



A.S. Nos.23 & 71 of 2012

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

A.S. Nos.23 & 71 of 2012 &

M.P. No.1 of 2012

A.S. No.23 of 2012

K.C. Subramanian

... Appellant

Vs.

1. Gandhimathi
2. Rajalakshmi
3. Valarmathi
4. Indirani
5. R. Rangasamy
6. S. Natarajan

... Respondents

A.S. No.71 of 2012

1. Rajalakshmi
2. Valarmathi
3. Indirani

...Appellants

Vs.

1. Gandhimathi
2. S. Natarajan
3. K.C.Subramanian
4. Saraswathy
5. Mohanraj
6. Kannan
7. Ashok Kumar

...Respondents

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Cause title accepted vide order of Court dated 18.01.2012
made in M.P. No.1 /12 in A.S.Sr. No.3473/12.

COMMON PRAYER: First Appeals filed under Section 96 r/w Order 41
of the Code of Civil Procedure against the decree and judgment dated
30.06.2011 made in O.S. No.233 of 2004 on the file of the Additional
District Court, Fast Track Court, Namakkal.

A.S. No.23 of 2012

For Appellant	: Mr. Kaithamalai Kumaran
For R1	: Mr. C. Jagadish
For R2 to R4	: Mr. T. Murugamanickam, Senior
counsel	
	Asst. by Ms. Zeenath Begum
R5	: Given up
R6	: No appearance.

A.S. No.71 of 2012

For Appellants	: Mr. T. Murugamanickam, Senior
counsel	
	Asst. by Ms. Zeenath Begum
For R1	: No appearance.
For R3	: Mr. Kaithamalai Kumaran
For R2, R4 to R7	: Mr. C. Jagadish



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JUDGMENT

The unsuccessful defendants 1 to 3 in O.S. No.233/2004 on the file of the Additional District Court, Fast Track Court, Namakkal, are the appellants in A.S.No.71/2012 while the 6th defendant is the appellant in A.S.No.23/2012. They filed the present appeals challenging the preliminary decree passed in O.S. No.233/04 on 30.06.2011 on the file of the Additional District Court, Fast Track Court, Namakkal. The plaintiff Gandhimathi filed the suit for partition of the suit properties.

2. The brief case of the plaintiff in nutshell is as follows:

- i. The plaintiff and the defendants 2 and 3 are sisters. Their father Nallusamy died intestate on 17.04.1996. The 1st defendant is their mother. The 4th defendant is the younger brother of the plaintiff's father and the 5th defendant is the son of the 4th defendant. The 6th defendant (appellant in A.S. No.23/2012) is the husband of the 2nd defendant.



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ii. On 15.03.1970 there was a partition in the family of Late Nallusamy, in which the 1st item of the suit properties was allotted to the share of Late Nallusamy. The 2nd item of the suit property was purchased by the plaintiff and the defendants 2 and 3 through a sale deed dated 07.10.1970 (Ex.A2). The 3rd item of the suit properties has been in joint possession of the plaintiff's father and the defendants 4 and 5. Till date there was no partition with regard to the said property.

iii. The plaintiff got married on 27.02.1994. Since her father died intestate, she is entitled to a share in all the three items of the suit properties by Tamil Nadu Act 1 of 1990 as shown below:

Item No.1	5/8 share
Item No.2	1/3 share
Item No.3	5/24 share

iv. According to the plaintiff since there are some difficulties in enjoying the suit properties in common, she requested the



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defendants 1 and 2 for partition of the suit properties and that since it was not favourably considered by the latter, she was constrained to file a suit for partition of the suit properties.

3. The suit was resisted by the defendants 1 to 3 on the following grounds:

- i. The plaintiff and the defendants 1 to 3 are not in possession of the suit properties.
- ii. Nallusamy during his lifetime executed a Will dated 14.02.1996 (Ex.B1) bequeathing the suit properties in favour of the plaintiff and the defendants 2 and 3 and also created a life estate for his wife, the 1st defendant.
- iii. After the death of Nallusamy, the husbands of the defendants 2 and 3, in the presence of elders and well wishers of the family made a family arrangement dated 19.04.1996 (Ex.B2), in which the 6th defendant was directed to maintain the suit properties and also to repay the loans obtained by Nallusamy. According to them, Nallusamy had obtained loans in various banks and also from



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- iv. The 6th defendant in order to repay the loan amount at an early date was cultivating crops in the suit properties by drawing water from his well situate in survey No.312/1.
- v. According to them, the plaintiff can only claim 1/3 share in the suit properties after repaying the loan amount.
- vi. Therefore, they prayed for dismissal of the suit.

4. The 6th defendant filed a separate written statement in which he has stated that as per the family arrangement dated 19.04.1996, he was managing the entire suit properties and he also repaid certain loans obtained by Late Nallusamy. According to him, he has to pay the remaining loan amount, which is around Rs.15,00,000/-. He also prayed for dismissal of the suit.

5. The plaintiff in the reply statement had denied the execution of family arrangement on 19.04.1996 and had also contended that the 6th defendant never paid any amount towards the alleged loans obtained by Late Nallusamy.



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6. The defendants 4 and 5 remained absent and were set ex parte.

7. On the basis of the above pleadings, the trial court framed the following issues.

- 1) Whether Late Nallusamy executed a Will dated 14.02.1996?
- 2) Whether there was a family arrangement on 19.04.1996 and on that basis the defendants 2 and 6 are maintaining the suit properties?
- 3) Whether the suit is bad for partial partition?
- 4) Whether the defendants 2 and 6 repaid the loan amounts obtained by Nallusamy from out of their own income?
- 5) Whether the 6th defendant repaid the loan amounts obtained by Late Nallusamy as mentioned in 'A' schedule of his written statement?
- 6) Whether the payment of loans by the 6th defendant would bind the plaintiff as mentioned in 'B' schedule?
- 7) Whether the plaintiff is entitled to 5/8 share in suit Item No.1?



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8) Whether the plaintiff is entitled for 1/3 share in suit Item No.2?

9) Whether the plaintiff is entitled for 5/24 share in suit Item No.3?

10) To what relief is the plaintiff entitled?

8. In the trial court the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A5. The 3rd defendant and the 6th defendant examined themselves and 9 other witnesses and marked Ex.B1 to Ex.B31 . Apart from the above documents Ex.C1 to Ex.C3 and Ex.X1 to Ex.X3 were also marked.

9. The plaintiff Gandhimathi filed another suit in O.S.No.40/2008 for a permanent injunction restraining the Special Officer, Cooperative Sugar Mills, Salem, from disbursing any amount for the sugar cane harvested from the suit properties, to the 2nd defendant K.C.Subramanian (appellant in A.S. No.23/2012). Both the suits in O.S.No.233/2004 and O.S.No.40/2008 were tried jointly and the learned Additional District Judge, Fast Track Court, Namakkal, vide his decree and judgment dated 30.06.2011 dismissed the suit in O.S. No.40/2008



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and decreed the suit in O.S. No.233/04 as prayed for by the plaintiff. A preliminary decree for partition was passed by the trial court judge as shown hereunder:

<i>Suit Item No.</i>	<i>Allotment of share to the plaintiff.</i>
1	5/8
2.	1/3
3.	5/24

10. Challenging the preliminary decree, A.S. No.23/2012 is filed by the 6th defendant and A.S. No.71/2012 is filed by the defendants 1 to 3.

11. Mr. T. Murugamanickam, learned Senior counsel assisted by Ms.Zeenath Begum, learned counsel for the appellants in A.S.71/2012 fairly conceded that as per the decision rendered in **Vineeta Sharma vs. Rakesh Sharma** reported in **(2019) 6 SCC 162**, the plaintiff and the defendants 1 to 3 are entitled to the following shares.



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IMPUGNED PRELIMINARY DECREE (Tamil Nadu Act 1/1990)	AS PER VINEETA SHARMA decision (cited supra)
<u>ITEM NO.1</u> Notional Partition between Nallusamy and Plaintiff - 1/2 share each. After Nallusamy's death - his half share is inherited by his wife D1, plaintiff and defendants 2 & 3 $= 1/2 \times 4 = 1/8$ Therefore : Plaintiff : $1/2 + 1/4 = 5/8$ D1 = $1/8$ D2 = $1/8$ D3 = $1/8$	<u>ITEM NO.1</u> Nallusamy = $1/4$ Plaintiff = $1/4$ D2 = $1/4$ D3 = $1/4$ AFTER NALLUSAMY's DEATH - his one-fourth share is inherited by his wife D1, plaintiff and defendants 2 & 3 $= 1/4 \times 4 = 1/16$ Plaintiff = $5/16$ D2 = $5/16$ D3 = $5/16$ D1 - Widow = $1/16$
<u>ITEM NO.2</u> Plaintiff = $1/3$ D2 = $1/3$ D3 = $1/3$	<u>ITEM NO.2</u> SAME SHARES
<u>ITEM NO.3</u> Nallusamy = $1/6$ Plaintiff = $1/6$ After Nallusamy's death - his 1/6 share is inherited by his wife D1, plaintiff and defendants 2 & 3 Therefore : Plaintiff : $1/6 + 1/4 = 5/24$ D1 = $5/24$ D2 = $5/24$ D3 = $5/24$	<u>ITEM NO.3</u> Nallusamy = $1/12$ Plaintiff = $1/12$ D2 = $1/12$ D3 = $1/12$ AFTER NALLUSAMY's DEATH - his 1/12 share is inherited by his wife D1, plaintiff and defendants 2 & 3 $= 1/12 \times 4 = 1/48$ Therefore, $1/12 + 1/48 = 5/48$ Plaintiff = $5/48$ D2 = $5/48$ D3 = $5/48$ D1 - Widow = $5/48$



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The learned counsel for the respondents also accepted the above division of shares as per the decision of Hon'ble Apex Court. In fact, the counsel for the appellants in A.S. No.71/2012 did not press their plea with regard to the Will dated 14.02.1996 and the family arrangement dated 19.04.1996. It is to be pointed out that the plaintiff and the defendants 1 to 5 are the sharers in the suit properties and the defendants 4 and 5 did not contest the suit. They did not also enter appearance in the present appeal.

12. Thus there is no dispute with regard to the division of shares. The points for consideration in A.S. No.23/2012, which is filed by the 6th defendant (husband of the 2nd defendant) challenging the preliminary decree, are as follows:

- 1) Whether there were loans to the tune of Rs.14,55,337/- in the family consisting of the plaintiff and defendants 1 to 3 as claimed by the 6th defendant?
- 2) Whether the appeal in A.S. No.23/2012 is liable to be allowed?



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13. According to the 6th defendant, as per the family arrangement dated 19.04.1996, he was managing the entire suit properties and he repaid certain loan amounts obtained by Late Nallusamy. According to him, the plaintiff and the defendants 1 to 3 can get their share only after repayment of other loan amounts obtained by Late Nallusamy, which is about Rs.15 lakhs as on date. The plaintiff had denied her signature in the family arrangement (Ex.B2) dated 19.04.1996.

14. In order to prove the execution of Ex.B2, the 6th defendant relied on the evidence of D.W.1, D.W.3 to D.W.6. The learned trial court judge had held that when both the parties agreed that there was no dispute between them with regard to their respective shares in the suit properties, there was no necessity for them to execute Ex.B2. Further it is pertinent to point out that the 6th defendant did not let in any evidence to show that he and his wife alone repaid the loan amounts obtained by Late Nallusamy. No documentary evidence was adduced on the side of the



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appellant in this regard before the trial court. His only contention in the written statement is that in order to repay the loan amounts at an early date, he was cultivating crops in the suit properties by drawing water from a well which is situate in his own property.

15. The 6th defendant had stated that a sum of Rs.14,55,337/- has to be paid to him. Except the tabular column furnished in the written statement showing the various loans repaid by him, there is no other documentary evidence to show that he repaid the loan amounts allegedly obtained by Late Nallusamy from out of his own income. It is not also the case of the 6th defendant that various creditors have filed suits for recovery of loan amounts obtained by Late Nallusamy. Apart from that, the 6th defendant also did not file any counter claim in the suit in O.S. No.233/2004. In any event, he cannot challenge the preliminary decree passed in favour of the plaintiff since he is a rank outsider to the family consisting of the plaintiff and the defendants 1 to 5. Accordingly points No.1 and 2 are answered against the appellant in A.S.No.23/2012. The actual sharers, namely, the plaintiff and the defendants 1 to 3 have in a



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clear cut terms stated that as per the decision in Vineeta Sharma vs.

Rakesh Sharma (cited supra), they are entitled to the following shares.

<i>Suit Item No.</i>	<i>Division of share</i>	<i>share to the plaintiff.</i>	<i>share to the D1.</i>	<i>share to D2.</i>	<i>share to D3</i>
1	16	5/16	1/16	5/16	5/16
2.	3	1/3		1/3	1/3
3.	48	5/48	1/48	5/48	5/48

In the circumstances the appeal filed by the 6th defendant is liable to be dismissed.

16. In the result,

- i. First Appeal in A.S. No.23/2012 is dismissed. No costs.
- ii. First Appeal in A.S. No.71/2012 is partly allowed. No costs.
consequently connected miscellaneous petition is closed.



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iii. The decree and judgment dated 30.06.2011 made in O.S. No.233 of 2004 on the file of the Additional District Court, Fast Track Court, Namakkal, is set aside and preliminary decree for partition is passed as detailed hereunder:

<i>Suit Item No.</i>	<i>Allotment of share to the plaintiff as per preliminary decree</i>	<i>Modified Allotment of share to the plaintiff as per Vineeta Sharma vs. Rakesh Sharma decision</i>
1	5/8	5/16
2.	1/3	1/3
3.	5/24	5/48

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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1. Additional District Judge, Fast Track Court, Namakkal.
2. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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