



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD)No.466 of 2014

and

M.P.(MD)No.1 of 2014

WEB COPY

1.Alagathal

2.Thangam ... Appellants / Appellants / Plaintiffs

-Vs-

1.Thanamalli

2.Periyathai

3.Chelladurai ... Respondents / Respondents / Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.64 of 2011 by the Sub Court, Sankarankoil on 26.07.2013 confirming the decree and judgment passed in O.S.No.312 of 2008 dated 17.03.2011 by the Additional District Munsif Court at Sankarankoil.

For Appellants : Mr.R.Ramesh @ Ramiah

For R1 : Mr.R.J.Karthick

For R2 & R3 : no appearance

JUDGMENT

This second appeal arises out of a partition suit in O.S.No.312 of 2008 on the file of the Additional District Munsif Court, Sankarankovil.

2. The plaintiffs are the appellants herein. The case of the plaintiffs is as follows:-

The suit properties originally belonged to their grandfather Arunachalathevar. He died some 30 years prior to the filing of the suit. He left behind his son Ramasamy Thevar / father of the plaintiffs. Ramasamy Thevar got married to the second defendant Periyathai. Through the wedlock, the plaintiffs and the first defendant Thanamalli were born. The first plaintiff got married in the year 1991. The second plaintiff got married in the year 2000. The first defendant got married in the year 1994. Ramasamy Thevar passed away in March 2003. According to the plaintiffs, Ramasamy Thevar died leaving behind his wife Periyathai and three daughters namely first plaintiff, second plaintiff and first defendant as his surviving legal heirs. The plaintiffs would contend that each of them would be entitled to 1/4th share in the suit properties.



However, the first defendant had fabricated the document dated 20.01.2003 as if the suit properties have been settled in her favour by Ramasamy Thevar. Based on the said document, she had also effected mutation in the revenue records. She sold "B" schedule property in favour of the third defendant Chelladurai vide Ex.B9-sale deed dated 03.11.2008. The first defendant filed written statement controverting the plaint averments. The defendants pleaded that the suit items absolutely belonged to Ramasamy Thevar and that they were enjoyed by him independently. It was also pointed out that Ramasamy Thevar during his life time had alienated in favour of the local Church as well as the third parties. The suit items were handed over to the first defendant some 15 years ago and he formalized the arrangement by executing the settlement deed dated 20.01.2003. The first defendant also pointed out that the plaintiffs knew fully well that the suit properties were enjoyed as her own property by the first defendant. Only to harass the first and second defendants, the instant suit had been filed.

3. The defendants also pleaded that the suit was bad for partial partition. Based on the rival pleadings, the trial Court framed the necessary issues. The first plaintiff examined herself as P.W.1 and the second plaintiff examined herself as P.W.2. Ex.A1 to Ex.A5 were marked. The first defendant examined herself as D.W.1. The third defendant Chelladurai examined himself as D.W.3. Ex.B1 to Ex.B9 were marked. The trial court, after a consideration of the evidence on record, dismissed the suit by judgment and decree dated 17.03.2011. Aggrieved by the same, the plaintiffs filed A.S.No.64 of 2011 before the Sub Court, Sankarankovil. By the impugned judgment and decree dated 26.07.2013, 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. The second appeal was admitted on the following substantial questions of law:-

"1.Whether the courts below have correctly assessed the authority of the settlor under Ex.A4 document as per law and whether such a document even if it is valid, is likely to affect the share of the appellants?

2. Whether or not the lower courts have erred in not applying the provisions of the Hindu Succession Act as amended by the Tamil Nadu Amendment 1989 and the Central Amendment Act, 2005 to the facts?"

4. 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 questions of law in favour of the appellants and grant decree as prayed for.

5. The relationship between the parties is not in dispute. The



plaintiffs and the first defendant are the daughters of late Ramasamy Thevar and the second defendant. The learned counsel appearing for the contesting defendant would state that the plaintiffs have not pleaded that the suit properties were the ancestral properties of Arunachalathevar. There is neither pleading nor evidence to that effect. When Ramasamy Thevar inherited the suit properties from Arunachalathevar, they were the absolute properties in his hands and hence, it was open to Ramasamy Thevar to settle the property in favour of the first defendant. In this regard, the learned counsel placed reliance on the decision reported in **2019 5 L.W. 289 (Govindan Vs. Revathi)**. He also would refer to the decision reported in **2018 7 SCC 646 (Shyam Narayan Prasad Vs. Krishna Prasad)** for the proposition that pleadings are meant to give to each side, intimation of the case of the other, so that, it may be met to enable courts to determine what is really at issue between the parties and no relief can be granted to a party without the pleadings. In the case on hand, since the plaintiffs have not pleaded that the suit properties were ancestral properties at the hands of Arunachalathevar, it is not open to the plaintiffs to fall back on Section 6 of Hindu Succession Act, 1956. He therefore submitted that the Courts below have correctly approached the issue on hand and submitted that the substantial questions of law deserve to be answered against the appellants. He also would point out that Ramasamy Thevar passed away in the year 2003 itself that is well before the Central Amendment Act came into force. According to him, there is no point referring to **Vineetha Sharma decision** because succession in this case opened well before the cutoff date ie., 09.09.2005.

6. I carefully considered the rival contentions and went through the evidence on record. There is no dispute regarding the relationship between the parties. The plaintiffs and the first defendant are daughters born to late Ramasamy Thevar and the second defendant. The only question that falls for consideration is whether the suit properties which belonged to Arunachalathevar when inherited by Ramasamy Thevar became absolute properties or they became coparcenary properties. It must be construed that in the plaint, the plaintiffs have not made a specific allegation or claim that the suit properties were the ancestral properties even in the hands of Arunachalathevar. However, in Ex.A4-settlement deed dated 20.01.2003, in the schedule of properties, Ramasamy Thevar /settlor had mentioned that the properties were the ancestral properties. Thus, there is some evidence to show that the properties are very much ancestral properties. That apart, this being a partition suit, all the parties are in the same position. Nothing stopped the first defendant from taking a stand that the suit properties were the separate properties of Arunachalathevar and therefore, when Ramasamy Thevar inherited the suit properties, they were his absolute properties. No such stand was taken in the written statement filed by the defendants. Any pleading will have to be construed as a



whole. The thrust of the plaintiffs' contention was that the properties are ancestral properties.

7. Hence, in view of the failure on the part of the defendants to take a specific stand that the suit properties are the separate properties of Arunachalathevar and in view of the specific admission made by Ramasamy Thevar in Ex.A4-settlement deed that he has been enjoying the property as an ancestral property, I have no hesitation to come to the conclusion that when Ramasamy Thevar inherited the suit items from his father, he took it in his capacity as a sole surviving coparcener. Of-course, Ramasamy Thevar did not have any son. He had only three daughters. But in the plaint, it had been specifically pleaded that all the three daughters got married only from the year 1991 onwards. In the written statement, there is no denial that any of the daughters got married earlier in point of time. Even though Central Amendment Act may not really apply, Tamil Nadu Act 1 of 1990 will clearly apply. Hence, I have no hesitation to come to the conclusion that all the three daughters became coparceners along with Ramasamy Thevar. It is true that during his life time, Ramasamy Thevar had alienated some properties. Atleast one property was sold in November 1996 under Ex.B4. There is sufficient internal evidence in Ex.B4 to show that the property sold thereunder was not a coparcenary property. That is why, the plaintiffs did not include all the properties. Likewise, daughters became coparceners only in view of Tamilnadu Act 1 of 1990. Prior alienations if had been made by Ramasamy Thevar cannot be affected. The suit cannot be said to be bad for partial partition. Once I hold that the suit items are ancestral properties, Ex.A4 cannot affect the share of the plaintiffs. Ramasamy Thevar had 1/4th share along with his three daughters in the suit properties.

8. Therefore, I answer the first substantial question of law in favour of the appellants. In this view of the matter, the judgment and decree passed by the Courts below are set aside. Preliminary decree is granted allotting 1/4th share in favour of each of the plaintiffs in respect of the suit properties. Since the second defendant mother cannot be left high and dry, she will be entitled to maintenance and corresponding charge on the shares that will be eventually allotted in favour of the parties herein. The second appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



1.The Sub Court, Sankarankoil.

2.The Additional District Munsif Court at Sankarankoil.

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+1 CC to M/s.R.J.KARTHICK, Advocate (SR-28637[F] dated 09/09/2021)

+1 CC to M/s.S.RAMESH @ RAMIAH, Advocate (SR-28563[F] dated
08/09/2021)

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DJ(CO)

KB(19.11.2021) 5P 7C