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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2021

PRONOUNCED ON: 04.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. No.1139 of 2010  
and M.P. No.1 of 2010

1.Pachiammal ... 1<sup>st</sup> Appellant / Plaintiff

2.Mannammal ... 2<sup>nd</sup> Appellant /2<sup>nd</sup> Defendant

versus

Arjuna Gounder ...Respondent /1<sup>st</sup> Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 23.04.2010 made in A.S.No.12 of 2010 on the file of the learned Principal District Judge, Villupuram, reversing the judgment and decree dated 22.10.2009 made in O.S.No.75 of 2007 on the file of the learned Additional Subordinate Judge, Tindivanam.

For Appellants : Mr.R.Agilesh

For Respondent : Ms.J.Prithvi  
for Mr.S.Kaithamalai Kumaran

J U D G M E N T

The present appeal is directed against the judgment and decree dated 23.04.2010 passed in A.S.No.12 of 2010 on the file of the learned Principal District Judge, Villupuram, reversing the judgment and decree dated 22.10.2009 passed in O.S.No.75 of 2007 on the file of the learned Additional Subordinate Judge, Tindivanam.



2.The first appellant in this appeal preferred the above referred suit as against the respondent and against the second appellant, seeking the relief of preliminary decree for partition, allowing her 1/3<sup>rd</sup> share, in order to pass final decree with metes and bounds.

3.The learned Additional Subordinate Judge, Tindivanam, by judgment and decree dated 22.10.2009, decreed the suit, as the plaintiff and the second defendant are each entitled to 1/3<sup>rd</sup> share in 'A' and 'B' schedule property. Excluding 5<sup>th</sup> and 6<sup>th</sup> item of 'A' schedule property and 10<sup>th</sup> item of 'B' schedule property and each an amount of Rs.10,000/- from the Fixed Deposit, which is in the name of Annadurai. In the appeal, the learned Principal District Judge, Villupuram, reversed the findings arrived at by the trial Court and ultimately, the suit was dismissed. Being dissatisfied with the said findings, the plaintiff and the second defendant, are before this Court with the present Second Appeal.

4.For the sake of convenience, hereinafter, the parties, are referred to, as per their litigative status before the trial Court.

5.The laconic averments made in the plaint, are as follows:

(i) The plaintiff and the second defendant are sisters. First defendant, is their father. Krishna Gounder, Govinda Gounder and Kuppan, are the brothers of the first defendant. One Raja Gounder was their father. On 20.08.1987, the first defendant and his other 3 brothers had partitioned the property by a registered Partition Deed. In the said partition, the plaintiff 'A' schedule property was allotted to the first defendant.

(ii) Those properties are the Joint Hindu family properties and so, the same was enjoyed by the first defendant along with his two daughters, as a Joint Hindu family property. 'B' schedule property was purchased by the first defendant from the nucleus of the 'A' schedule property. After selling the Sl.Nos.5 and 6 of the 'A' schedule property, the first defendant had purchased Sl.Nos.8 to 10 of the 'B' schedule property. The first defendant never enjoyed those properties in a separate manner and so, the suit schedule property, is not his separate property.



(iii) The plaintiff got married on 06.07.1992. Similarly, the second defendant got married on 20.08.2000. When at the time, the Hindu Succession Act was amended in the year of 1989, both the plaintiff and the second defendant was unmarried and hence, they are entitled to 1/3<sup>rd</sup> share in the suit 'A' and 'B' schedule property. Now, the first defendant is trying to alienate the property. When the plaintiff asked for her share, the first defendant refused for amicable partition. So, the plaintiff caused lawyer notice to the first defendant on 30.04.2007 but the first defendant refused to receive the said notice.

(iv) The name of the first defendant's wife is Jakkubaiammal. She is the mother of the plaintiff and the second defendant. When the first wife was alive, the first defendant got married to the second wife, namely, Devaki. Hence, the marriage solemnised between the first defendant and Devaki become void and thereby, the son born to them, is not entitled to any share from the suit schedule property. Hence, the present suit has been filed for the relief of partition.

6. The case of the first defendant, as averred in the written statement, is as follows:

(i) The suit schedule properties and other properties were all purchased by utilising the funds realised from the hard work done by the first defendant and his brothers. After entering into the partition, the suit schedule property becomes absolute property of the first defendant.

(ii) The first defendant of his sheer hard work had earned the money and arranged the marriage for his two daughters, for example, the plaintiff and the second defendant. While at the time of marriage, the first defendant by following the formalities given 7½ sovereigns of gold to the plaintiff and ½ sovereigns of gold to his son-in-law. He spent around Rs.1,00,000/- towards the marriage expenses of the plaintiff.

(iii) Later, in order to discharge the debts, the first defendant had sold some of the properties. Hence, the plaintiff, is not entitled to the relief of partition. This defendant has got one daughter and one son through his second wife and they are residing along with him. They are coparcener to the suit schedule property, further becomes they are necessary parties to suit. The suit is bad for non-joinder of necessary parties. Hence, the suit filed by the plaintiff, is liable to be dismissed.



7. The case of the second defendant, as averred in the written statement, is as follows:

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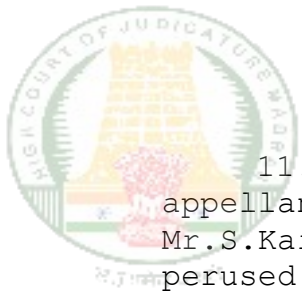
(i) The relationship stated by the plaintiff in the plaint, is found correct. The facts narrated by the plaintiff in respect to the purchase of the suit schedule property and about her right stated by the plaintiff, is also found correct. Now, both the plaintiff and the defendants, are in joint possession of the suit schedule property. The son and daughter born through the second wife of the first defendant, is not having any right in the suit schedule property. The second defendant has got no objection in granting the relief, which prayed for by the plaintiff.

8. Based on the above said pleadings, the learned II Additional Subordinate Judge, Tindivanam, framed necessary issues and tried the suit. On the side of the plaintiff, 3 witnesses were examined as P.W.1 to P.W.3 and marked 7 documents, as Ex.A.1 to Ex.A.7. Similarly, on the side of the defendants, first defendant examined himself as D.W.1 and marked 3 documents, as Ex.B.1 to Ex.B.3.

9. Having considered the materials placed before him, the learned Additional Subordinate Judge, Tindivanam, vide judgment and decree dated 22.10.2009, came to the conclusion that the plaintiff is entitled to the relief of partition and decreed the suit. In the appeal filed by the first defendant in A.S.No.12 of 2010, the learned Principal District Judge, Villupuram, reversed the findings arrived at by the trial Court and ultimately, the suit was dismissed.

10. Feeling aggrieved over the said findings of the Court below, the plaintiff and the second defendant, are before this Court with the present Second Appeal. The Second Appeal was admitted on file after formulating the following substantial question of law;

“(i). Whether the judgment of the First Appellate Court is vitiated by failure to appreciate the relevant materials on record and by non-application of the correct principles of law ?”



11. Heard Mr.R.Agilesh, learned counsel appearing for the appellants and Ms.J.Prithvi, learned counsel for Mr.S.Kaithamalai Kumaran appearing for the respondent and also perused the materials available on record.

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12. Admittedly, the plaintiff and the second defendant are the daughters of the first defendant. The first defendant is having 3 brothers, namely, Krishna Gounder, Govinda Gounder and Kuppan. In respect to the properties having by them, they had entered into a partition on 20.08.1987 wherein 'A' schedule property was allotted in favour of the first defendant.

13. It is the submission of the learned counsel for the appellants / plaintiff and the second defendant that, the property allotted in favour of the first defendant vide Partition Deed dated 20.08.1987, is the Joint Hindu family property. Since both the plaintiff and the second defendant got married after the year of 1989, in the capacity of coparceners, the plaintiff and the second defendant, are entitled to 1/3<sup>rd</sup> share in the schedule of property.

14. It is the further submission of the learned counsel for the appellants that, after selling the Sl.Nos.5 and 6 of the 'A' schedule property, the first defendant purchased the Sl.Nos. 8 to 10 in the 'B' schedule property. Therefore, the entire 'A' and 'B' schedule property becomes the Joint Hindu family property and therefore, the suit filed by the plaintiff, is maintainable.

15. Per contra, the learned counsel for the respondent / first defendant would contend that, since the 'A' schedule property has been reached the first defendant through partition, the said property became the absolute property of the first defendant and therefore, the plaintiff cannot claim any right over the said property and accordingly, the relief sought for by the plaintiff, cannot be entertained.

16. Now, on considering the said submissions with the relevant records, to reach the correct conclusion in the suit, it would necessary to see whether 'A' and 'B' schedule property, is having the character of Joint Hindu family. In respect to the same, while at the time of examining the first defendant as D.W.1, in his cross examination, he would state that, his father Raji Gounder, is having an agricultural land to an extent of 3.55 acres. He would further state that after his demise, from the income realised from the said property, the plaintiff 'A'



schedule property and the other properties allotted in favour of his brothers were purchased in the name of one Krishna Gounder, who is the brother of the first defendant. It is the evidence given by him that in the year 1987, he entered into the partition with his brothers. Therefore, in the oral evidence given by D.W.1, he would admit that only from the nucleus of the ancestral property, he and his brothers purchased the 'A' schedule property.

17. In this occasion, before the trial Court, the Partition Deed dated 20.08.1987 entered into between the first defendant and his brothers was marked as Ex.A.1. Now, on going through the recital found in the said document, it seems that, the properties, which have been partitioned through the partition, were all purchased in the name of Krishna Gounder by utilising the income realised from the ancestral property, which was left out by their father Raji Gounder. Accordingly, the recital found in Ex.A.1 and oral evidence given by D.W.1 would make it clear that, the suit 'A' schedule property, is having the character of Joint Hindu family property.

18. Apart from that, in respect to 'B' schedule property, it is the evidence given by D.W.1 that after selling one of the property, which was allotted in his favour vide Partition Deed dated 20.08.1987, 'B' schedule property was purchased in his name. Therefore, herein also, the evidence given by D.W.1 would make it clear that, the suit 'B' schedule property, is also having the character of Joint Hindu family property.

19. Secondly, it is the case of the plaintiff that, during the time of partition, for example, 20.08.1987, the plaintiff and the second defendant, was alive. In this aspect, while at the time, the case was instituted in the year 2010, it was stated that the plaintiff and the second defendant are aged about 35-30 years respectively. Therefore, obviously, during the time of partition, the plaintiff and the second defendant are the children, in the age of 5 or 6. In this regard, as there is no dispute on the side of the first defendant that, the plaintiff and the second defendant were born after the date of partition.

20. Therefore, in order to finalise the eligibility for getting partition in the suit schedule property, it would necessary to see the judgment of our Hon'ble Apex Court in the case of ROHIT CHAUHAN vs. SURINDER SINGH reported in AIR 2013 SC 3525 wherein, it has held as follows;



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"11. We have bestowed our consideration to the rival submission and we find substance in the submission of Mr.Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener. The view which we have taken finds support from a judgment of this Court in the case of M.Yogendra v. Leelamma N., (2009) 15 SCC 184, in which it has been held as follows:

"29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him."

21. Further, this Court, while at the time of disposing the Second Appeal in P.DURASAMY AND OTHERS vs. D.LATHA AND OTHERS reported in 2019-5-L.W.489, has observed as follows;

"17. .... The character of the properties that ancestral joint family property, is admitted. Once Pachiammal is found to be the first wife of the first defendant Duraisami, then by virtue of the Hindu Succession Amendment Act, 39 of 2005, Duraisami the first defendant, Selvakumar the second defendant and the plaintiffs would be entitled to



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equal shares as coparcenors in the joint family. Therefore, each one of them would get  $1/4^{\text{th}}$  share. The defendants 3 to 6, who are children of the first defendant through Bothamani @ Maniammal, would not get a right by birth in the suit properties and they would not be entitled to a share till Duraisami is alive. Therefore, the Courts below should have granted a decree for  $2/4^{\text{th}}$  share in favour of the plaintiffs instead of  $2/8^{\text{th}}$  share."

22. Further, our Hon'ble Apex Court in VINEETA SHARMA vs. RAKESH SHARMA reported in AIR 2020 SC 3717, wherein, it has held as follows;

"129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities."

23. Accordingly, in view of the principles set out in the above referred judgments, it would clear that after the amendment by Act 39 of 2005, the daughters also become coparceners as likes the son. Here, it is a case, the suit schedule property has not been alienated by the first defendant before the year 2005, hence, his daughter being the coparcener also having the right to claim the Joint Hindu ancestral property and this case also comes under the said category.

24. The First Appellate Court without appreciating the same in correct perspective manner, allowed the appeal, which is erroneous one. Accordingly, the substantial question of law, is answered as above.

25. Resultantly, the Second Appeal is allowed. The judgment and decree rendered by the trial Court, is restored. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

SD/-  
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



To

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1.The Principal District Judge,  
Villupuram.

2.The Additional Subordinate Judge,  
Tindivanam.

Copy to

The Section Officer,  
VR Section High Court, Madras.

+lcc to Mr.S.Kaithamalai Kumaran, Advocate Sr.736

+lcc to Mr.T.Dhanasekaran, Advocate Sr.492

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and M.P. No.1 of 2010

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