



AS.No.1/2012

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N.MALA

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- 1.Kumar
- 2.Ammurani
- 3.Geetha
- 4.Panneerselvam
- 5.Indrani
- 6.Gokulakrishnan
- 7.Santhanakrishnan
- 8.Vijayalakshmi

.. Appellants

Vs.

- 1.Vedhavalli
- 2.Meera
- 3.Usha
- 4.Parthasarathy
- 5.Shanthi
- 6.Santhanalakshmi
- 7.Krishnakumar
- 8.Vijayakumar
- 9.Harikrishnan
- 10.Amirthavalli
- 11.Ramakrishnan



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12.Karthikeyan

.. Respondents

Prayer:- Appeal Suit filed under section 96 of the Code of Civil Procedure against the judgment and decree dated 11.08.2011 made in OS.NO.47/2006 on the file of the learned Additional District Judge [Fast Track Court-II], Poonamallee.

For Appellants : Ms.K.Priyadharshini for
Mr.R.Subramanian

For R4 : Mr.M.V.Seshachari

For RR 7 to 12 : Mr.S.Ganesh

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

- (1) The plaintiffs in the suit in OS.No.47/2006 on the file of the Additional District Court, Poonamallee, are the appellants in the above appeal.
- (2) The appellants filed the suit in OS.No.47/2006 for partition of 1/4th share to plaintiffs 1 to 7 and another 1/4th share to the 8th plaintiff / 8th appellant herein by metes and bounds and for other consequential reliefs. The suit is also for a declaration to declare



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that the Partition Deed dated 11.05.1963 is invalid and void.

- (3) The suit properties are descried in four items in the suit schedule. The case of the plaintiffs before the Lower Court is that the suit property is the ancestral properties of Thiru.Adikesava Pillai, father of the 8th plaintiff / 8th appellant and grandfather of plaintiffs 1 to 7. Plaintiffs 1 to 7 are the children of one of the daughters of Adikesava Pillai, by name Sankari. Defendants 1 to 5 are the wife and children of one of the deceased sons of Adikesava Pillai by name Muthukrishnan. Defendants 6 to 12 are the wife and children of another son of Adikesava Pillai by name Kamalakannan. It is admitted that the said Adikesava Pillai died long back and as per geneology, the properties of Adikesava Pillai would devolve on his two sons and three daughters including the 8th plaintiff/8th appellant.
- (4) Even though one Pappammal, another daughter of Adikesava Pillai died leaving behind her legal heirs, it is stated in the plaint that the said Pappammal released all her right in the family properties and settled elsewhere. Plaintiffs 1 to 7, being the legal heirs of one of



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the daughters of Adikesava Pillai and the 8th plaintiff, being one of the daughters of Adikesava Pillai, filed the suit.

(5) The suit was contested by defendants 6 and 8 to 12, the legal heirs of Kamalakannan, one of the sons of Adikesava Pillai on various grounds. It is the case of defendants 6 and 8 to 12 that the suit properties along with the other properties of Adikesava Pillai were the subject matter of a registered Partition Deed dated 16.05.1963 vide Doc.No.1064/1963 and that, in the said partition, Adikesava Pillai and his two sons, namely, Muthukrishnan and Kamalakannan, have divided among themselves all the properties that were ancestral properties in the family and the self acquired properties of Adikesava Pillai. It is also contended that two items which were allotted to Adikesava Pillai, was sold even during the life time of Adikesava Pillai.

(6) The Trial Court, after framing necessary issues, found that the suit properties were divided during the life time of Adikesava Pillai and that the said partition by a registered Partition Deed, which was marked as Ex.B1, was proved. The Trial Court further found that



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the contents of Ex.B1 has been proved particularly by virtue of Section 90 of the Indian Evidence Act. Even though a prayer was sought for in the plaint to declare the said Partition Deed under Ex.B1 as invalid, the Trial Court found that the relief to declare the Partition Deed as null and void, cannot be sought for nearly after a period of 42 years. Therefore, the declaratory relief to declare the Partition Deed [Ex.B1] dated 16.05.1963 as invalid was rejected by the Trial Court. The Trial Court also found that the suit is liable to be dismissed for non-joinder of one of the daughters of Adikesava Pillai by name Pappammal. Since the properties of Adikesava Pillai were also included in the Partition Deed under Ex.B1 dated 16.05.1963, the Trial Court dismissed the suit for partition finding that the plaintiffs have no right to seek partition in view of the earlier registered Partition Deed.

- (7) Though the appellants have raised several grounds, the learned counsel for the appellants tried to convince this Court that the appellants were not aware of the Partition Deed dated 16.05.1963 till the suit was filed and that some of the properties of Adikesava



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Pillai were not included in the prior Partition Deed. The learned counsel for the appellants is unable to demonstrate before this Court that the suit is filed within three years from the date of knowledge of the Partition Deed. This Court is unable to find any substance especially having regard to the findings of the Trial Court on all issues.

- (8) One of the submissions of the learned counsel for the appellants is to the effect that the parties to the document [Ex.B1] have admitted the existence of ancestral properties and that therefore, Adikesava Pillai cannot effect partition with his sons excluding his daughters. Though this submission appears to be appealing, the suit filed nearly after 42 years from the date of partition without valid reason, cannot be entertained.
- (9) It is true that the 8th appellant and other two daughters of Adikesava Pillai are not parties in the Partition Deed. The right of female heirs to seek partition in the joint family is introduced for the first time by way of 2005 amendment. The Hon'ble Supreme Court in the case of *Vineeta Sharma Vs. Rakesh Sharma* reported in 2020 [9]



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SCC I has upheld the right of female heirs to claim partition in the joint family property irrespective of the death of the father either before or after the commencement of the amendment. However, a registered Partition Deed of the year 1963 is saved.

- (10) Therefore, this Court is unable to find any merit in this appeal and the Appeal Suit is liable to be dismissed.
- (11) Accordingly, the **Appeal suit is dismissed for devoid of any merits.** Considering the relationship between the parties, there shall be no order as to cost.

[SSSRJ] [NMJ]

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To

1.The Additional District Judge
[Fast Track Court-II], Poonamallee .

2.The Section Officer
VR Section, High Court.
Chennai.



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S.S.SUNDAR, J.,

AND

N.MALA, J.,

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