



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2022

PRONOUNCED ON : 07.06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

A.S.NO.126 OF 2011

AND

M.P.NOS.1 OF 2011 AND 1 OF 2015

1. Backiammal

2. C.Ravichandran

3. C.Sekar

... Appellants/2<sup>nd</sup> to 4<sup>th</sup>  
Defendants

.Vs.

1. C.Vasantha

2. Gowri Bai

3. K.Ramesh babu

... Respondents/Plaintiffs  
& 1<sup>st</sup> Defendant

PRAYER:-

First Appeal filed under Section 96 of Civil Procedure Code to set aside the judgment and decree dated 30.08.2010 made in O.S.No.1 of 2008 on the file of the Court of the Additional District Judge, (Fast Track Court No.III), Tiruvallur.

For Appellants : Mr.P.Anbarasan

For R1 and R2 : Mr.M.S.Subramanian

For R3 : No appearance

O R D E R

The first Appeal is filed against the Judgment and Decree dated 30.08.2010 made is O.S.No.01 of 2008. The defendants 2 to 4 in the suit are the appellants herein, 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs



and the 1<sup>st</sup> defendant in the suit are the respondents herein. The 1<sup>st</sup> defendant in the suit is the 3<sup>rd</sup> respondent herein and he has not entered appearance/contested, thus the reference to respondents will only mean respondents 1 and 2.

WEB COPY

2. The suit was filed by the respondents herein in O.S.No.01 of 2008, for partition of the suit mentioned property into 6 shares and allot two such shares to 1<sup>st</sup> and 2<sup>nd</sup> respondents by metes and bounds. The suit was originally with reference to 13 items, however, items 2,7 and 8 are not ancestral properties as it is admittedly the independent/ separate properties owned by the husband of the first appellant and father of the second and third appellants. Thus items 2,7 and 8 are not the subject matter of dispute in this First Appeal. In other words, the present appeal is limited to entitlement of the the respondents to 2/6<sup>th</sup> shares in the suit item 1,3,4,5,6,9 to 13.

3. Brief Facts relating to the case are set out hereunder:

3.1. The 1<sup>st</sup> and 2<sup>nd</sup> respondents herein are daughters of late Kuppusamy Naidu. Kuppusamy Naidu and Chinnasamy Naidu were born to one Subba Naidu and Subbammal.

3.2.The 1<sup>st</sup> and 2<sup>nd</sup> respondents are daughters of late Kuppusamy Naidu, and the first defendant in the suit K.Ramesh Babu is the son of Kuppusamy Naidu. Chinnasamy Naidu is the brother of Kuppusamy Naidu and was married to one Backiyammal who is the first appellant and they have two sons namely C.Ravichandran and C.Sekar who are the 2<sup>nd</sup> and 3<sup>rd</sup> appellants herein.

3.3. It is not in dispute that the properties namely 1,3,4,5,6,9 to 13 was originally owned by Subbammal who is the mother of Kuppusamy Naidu and Chinnasamy Naidu and the paternal grand mother of the 2<sup>nd</sup> and 3<sup>rd</sup> appellants and the respondents herein. Subbammal had purchased the suit properties through various Sale Deeds. It is not in dispute that the properties are the separate properties of Subbammal and her husband Subba Naidu predeceased her. On the death of Subbammal the property devolved on her 2 sons viz., Kuppusamy Naidu and Chinnasamy Naidu. Kuppusamy Naidu died on 08.01.1982 and his wife Kanthammal died on 14.11.1995. Chinnasamy Naidu died in the year 1987.

3.4. Whiles, the respondents who were in enjoyment of the properties issued a notice on 11.12.2007, calling upon the appellants for an amicable division of properties which originally belonged to their maternal grand parent viz., Subbammal and which devolved on her death on Kuppusamy Naidu and Chinnasamy Naidu. While the 1<sup>st</sup> appellant acknowledged the said notice, however the notice sent to the appellants 2 and 3 was



returned as "no such address", which according to the respondents herein is factually incorrect.

4. It is the submission of the respondent herein that the property being independent property and owned separately by Subbammal do not belong to the joint family property and constitute an independent line of property distinct from joint family property. That there was no partition as alleged between Kuppusamy Naidu and Chinnsamy Naidu. Thus the entire property which originally belonged to Subba Naidu and having devolved on Kuppusamy Naidu and Chinnsamy Naidu the respondents are entitled to 2/6<sup>th</sup> shares in the suit properties.

5. The above claim was resisted by the appellants herein on the following premise viz.,

a) The first defendant who is the son of Kuppusamy Naidu and the brother of the respondents herein had effected a sale of the shares inherited by Kuppusamy Naidu through Subba Naidu in favour of Backiyammal who is the mother of the appellants 2 and 3.

b) Secondly, the respondents herein have attested the said sale deed and thus stood estopped from pleading to the contrary.

c) That there was a oral partition entered between Kuppusamy Naidu and Chinnsamy Naidu.

d) Further, the suit property is ancestral property and the respondents were married in the year 1985 prior to the amended Act, 1989 and therefore they are not entitled for share in the suit property.

#### 6. Findings of the Trial Court:

a. That the appellants herein submitted that some of the suit properties are sold to 3<sup>rd</sup> parties and thus the suit is bad for non-joinder of parties. The appellant herein have not clearly stated the details of such parties who are necessary parties to the present suit. The trial Court thus stated that mere bald allegations of non-joinder of necessary parties was baseless and thus rejected the same.

b. The property inherited through female line is a special property and not a joint family property, it is not in dispute that late Subbammal was the original owner of the suit properties who died intestate and after the death of Subbammal the property devolved upon her 2 sons viz., Kuppusamy Naidu and Chinnsamy Naidu. The submissions/ contentions of the appellants herein that the respondent herein was married prior to 1989 and



thus not entitled to any share was found lacking in merit and rejected as it was found that the properties in dispute were not joint family properties.

c. The submission that the suit properties were divided orally was rejected on the basis of the deposition made by the 4<sup>th</sup> defendant during the course of cross examination, wherein he has stated that there is no sub-division pursuant to the alleged oral partition nor is there any witness/ evidencing to their oral partition.

d. Yet another contention of the appellant herein is that the respondent herein had attested the sale deed dated 29.01.1996 by which the shares in suit properties item 1, 3, 4, 12 to 13 were sold by the 3<sup>rd</sup> respondent herein to the appellants herein. The respondents herein are thus estopped from pleading, to the contrary. It was found by the trial Court that mere attesting of a deed/ document would not result in estoppel nor would the respondents lose their right to property only on the premise of having attested such sale deed. On the strength of the above reasoning the trial Court was pleased to hold that the respondents were entitled to 2/6<sup>th</sup> share in the suit items 1, 3, 4, 5, 6, 9 to 13.

e. The appellants had challenged the order of the lower Court on the premise that the findings on all the the 3 issues were erroneous and unsustainable and reiterated the same grounds before this Court.

7. To the contrary, the respondents have submitted that the property admittedly, belonged to Subbammal and thus not a joint family property. There is no evidence to support the case of oral partition between Kuppsamy Naidu and Chinnasamy Naidu as set up by the appellant herein. That the attestation of a Sale Deed would not estop the respondents from questioning the contents of the deed nor can they be imputed with knowledge of its contents.

8. Against the above background the following question may arise of consideration:

a. Whether the properties inherited through female line are not a joint family property and thus Amendment Act 1989, may not have relevance.

b. Whether there was a oral partition between Kuppusamy Naidu and Chinnsamy Naidu of the suit mentioned properties.

c. Whether the attestation by the respondents in the Sale Deed would estop them from challenging the Sale Deed resulting in the denial of their right to the properties in the suit



mentioned properties.

9. All the above 3 questions are no longer res integra and had arisen for consideration on numerous occasions.

WEB COPY

a) Property inherited through female line-not joint family property:

Now coming to the first question, it is a settled law that the properties which are inherited through female line would constitute separate property and would not be a part of Joint Family property. In this regard, it may be relevant to the following judgements:

S. Rathinasababathy v. S. Gajaganapathy, reported in 2011 SCC OnLine Mad 368 :

"M. Shanmugha Udayar v. Sivanandam, AIR 1994 Mad. 123 an excerpt from it would run thus:

"15... .... Property inherited by a person from any female is his separate property and his male issues do not take any interest in it by birth... .. "

A mere perusal of those decisions would unambiguously and unequivocally highlight and convey that in order to treat a property as Hindu joint family property or a coparcenary property, the origin should be from a male, but if the property is inherited by a male from a female, then ex facie and prima facie it cannot be termed as Hindu joint family property, and it could only be treated as the self-acquired property of the inheritor and it is clear from the aforesaid decisions. "

2010 SCC OnLine Mad 954 : (2010) 2 CTC 198 : (2010) 2 MWN (Civil) 199 : (2010) 3 Mad LJ 961 : (2010) 89 AIC 354

13. It is pertinent to note that the suit property is not a joint family property. It is a separate property, since the vendor of the appellant-plaintiff and the vendor of the respondent-defendant succeeded to the property on the maternal side. Any property derived or inherited from the female line or through the maternal grandparents are collateral and cannot be termed as the character of joint family. So, the suit property is not joint family property. .... The burden is upon the appellant-plaintiff to prove that the property is joint family property, but he has not



WEB COPY

let in any oral evidence, except the ipse-dixit of the appellant-plaintiff and the vendor has not been examined before this Court. So, I am of the opinion that the suit property is a separate property of the vendor of both the appellant-plaintiff and the respondent-defendant.

14. The said Thirunavukkarasu, as guardian, executed Ex.A-1 in favour of the appellant-plaint

P.Arul & others v. P.Sekaran reported  
in 2012 SCC OnLine Mad 1024 : (2012) 3  
LW 681

Since the learned counsel for the respondent fairly submitted that the original allotment of 15×90', at the hands of first defendant, is not a joint family property, but it is a separate property, it is pertinent to note that the suit property is not a joint family property and it is a separate property, since the first defendant has succeeded to the property on the maternal side, because any property derived or inherited from the female line cannot be termed as the character of joint family. Therefore, the house site, on the date of inheritance by a father from his mother, is not a joint family property.

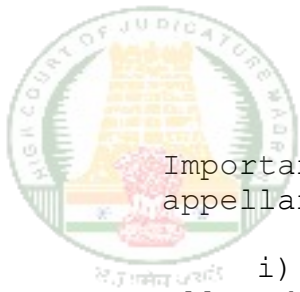
Udaya Kumar v. Eswara Vadivu & others  
reported in 2020 SCC OnLine Mad 12816

8. Their line of reasoning is straight forward, in that, since the property devolved on the first defendant through female line, no joint family as known in the Hindu Law can ever be created.

10. It is thus beyond the pale of any doubt that properties inherited through the female line/maternal line will not form part of joint family property.

a) Oral partition-Burden on the party asserting:

The plea of oral partition should be proved by cogent evidence by the claimant, to the contrary the deposition of the 3<sup>rd</sup> appellant would show that the alleged partition between two sons of Subbammal viz., Kuppusamy Naidu and Chinnasamy Naidu is not supported by way of any evidence. There was admittedly, no Chitta, Patta or sub-division for partition nor is there any evidence or witness to show that there was a oral partition.



Importantly, during the course of cross examination the appellant herein had deposed the following:

i) There is no written evidence to show that after the alleged oral partition Kuppusamy Naidu and Chinnaasamy Naidu were engaged in agriculture/Cultivation separately.

ii) There has been no mutation of the revenue records pursuant to the oral transfer.

iii) There has been no sub-division nor transfer of the patta pursuant to reflecting oral transfer.

iv) There are no witnesses in support of the oral transfer.

It is settled that when a claim of oral partition is made the burden is on the party setting up the claim of oral partition and the burden is onerous and ought to be discharged by letting in cogent evidence. However, admittedly, no evidence whatsoever has been let in by the appellant herein. The case of oral partition cannot be accepted merely on the ipse dixit of a party. In this regard it may be relevant to refer to the following judgments:

Damodara Naicker v. Collector of Chengalpattu District and 7 others reported in 2003 SCC OnLine Mad 155 : (2003) 2 CTC 551

Even according to Damodara Naicker prior to 1932, himself and his two brothers constituted Joint Hindu Family and the joint family owned 10 acres of land in Papparambakkam village. Damodara Naicker would plead oral partition in the year 1932. It is for him to prove the same.

Debendra Nath Bez v. Kanan Bez, 2011 SCC OnLine Cal 4295 : (2012) 1 CHN 84 : (2012) 109 AIC 931 : (2012) 1 Cal LT 226 : (2012) 1 Cal LJ 5 : (2012) 4 ICC 218 at page 85

9. An amicable arrangement amongst the co-owners should not be confused with an oral partition. A mere arrangement as to possession of convenience of the parties is not a partition by metes and bounds. Such amicable arrangement can never be operative and binding for all time to come. Such arrangement does not destroy the joint character of the properties nor bars a suit for partition at the instance of one of the co-owners dissatisfied with the arrangement. The burden lies





WEB COPY

upon the party, who asserts oral partition to prove partition.

Gispati alias Gurudas Bhattacharya v. Hrishikesh Santra & Ors reported in 2018 SCC OnLine Cal 6341 :

If one contends that a property stood partitioned orally, then it is the bounden duty of the person claiming to have such oral partition to prove that partition. Burden of proof is entirely on the person who claims oral partition. Such burden, at no point of time, has been shifted to the defendants to prove that there was no partition. Therefore, initial burden lies upon the plaintiff to prove oral partition.

Gnanaiyan v. Russaliyan reported in 2021 SCC OnLine Mad 6016 : (2022) 1 Mad LJ 36

The burden of proof to prove the oral partition is upon the party who is asserting that there was an oral partition in the family.

P.Jayanthi v. C.Hemathi reported in 2022 SCC OnLine Mad 1053

The plaintiff has approached the Court with a specific case that there was a oral partition between G. Elumalai and his brother Parthasarathy. Therefore, the burden of proof is upon the plaintiff to prove the oral partition.

It is clear that the case of oral partition set up by the appellants has been rightly rejected by the lower Court in the absence of any evidence in support thereof.

b) Attestation does not estop nor impute knowledge of the contents

The third question that may arise is whether the respondent herein by virtue of having attested sale deed by which defendant 1 had allegedly effected sale of the suit properties in favour of the defendants 2 to 4 is estopped from contending to the contrary to the contents of the deed or attesor is to be imputed with knowledge of the contents of the deed. The answer to the above submission is also in the negative since, unless the appellants herein are able to show that the respondents herein had attested having full knowledge of the contents of the deed. However, there is no evidence/material which would show that the respondent herein had knowledge of the contents of the deed and had attested thereafter. It is trite law that on the





basis of attestation one cannot impute knowledge of the contents of the deed nor would it create estoppel or implied consent of the parties who have attested unless it is shown by independent evidence that when becoming attesting witnesses the party had full knowledge and understanding of the nature of the document. Attestation by itself without independent evidence cannot be taken as proof of the attestor's knowledge of contents of the document nor would create any estoppel. In this regard it may be relevant to refer to the following judgments:

a. In Pandurang Krishnaji v. M. Tukaram, AIR 1922 Privy Council 20, the Privy Council has held as follows:

"The attestation of a deed by itself estops a man from denying nothing whatsoever excepting that he has witnessed the execution of the deed. It conveys, neither directly nor by implication, any knowledge of the contents of the document and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects."

b. Chidambara Padayachi v. Vellaiya padayachi, 2008 SCC OnLine Mad 451 : (2008) 5 CTC 219 : (2009) 4 Mad LJ 449 at page 227

19. Attestation proves no more than that the signature of an executing party has been attached to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed nor offer him with notice of its provisions. It can at the best, be used for the purpose of cross-examination but by itself, it will neither create estoppel nor imply consent.

c. Attestation by itself would not operate as estoppel. Where it is shown by an independent evidence that, when becoming an attesting witness he must have fully understood what the transaction was, his attestation may support the inference that he was a consenting party. Whether an attesting witness was a consenting party to the document is question of fact and should be determined with reference to the circumstances of each case. The Courts below have recorded concurrent findings of fact that attestation of the Plaintiff in Ex.B4 sale deed would not operate as estoppel. That concurrent findings cannot be said to be improper or perverse warranting interference.



2009 SCC OnLine Mad 1279 : (2009) 4 CTC 698 :  
(2009) 7 Mad LJ 647

(ii) K.A. Selvanachi and another v. Dr. S.R. Sekar and another, 2003 (1) CTC 745 (DB): 2003 (1) MLJ 769:

"Mere attestation of a document does not imply that the attester had knowledge of the contents of the document. There should be something more than mere attestation.

2003 SCC OnLine Mad 79 : (2003) 1 LW 818 :  
(2003) 1 CTC 745 : (2003) 1 Mad LJ 769 : (2003) 2 Civ LT 469

7. Attestation of a document does not, in our view, entitle any of the parties thereto or any one claiming under them to regard such attestation, per se, as acceptance on the part of the attester that the contents of the document are true and that such attester had knowledge of the same unless there is evidence before the Court either intrinsic in the document itself or extrinsic to show that the attester had knowledge of the contents and had accepted the same as correct.

8. Nearly eighty years ago, the Privy Council in the case of Pandurang Krishnaji v. Markandeya Tukaram (1922) LXII MLJ 436 = 15 L.W. 486, had held inter alia thus: -

"..they think it is desirable to emphasize once more that attestation of a deed by itself estop a man from denying nothing whatever excepting that he has witnessed the execution of the deed. It conveys, neither directly nor by implication, any knowledge of the contents of the document, and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects. It is, of course, possible, as was pointed out by their Lordships in the case of Banga Chandra Dhur Kiswas v. Jagat Kishore Chowdhuri (1916) L.R. 43 I.A. 249 that an attestation may take place in circumstances which would show that the witness did in fact know of the contents of the document, but no such knowledge ought to be inferred from the mere fact of the attestation."



Attestation, therefore, does not imply that the attester had knowledge of the contents of the document or that the attester accepts the correctness of whatever is stated therein."

WEB COPY

11. The above discussion leaves no room for any doubt that mere attestation would not result in imputing knowledge to the attester as to the content of the document nor estop the attester from pleading contrary to the contents of the document. In view of the above, I see no merit in any of the grounds of appeal challenging the judgment and decree dated 30.08.2010 made in O.S.No.1 of 2008 on the file of the Court of the Additional District Judge (Fast Track Court No.III), Tiruvallur and thus the above judgment and decree dated 30.08.2010 made in O.S.No.1 of 2008 stands affirmed.

12. Accordingly, the appeal stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Psa

To

1. The Additional District Judge,  
(Fast Track Court No.III),  
Tiruvallur.
2. The Section Officer,  
V.R. Section,  
High Court, Madras.

+1cc to Mr.M.S.Subramanian, Advocate, S.R.No.32377

+1cc to Mr.P.Anbarasan, Advocate, S.R.No.32797

A.S.NO.126 OF 2011

SR(CO)  
PBS/01/07/2022