



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2022	PRONOUNCED ON : 07.03.2022
--------------------------	----------------------------

WEB COPY

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

APPEAL SUIT NOS.867 & 877 OF 2010
&
C.M.P.NO.21506 OF 2021

A.S.No.867 of 2010

1.D.Sukumar

2.D.Ravichandran

3.D.Hamsabai (Died) ...Appellants / Defendants 3 to 5

Appellant 3 Died, vide Court
Order dated 17.03.2022 made in
A.S.No.867 & 877 of 2010 and
CMP No.21506 of 2021

/versus/

1.G.Nithiya,

2.G.Balakannan,

3.D.Gunasekaran,

4.Minor G.Shruthi,

5.Minor G.Janani,

(Both the minor respondents 4 & 5
are represented by their mother and
guardian G.Lalitha)

...Respondents / Plaintiffs and
Defendants 1, 6 & 7

Prayer : Appeal Suit has been filed under Section 96 C.P.C.,
praying against the judgment and decree of the Court on the
file of Additional District Judge, Fast Track Court - I, at
Vellore, Vellore District made in O.S.No.40 of 2005 dated
30.06.2010.

For Appellants : Mr.M.Kemp Raj

For R1 & R2 : Mrs.Hema Sampath, Senior Counsel,
for Mr.B.Sundarapandian



A.S.No.877 of 2010:-

1.D.Gunasekaran,

2.Minor G.Shruthi,

3.Minor G.Janani,

(Both the minor appellants

2 & 3 are represented by

their mother and next friend

G.Lalitha)

...Appellants / Defendants 1, 6 & 7

/versus/

1.G.Nithiya,

2.G.Balakannan,

3.D.Sukumar,

4.D.Ravichandran,

5.D.Hamsabai (Died)

...Respondents / Plaintiff 1 & 2 and

Defendants 2 to 5

5th Respondent Died, vide Court

Order dated 17.03.2022 made in

A.S.No.867 & 877 of 2010)

Prayer : Appeal Suit has been filed under Section 96 C.P.C., praying against the judgment and decree of the Court on the file of Additional District Judge, Fast Track Court - I, at Vellore, Vellore District made in O.S.No.40 of 2005 dated 30.06.2010.

For Appellants : Mr.R.Suresh Kumar,
for M/s.K.M.Vijayan Associates

For R1 & R2 : Mrs.Hema Sampath, Senior Counsel,
for Mr.B.Sundarapandian

C O M M O N J U D G M E N T

These two Appeal Suits are directed against the judgment and decree passed by the Trial Court, by two set of defendants, who lost the suit to the plaintiffs, who prayed for partition and allotment of separate possession of 1/6th share in the suit schedule properties totally 20 items which includes two theatres, residential and commercial buildings, Tourist buses, route buses and bus permits, car, scooters and vacant house sites.

2. The suit initially laid by the plaintiffs as in forma pauperis on 08/03/1999, later on transfer to the Additional District and Sessions Judge, Fast Track Court, Vellore, it was



renumbered as O.S.No.40/2005 and came to be disposed on 30/06/2010.

3. **Plaint averments:**

According to the plaint, the plaintiffs are daughter and son of one Gunasekaran, who is the first defendant in the suit. Mr.V.Durairaj and Hamsabai are the parents of the said Gunasekaran. They are the second and fifth defendants respectively. The brothers of Gunasekaran are the defendants 3 and 4 in the suit. Gunasekaran married one Chitra on 06/05/1981 at Marudeeswarar Temple in Thirvanmaiur, Chennai as per the Hindu sastra and both affixed their signature in the register maintained by the Temple Authorities. Till March 1985, they both lived at Katpadi. The first plaintiff born to them on 30/10/1981 and the second plaintiff on 19/05/1985. Thereafter, due to ill advice of the second defendant -Durairaj, the first defendant-Gunasekaran stopped coming to the house and started neglecting the family. An attempt was made to conduct second marriage to Gunasekaran which forced the mother of the plaintiffs to file O.P.No.31/1986 for restitution of conjugal right and O.S.231/1986 for injunction restraining the Gunasekaran from marrying any other person. Since Gunasekaran did not join his wife Chitra, a decree of divorce was granted.

4. The suit for partition through the said Gunasekaran is filed claiming that V.K.Velayutham, who is the father of Durairaj got separated from his brothers under the partition deed of the year 1955. In the said partition, he got buses, agricultural lands and theatre. Thereafter, V.K.Velayutham and his sons (Durairaj and others) constituted a joint family owning number of buses, bungalows, theatre and other properties as their joint family properties. On 16/08/1965, partition between the sons of Velayutham took place. The second defendant-Durairaj being one of the sons of V.K.Velayutham got 2 buses, House at Veerakoil Street, a motor shed and other houses. Durairaj (D2) along with his sons Gunasekaran (D1), Sukumar (D3) and Ravichandran (D4) continued the transport business and from out of the income in the transport business, they build a house and a theatre. These properties were purchased from the joint family income and out of joint exertions of the defendants 1 to 4. Therefore, each of them are entitled for $\frac{1}{4}$ share in the said properties. From the first defendant's share of $\frac{1}{4}$, the plaintiffs are entitled to a share in the property. The plaintiffs laid the suit claiming they are jointly entitled for $\frac{1}{6}^{\text{th}}$ share in the suit properties and first defendant Gunasekaran is entitled for $\frac{1}{12}^{\text{th}}$ share. Durairaj and his other two sons are entitled for $\frac{1}{4}$ share each.

5. The first defendant and defendants 3 to 5 had filed written statements.



The first defendant, in his written statement had denied his marriage with Chitra, the mother of the plaintiffs. He deny the averment that, they both lived at Katpadi till March 1985. He has asserted that Chitra is not his legally wedded wife and the plaintiffs are not his children. During his college days, he was friendly with the said Chitra. Taking undue advantage of his friendship with her, to grab money filed petition for restitution of conjugal right and obtained exparte decree and later, obtained the decree for divorce. The first defendant had married another lady, who is related to him. He have no knowledge about the alleged partition between his grand father V.K.Velayutham and his brother in the year 1955 or the partition between his father Durairaj and his brothers in the year 1965. He born on 03/04/1960 and was studying in the College till 1983. He got separated from his family and living at Chennai since 1983. He is working in a private bus company.

6. The suit properties are not joint family properties. They were acquired by the second defendant Durairaj and they are his self acquired absolute properties. He himself have no share in the suit properties, so no right from him flow to the plaintiffs.

7. The defendants, 3 to 5 in their written statements had denied the correctness and bonafide of the averments found in the plaint. According to them the plaintiffs are stranger to the family and they are not coparceners of the family to seek partition. The movables in the suit schedule property are not at all in existence. Whereas, items 1, 9, 10, 11 and 12 in the suit schedule property are independent properties of the 3rd defendant. Other immovable properties are ancestral properties of the defendants 1, 3 and 4.

8. With these pleadings, the parties went for trial to answer the issues framed by the Court.

(i).Whether the plaintiffs are the children of the first defendant Gunasekaran?

(ii).Whether the suit properties are joint family properties?

(iii).Whether the plaintiffs are entitled for partition of 1/6th share in the suit properties?

(iv).To what relief the plaintiffs are entitled to?

Additional issues:-

(i).Whether the plaintiff can claim right over the suit properties?

(ii).Whether the plaintiffs are entitled for any share in the suit properties?

(iii).To what other relief?



9. To prove their case, the plaintiffs examined two witnesses and marked 16 documents. The defendants examined 2 witnesses and marked 3 exhibits.

10. The Trial Court, on considering the evidence, Gunasekaran (D-1) marriage with Chitra on 06/05/1981 proved. The plaintiffs have proved that, they are the children of first defendant Gunasekaran. Whereas, the defendants 6 and 7 are children born to Gunasekaran through Lalitha and they were born during the subsistence of Gunasekaran marriage with Chitra which got dissolved on 15/10/1998. The suit properties are joint family properties, in which through Gunasekaran, the plaintiffs who are his legitimate children are entitled for 1/6th share. Accordingly, a preliminary decree was passed on 30/06/2010.

11. Aggrieved by the Trial Court judgment and decree, the defendants 3 to 5 have joined together and filed A.S.No.867 of 2010. The first defendant and his two children born through his second wife Lalitha and who were later impleaded, pending suit as defendants 6 and 7 jointly had preferred A.S.No.877 of 2010.

12. Nearly, 11 years after preferring the A.S.No.867 of 2010, the appellants have filed the Miscellaneous Petition in C.M.P.No.21506 of 2021 to receive additional 10 documents.

13. The Appeals and the Miscellaneous petition are taken together for hearing. The submissions of the learned counsels for respective parties heard.

Points for determination in these two appeals are:-

1).Whether the Trial Court right in its finding that the plaintiffs are legitimate children of first defendant Gunasekaran and the defendants 6 and 7 are his illegitimate children?

2).Whether the Trial Court right in holding all the suit properties are ancestral properties held jointly by the family headed by Durairaj and his wife Hamsabai along with his sons?

14. The Learned Counsels appearing for the appellants, primarily submitted that, the Trial Court without ascertaining the title over the suit properties and existence of the suit properties, had blindly passed a preliminary decree in respect of all movable and immovable properties contrary to the fact that the movables like Benz car, Buses and Scooters which are described as items 5 to 8 were condemned and discarded long time ago and most of the immovable properties were purchased by the individual defendants from out of their earning and does not form part of the ancestral properties or accrued from the



ancestral properties devolved to Durairaj from his father Velayutham. To establish the said fact for allowing the miscellaneous petition filed for receiving the additional documents which are in respect of :-

i). Item No.1 property - Sale Deed to show that it was purchased by 5th defendant in her name on 17/11/1962.

ii). Item No.2 property - Sale Deed to show that it was purchased by the second defendant in his name on 13/03/1972.

iii). Item No.3 property - Will of Rajammal dated 28/11/1970 in favour of the second defendant.

iv). Item No.9 property - Sale deed dated 16/09/1998 in favour of second defendant.

v). Item Nos.9 and 10 properties - Sale deed dated 22/03/1993 in favour of second defendant.

vi). Item No.12 property - Sale deed dated 16/07/1980 in favour of second defendant.

vii). Item No.19 property - Sale deeds dated 29/01/1987, 02/02/1987 and 04/02/1987 in favour of second defendant.

15. It is further contended by the learned counsel appearing for the appellants in A.S.No.867 of 2010, that after the demise of the second defendant Durairaj, partition between his wife Hamsabai (D-5) and his children (D-1, D-3 and D-4) was effected vide a registered partition deed dated 29/11/2002. As per the will, Gunasekaran was allotted properties morefully described under schedule 'D' of the partition deed. Whatever right the said Gunasekaran derived from that partition suit alone can be subjected to the decree, even if the decree of the trial court declaring 1/6th share is confirmed.

16. The Learned Counsel appearing for the appellants in A.S.No.877 of 2010 submitted that, the plaintiffs are stranger to the family. Declaring legitimacy to the plaintiffs and denying the same to these appellants 2 and 3, who are the defendants 6 and 7 is an erroneous finding both on law and facts. Their legitimate right in the suit properties cannot be deprived or denied by declaring them as illegitimate children of Gunasekaran.

17. Per contra, the Learned Senior Counsel for the contesting respondents/plaintiffs submitted that, the appellants contested the suit for partition on two grounds. First, they denied the marriage of Gunasekaran with Chitra and second, they denied the suit properties are not joint family property.

18. The plaintiffs through documentary evidence Ex.A-1 to Ex.A-7 had proved the marriage of Chitra with Gunasekaran on 06/05/1981. Through Ex.A-1, Ex.A-15 and Ex.A-16 proved that the said marriage was later dissolved by a Court decree on 15/10/1998.



19. Regarding the suit properties, to prove that they are ancestral properties and properties accumulated from out of the surplus income derived from the ancestral properties, the plaintiffs have marked Ex.A-12 partition deed between V.K.Velayutham and his brother V.K.Kannan on 12/05/1955 and Ex.A-13, partition deed between Govindammal W/o.V.K.Velayutham and Durairaj the eldest son of Velayutham and his other 4 children on 16/08/1965. The transport business was the only source of income for the family and the suit properties were in joint possession and enjoyment of Durairaj, his wife and sons.

20. The defendants though specifically denied some of the movable properties listed in the suit schedule were not in existence and some items of properties are self acquired properties, they did not adduce any evidence to prove the said averments. The three documents Ex.B-1 to Ex.B-3 are documents to show the 6th and 7th defendants were children of Gunasekaran born through Lalitha and Ex.B-3 is the ration card to show they were living as a family. These documents does not disprove the fact that the suit properties are ancestral properties and properties accrued from the income of ancestral properties were enjoyed as joint family properties.

21. The Learned Senior Counsel for the contesting defendant strenuously oppose the miscellaneous petition to receive additional documents on the ground that, the suit for partition laid in the year 1989 with specific plea. The defendants filed their written statements in the year 2005 denying the averments. They did not choose to file these documents along with the written statements or during the trial or even along with the appeal, nearly after three decades of instituting the suit, additional documents are sought to be filed. Most of these documents are documents which were within the knowledge of the defendants at the time of filing their written statement and there was no plausible reason for not producing it before the Trial Court. Further, the partition deed of the year 2002 which was created pending suit to cheat the plaintiffs has no validity in the eye of law. Hence, prayed for dismissal of the miscellaneous petition along with the appeals.

22. Heard the Learned Counsel for the appellant and the Learned Senior Counsel for the respondents and documents perused.

23. To prove that the marriage of Gunasekaran with Chitra was prior in point of time, the plaintiffs have marked Ex.A-1 receipt and Ex.A-2, the certificate given by the Temple Authority. This vouchsafe the fact that on 06/05/1981, the mother of the plaintiffs Chitra got married to the first



defendant Gunasekaran at Marutheswarar temple. In addition, the plaintiffs have marked Ex.A-3 to Ex.A-7 the marriage photographs with negative. To prove the second plaintiff is the son of Gunasekaran born to Chitra. Ex.A-8 the certificate issued by the medical officer is marked. The proceedings before the Court for restitution of conjugal right, suit for injunction restraining Gunasekaran from solemnising second marriage while subsistence of first marriage and the divorce decree are proved without any pale of doubt through Ex.A-11, Ex A-15 and Ex.A-16. The defendants own documents Ex.B-1 and Ex.B-2 establishes that the defendants 6 and 7 were born while the first marriage was in subsistence of first contested the suit denying the lawful right of the plaintiffs in the suit property.

24. Therefore, this Court finds no error in the finding of the Trial Court that, the plaintiffs are legitimate children of Gunasekaran. They are children born to Chitra before the marriage between her and Gunasekaran got legally dissolved through a Court decree dated 15/10/1998 (Ex.A-11).

25. Regarding the character of the suit properties and the prayer to receive additional documents, this Court on perusal of the partition deeds Ex.A-12 dated 12/05/1955 find that earlier to this partition, in the year 1945 on 17th February, Velayutham Pillai S/o.Kumarasamy Pillai, Imperial Bus Service Proprietor and his brothers have divided properties through a registered partition award. In which Velayutham and his brother Kannan was jointly allotted the transport business in the name and style "Imperial Bus Service" and "Imperial Bus Transport" and they were running the business and enjoying the profit equally. Under Ex.A-12, the division of the transport business and immovable properties held in connection to the business was effected. On perusal of the recital in Ex.A-13, this Court finds that the said Velayutham Pillai, with the properties given to him under the earlier partition deeds have acquired other properties and died on 15/07/1959. Those properties were divided among his 8 legal heirs. Durairaj, the second defendant in the instant suit is the eldest son of Velayutham Pillai and one among the 8 legal heirs. From the recitals of these documents, it could be inferred that the prime source of the family was the income from the transport business and no evidence to prove that there was other source of income for any of the other family members.

26. Hence, this Court confirms the finding the Trial Court that the suit properties are joint family properties and the plaintiffs are entitled for 1/6th share in it.

27. Regarding the petition to receive additional documents, this Court finds no reason to entertain this petition with an



extraordinary unexplained delay of nearly 30 years in respect of documents existed prior to the institution of suits and within the knowledge of the defendants being party to the documents. In respect of documents which came into existence pending suit, then again, it should have been produced before the Court immediately or within reasonable time with reason for not producing in time, in view of this Court Order 41 Rule 27 of C.P.C., is not meant to permit the introduction of documents which came into existence between the years 1962 to 1987 prior to the suit and documents which came into existence between 1992 to 1998 pending suit when all these documents are not third party documents but documents in which the defendants were parties. Most of the deeds described in brief in the earlier part of this judgment indicates Durairaj (2nd defendant) is a party. The said Durairaj died on 03/01/2001 pending suit and his death was recorded and his wife Hamsabai was brought on record on 05/01/2005. By that time, the legal heirs of Durairaj has also purported to have entered into a partition deed dated 29/11/2002. The petitioners/appellants have not cared to produce these additional documents within reasonable period. These petitions to receive additional documents filed belatedly for the purpose of protracting the execution of final decree and the plaintiffs reaping the fruits of the decree.

28. Hence, the Civil Miscellaneous Petition No.21506 of 2021 to receive additional documents is dismissed as devoid of merits. In the result, Appeal Suit Nos.867 and 877 of 2010 are dismissed with costs.

07.03.2022

bsm

This Appeal Suit having been listed under the Caption "for Being Mentioned" on Thursday, the Seventeenth day of March 2022 in the presence of above said Advocates, this Court made the following order :

Today, this matter came up for hearing under the caption 'being mentioned.

2. The memo filed by the learned counsel for the respondents 1 and 2 in A.S.No.877 of 2010 stating that after these two appeals reserved for orders on 22.02.2022, one of the defendant by name D.Hamsabai died on 25.02.2022. The said Hamsabai is the appellant in A.S.No.867 of 2020 and the fifth respondent in A.S.No.877 of 2010. Her legal heirs are already on record either as the appellant or the respondents in these two appeals and there is none other than these legal heirs for the deceased



Hamsabai. Therefore, it is suffice to record the death of the Hamsabai on 25.02.2022 in the cause title.

17.03.2022

vri/bsm

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

To

The Additional District Judge,
Fast Track Court - I,
Vellore.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+2ccs to M/s.B.Sundarapandiyan, Advocate Sr.No.14950

+1cc to M/s.K.M.Vijayan Associates, Advocate Sr.No.14844

+2ccs to M/s.M.Kempuraj, Advocate Sr.No.14911

Appeal Suit Nos.867 & 877 of 2010
& C.M.P.No.21506 of 2021

RSI (CO)
RVM(23/05/2022)