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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.287/2022 and CMP.No.5944/2022

1.Subramani
2.Nallamuthu

.. Appellants / Appellants /
Defendants 1 and 2

Vs.

1.Kannammal
2.Samiathal
3.Karuppusamy
4.K.Dhamodaran

.. Respondent No.1 / Respondent No.1/
Plaintiff

.. Respondents 2 to 4 /Respondents 2 to 4 /
Defendants 3 to 5

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.8/2019 dated 29.10.2021 in respect of the 'A' schedule property is concerned, on the file of the I Additional District Court, at Erode, in confirming the judgment and decree made in O.S.No.71/2012 dated 19.11.2018 on the file of the learned II Additional Subordinate Judge, Erode.

For Appellants : Mr.M.Guruprasad

JUDGMENT

- (1) The above Second Appeal is filed by defendants 1 and 2 in the suit in O.S.No.71/2012 before the learned II Additional Subordinate Judge, Erode.
- (2) The 1st respondent in this appeal as plaintiff filed the suit in O.S.No.71/2012 for partition of suit 'A' schedule property and to allot an extent of 3.52 acres in plaintiff 's share and one half of shares in suit 'B' schedule property and for other consequential reliefs.
- (3) It is the case of the 1st respondent/plaintiff in the suit that suit A and B schedule properties originally belonged



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to one Thiru Porappana Gounder. Suit 'A' schedule is described as an extent of 5.30 acres in R.S.No.461/1&2 Vadamugam Vellode Village and 'B' schedule is an extent of 3 acres in R.S.No.309/20 in Pudur Pudupalayam Village. It is stated that the properties are the ancestral properties of Thiru Porappana Gounder and his two sons by name Thiru Nalla Gounder and Thiru Sengoda Gounder. It is further stated in the plaint that two sons of Thiru Porappana Gounder namely Nalla Gounder and Sengoda Gounder inherited an extent of 2.65 acres each in A schedule suit properties. It is also the case of the plaintiff that Thiru Nalla Gounder, one of the sons of Porappana Gounder died and had no issues. However, it is admitted that Nalla Gounder had a wife by name Tmt Pavayammal.

- (4) It is the further case of the plaintiff that Thiru Sengoda Gounder had three sons by name Nallappa Gounder, Ramasamy Gounder, Arumuga Gounder and one daughter by name Arukkani. It is the further case of the plaintiff that she is the daughter of Ramasamy Gounder and defendants 1, 2 and 3 are the children of Nallappa Gounder. It is admitted that Arumuga Gounder and Arukkani died without any issues. It is the case of the plaintiff that her father Ramassamy Gounder and his father-in-law Muthusamy purchased the property of Pavayammal W/o Nalla Gounder and Arumuga Gounder, an extent of $88 \frac{1}{3} + 88 \frac{1}{3}$ acres. Therefore, it was contended by the plaintiff that the property measuring an extent of 2.65 acres in the suit survey number belonged to her as she is the sole legal heir of Ramasamy Gounder and her grandfather. The plaintiff claimed title to an extent of 3.52 acres in the 'A' schedule properties as a legal heir of Ramasamy Gounder by virtue of a Gift Deed dated 07.12.1992 stated to have been executed by the maternal grandfather of the plaintiff. It is seen that the plaintiff also claimed title to an extent of $88 \frac{1}{3}$ acres by virtue of a Sale Deed executed by Pavayammal. Though the plaintiff claimed title to an extent of 3 acres and 52 cents, the Trial Court has given relief only to an extent of $3.09 \frac{2}{3}$ acres in the suit holding that the property of Pavayammal, wife of Nalla Gounder should be taken by the plaintiff and defendants 1, 2 and 3 in equal proportionate.
- (5) The defendants contested the suit by filing a written statement denying the specific averments made in the plaint. The contention of the appellants/defendants was that there was already a partition between the plaintiff and the defendants as regards to 'A' suit schedule property



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and therefore, the plaintiff cannot file a suit for partition. Further, it is stated that the plaintiff and her sister along with their mother, Karuppayammal sold an extent of 75 cents to Ramasamy Gounder under a registered Sale Deed dated 28.04.1965 and that the plaintiff has lost her share in suit 'B' schedule property. It is not in dispute that suit 'A' schedule property is an extent of 5.3 acres. However the Trial Court has granted the decree in favour of the plaintiff in respect of an extent of 3.09 $\frac{2}{3}$ acres in suit 'A' schedule property. The suit in respect of other prayer is dismissed. Aggrieved by the same, the appellants preferred an appeal in A.S.No.8/2019 and the defendants 3 to 5 preferred an appeal in A.S.No.52/2019 before the learned I Additional District Judge, Erode.

(6) The Lower Appellate Court also confirmed the judgment and decree of the Trial Court and dismissed the appeals. Aggrieved by the judgment and decree of the learned I Additional District Judge, Erode in A.S.No.8/2019 dated 29.10.2021, defendants 1 and 2/appellants have preferred the above second appeal.

(7) The appellants have raised the following substantial questions of law in the Memorandum of Grounds of Second Appeal.

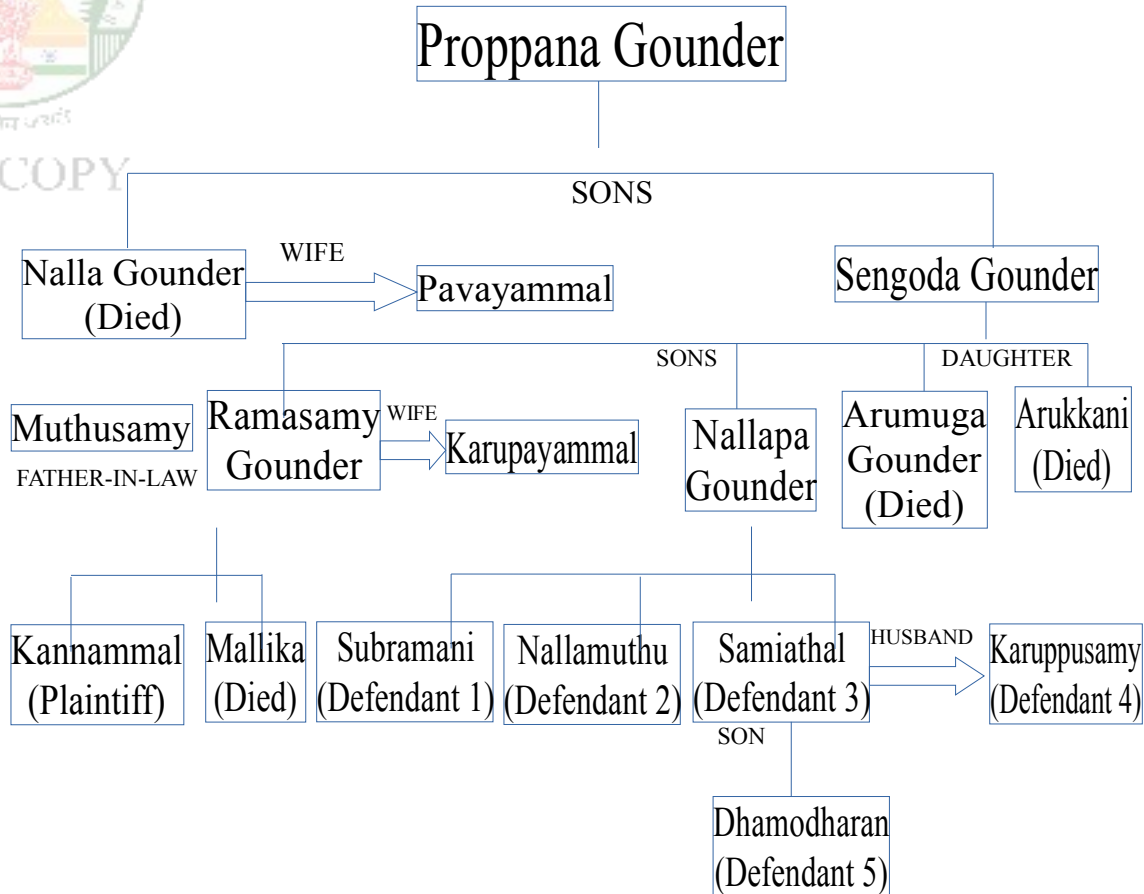
1. Whether the Courts below are right in holding that the mere existence of the name of the said Pavayammal in Ex.B4 confers absolute right over the 0.88 $\frac{1}{3}$ acres of land in 'A' schedule property even on her failure to contribute towards the sale consideration towards the purchase of the property is concerned?

2. Whether the Courts below are right in rejecting the oral partition took place between the plaintiff and defendants 1 and 2 in the year 1993, while the mention of the same oral partition has been reflected in the subsequently registered Partition Deed dated 23.10.2007.

(8) It is seen that the genealogy and the relationship between the parties are not in dispute. The following genealogy is admitted.



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- (9) From the Genealogy, there is no dispute with regard to the 1st respondent/plaintiff 's title to an extent of 2.65 acres in suit 'A' schedule property. It is admitted by the appellants in the written statement and in the course of arguments that defendants 1 to 3 are the sons of Nallappa Gounder. Though Nallappa Gounder is also entitled to 88 1/3 acres in suit 'A' schedule property, their right beyond the share to which the Nallappa Gounder was entitled, cannot be accepted unless there is any document. Defendants 1 to 3 have not produced any document to show their title to an extent of more than 88 1/3 acres. However, it is admitted that both the plaintiff and defendants 1 to 5 are entitled to share the property of Pavayammal W/o. Nalla Gounder who is also the son of Thiru Porappana Gounder. The Trial Court as well as the Lower Appellate Court after finding that the plaintiff is entitled to 2.65 acres in suit 'A' schedule as the legal heir of Ramasamy Gounder and by virtue of the Settlement Deed stated to have been executed by her grand parents, it is further held that the plaintiff is also entitled to half of 88 1/3 acres after the death of Pavayammal W/o Nalla Gounder. It is admitted



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that Nalla Gounder died in the year 1940 leaving behind his wife Pavayammal. After the death of Pavayammal the property of Nalla Gounder would only devolve on the legal heirs of Sengoda Gounder. Therefore, the findings of the Courts below with regard to the allotment of share and entitlement of the plaintiff/1st respondent at least to an extent of 44 1/6 cents cannot be disputed. This Court is of the view that the Courts below have independently applied their mind to sustain the claim of the plaintiff/1st respondent to an extent of 3.09 acres in suit 'A' schedule property. This Court find that the judgment and decree of the Trial Court is well founded and the issues have been well considered and decided in the light of pleadings and documents filed by both sides.

- (10) Having regard to the fact that the findings of facts by the Courts below are supported by several documents particularly, the admission of defendants/appellants in the course of oral evidence, this Court has no reason to interfere with the judgments and decrees of the Courts below.
- (11) In the result, the Second Appeal is devoid of merits and hence, dismissed. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

cda

To

1. The Additional District Court,
Erode.
2. The II Additional Subordinate Judge,
Erode.

Copy to:
The Section Officer,
VR Records, High Court, Chennai.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.23508

SA.No.287/2022 and
CMP.No.5944/2022

CA(CO)
UMA(29/06/2022)