. Since the plaintiff had gone out of the family way back in the year 1989, he cannot claim any share therein. He also pointed out that though Rajammal was the wife of Subbiahkone, she will be entitled only to 1/20th share and therefore being one of the five legal heirs, the plaintiff will get 1/100th share in the suit second schedule also. He called upon this Court to sustain the impugned judgment and decree and dismiss the second appeal.

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

9. The learned counsel appearing for the appellant did not seriously dispute the allotment of 1/100th share in the suit first schedule and the controversy revolved essentially around the



allotment of his share in the suit second schedule. Though the plaintiff took a specific stand in the plaint that the suit second schedule items were the self-acquired properties of Subbiahkone, he did not stick to the said stand during the course of the trial. He answered in the affirmative, when it was suggested that the suit second schedule items are also joint family properties. The moot question before this Court is whether on this ground, the Courts below were justified in coming to the conclusion that the suit second schedule properties are joint family properties. There is no dispute that all the four properties covered in the suit second schedule are in the names of Subbiahkone. They were purchased by him. Ex.B.4 came into existence after the filing of the suit. It was marked by the defendants. A mere perusal of the recitals of Ex.B.4 indicates that the defendants recognised the suit second schedule properties as the self-acquired properties of Subbiahkone. Except the answer given by the plaintiff during the course of cross examination, there is absolutely no other evidence to come to the conclusion that they should be considered as the joint family properties. On the other hand, Ex.B.4 categorically indicates that the suit second schedule were considered as self-acquired properties of Subbiahkone.

10. While the answer given during cross-examination can even be a slip of tongue, Ex.B.4 is a document that has been drafted after considerable deliberation and signed by all the defendants. The Courts below have not taken into account Ex.B.4. Ignoring material evidence would definitely render any finding perverse. Since the suit second schedule properties were the self-acquired properties of Subbiahkone, his wife Rajammal will have 1/5th share therein. Since the appellant/plaintiff was one of her five legal heirs, he will be entitled to 1/25th share therein. In view of his relinquishment, the appellant will not be entitled to any share as a member of the joint family. But he will be entitled to inherit as a legal heir of Rajammal. That right cannot be denied. The substantial questions of law are answered accordingly. Therefore, the impugned judgment and decree are modified accordingly. It is declared that the plaintiff is entitled to 1/100th share in the suit first schedule property and 1/25th share in the suit second schedule properties.

11. This second appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

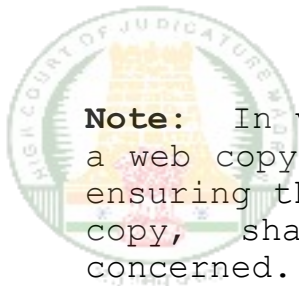
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Sub Assistant Registrar(CS)

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To:

1.The III Additional District and Sessions Judge,
Tirunelveli.

2.The Principal Sub Judge,
Tenkasi.

3.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-29167[F]
dated 15/09/2021)

+1 CC to M/s.S.VELLAI CHAMY, Advocate (SR-29365[F] dated 16/09/2021)

+1 CC to M/s.M.THIRUNAVUKARASU, Advocate (SR-29078[F]
dated 15/09/2021)

S.A. (MD) No.258 of 2014

14.09.2021

AC (CO)

GC (20.10.2021) 5P 8C