



A.S.(MD) No.154 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD) No.154 of 2018
and
Cros.Obj.(MD).No.32 of 2021

A.S.(MD) No.154 of 2018

1.Krishnamani (died)
Memo dated 01.04.2022 presented before the Court
on 11.04.2022 is recorded as 1st appellant
died and appellants 2 to 6, who are already on record are
recorded as LR's. of the deceased 1st appellant
vide Court order dated 11.04.2022 made in
A.S.(MD).No.No.154/2018 and Cros.Obj.(MD).No.32/2021.

2.G.K.Ganesh Babu
3.G.K.Saravanan
4.G.K.Sivakumar
5.Jamunabai
6.Roopavathi
7.S.K.Sivaraman
8.S.S.Karthik
9.S.S.Rajasekaran

... Appellants



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-Vs-

1.M.J.Indira
2.K.R.Ramadoss
3.K.R.Devadoss
4.M.S.Durga
5.M.S.Jeyanthi
6.S.N.Santhi
7.V.G.Kumaresan
8.V.K.Gopinath
9.V.K.Vishnupriya
10.V.K.Sridevi

... Respondents

PRAYER: Appeal Suit filed under Order 41 Rules 1 and 2 r/w. Section 96 of the Civil Procedure Code, against the judgment and decree dated 04.04.2018 made in O.S.No.169 of 2014 on the file of I Additional District Court, Madurai.

For Appellants : Mr.T.R.Jeyapalam

For Respondents : Mr.S.Srinivasa Raghavan

Cros.Obj.(MD).No.32 of 2021

M.J.Indira

... Cross Objector



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Vs.

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10.K.R.Ramadoss
11.K.R.Devadoss
12.M.S.Durga
13.M.S.Jeyanthi
14.S.N.Santhi
15.V.G.Kumaresan
16.V.K.Gopinath
17.V.K.Vishnupriya
18.V.K.Sridevi

... Respondents

PRAYER: Cross Objection is filed under Order XLI Rule 22 of C.P.C.,
against the judgment and decree dated 04.04.2018 made in O.S.No.169 of
2014 on the file of I Additional District Court, Madurai.



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For Cross Objector : Mr.S.Srinivasa Raghavan
For Respondents : Mr.T.R.Jeyapalam

COMMON JUDGMENT

The first respondent is the plaintiff. She filed a suit in O.S.No.169 of 2014 before the I Additional District Court, Madurai, against the appellants/defendants 1 to 10 and the respondents 2 to 10/defendants 11 to 19, for passing of preliminary decree for partition allotting 1/3rd share to the plaintiff in the suit property by metes and bounds and for costs.

2. The trial Court after trial, decreed the suit in part and a preliminary decree was passed allotting 1/12th share to the plaintiff in the suit property and given liberty to the plaintiff to take out final decree proceedings for actual division of the suit property. Challenging the said judgment and decree, the defendants 1 to 10 have filed the present appeal and the first respondent/plaintiff has filed the Cross Objection.



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3 (i). The brief facts of the case are as follows:

The plaintiff is the daughter of Ramalingaier and Thulasiammal. Apart from the plaintiff, they have one son viz., Krishnamurthi and one daughter Mahalakshmi. Both of them are no more. The first defendant is the wife of deceased Krishnamurthi and the defendants 2 to 7 are the sons and daughters of the deceased Krishnamurthi. The 8th defendant is the husband of the deceased Devika, who is the daughter of the first defendant. The 9th and 10th defendants are the sons of deceased daughter Mahalakshmi. The 16th defendant is the husband of one Vijayalakshmi, who is the daughter of Late Mahalakshmi and 17th to 19th defendants are the son and daughters of the deceased Vijayalakshmi.

3(ii). The suit property is the ancestral property and the same was allotted to Ramalingaier, as per the registered partition deed, dated 27.09.1950. Tmt. Thulasiammal predeceased Ramalingaier. Ramalingaier died intestate during 1988. After his demise, the suit property was jointly



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enjoyed in common by the plaintiff and the defendants. The plaintiff so many times requested to give her 1/3rd share. But, the defendants evaded from partition. Hence, the plaintiff has sent a legal notice on 16.06.2014, claiming her 1/3rd share. The defendants 11 to 15 sent their reply stating that they also have right in the suit property. Since the suit property is the undivided joint family property, the plaintiff is entitled to 1/3rd share. During the pendency of the suit, the 7th defendant died as a spinster and her mother the 1st defendant alone is her legal heir. Hence, the suit is filed for partition.

4. The written statement filed by the defendants 1, 2, 4, 5 and 7, which was adopted by the defendants 3, 6, 8 to 10, reads as follows:

The plaintiff is the daughter of Late Ramalingaier was admitted. The suit property is the ancestral property of Late Ramalingaier. During partition on 27.09.1950, the 1st defendant's husband viz., Krishnamurthi alone was born. Therefore, Ramalingaier and Krishnamurthi alone become the absolute owners of the property. The plaintiff got married in the year 1955 and another daughter Mahalakshmi got married in the year 1948. The



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said Mahalakshmi died prior to 1973. Ramalingaier's wife Thulasiammal died on 24.06.1977. After the death of Thulasiammal, Ramalingaier gave 5 sovereigns of jewels and Rs.20,000/- cash to the plaintiff and the heirs of Mahalakshmi. Ramalingaier was in a sound and disposing state of mind executed a registered Will dated 22.02.1988 in respect of his undivided $\frac{1}{2}$ share in the suit property and his other property in Dindigul. The plaintiff and all the defendants known the existence of the said Will and it was acted upon. The plaintiff and the defendants 11 to 19 never demanded partition. The defendants sent reply to the legal notice dated 16.06.2014 and the same was received by the plaintiff's counsel on 23.07.2014. The plaintiff had never been in possession of the suit property. Neither the plaintiff nor the defendants 11 to 19 have any share or right over the suit property. Hence, the suit is liable to be dismissed.

5. The written statement filed by the 12th defendant, which was adopted by the defendants 11, 13 to 19, reads as follows:



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The relationship of the parties was admitted. The suit property is undivided joint family ancestral property. Ramalingaier died intestate in the year 1988. After his demise, the property was enjoyed by the plaintiff and the defendants in common without any partition. The defendants 11 to 19 so many times requested for partition, in the presence of community elders, the defendants 1 to 6 evaded from partition. For the legal notice sent by the plaintiff, the defendants 11 to 15 sent their reply on 11.07.2014, stating that they have also right in the suit property. No such Will has been executed as stated by the defendants 1 to 6. The suit property is still in common and joint possession of the parties. The 12th defendant's mother Mahalakshmi is also having 1/3rd share in the suit property. Hence, the defendants 11 to 19 are entitled to receive 1/3rd share collectively.

6. On the basis of the above pleadings, the learned trial Judge has framed the following issues for consideration:



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(i) Whether (Late) Krishnamurthy inherited half undivided share in the suit property?

(ii) Whether the registered Will dated 22.02.1988 executed by (Late) Ramalingaier is valid and binding?

(iii) Whether the suit property is available for partition?

(iv) Whether the plaintiff is entitled to the partition as prayed for?

(v) To what other relief?

7. In order to substantiate the case, on the side of the plaintiff, one witness was examined as P.W.1 and 5 documents were marked as Exs.A1 to Ex.A5. On the side of the defendants, three witnesses were examined as D.Ws.1 to 3 and 8 documents were marked as Exs.B1 to Ex.B8.



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8. After completing the trial and on hearing of arguments advanced on either side, the learned trial Judge, considered the evidence available on record, decreed the suit in part and a preliminary decree was passed allotting 1/12th share to the plaintiff in the suit property. Challenging the said judgment and decree, the defendants 1 to 10 have filed the present appeal and the first respondent/plaintiff has filed the Cross Objection.

9. The learned counsel appearing for the appellants would submit that the suit property originally belongs to one Ramalingaier. He got two daughters viz., Cross Objector herein / plaintiff, one Mahalakshmi and one son Krishnamurthy, who is the husband of the deceased first appellant herein and the father of the appellants 2 to 6. Ramalingaier and Krishnamurthy are the father and son and the Ramalingaier's daughter, the first respondent herein married in the year 1955 and another daughter Mahalakshmi married in the year 1948 and she died in the year 1973. After their marriage, the wife of Ramalingaier viz., Thulasiammal died on



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24.06.1977. After the death of Thulasiammal, Ramalingaier gave 5 sovereigns of gold to the first respondent / plaintiff and the deceased Mahalakshmi. Krishnamurthy is the only son by birth. He is entitled to $\frac{1}{2}$ share and Ramalingaier is entitled to $\frac{1}{2}$ share in the suit property. The Ramalingaier, during his life time, executed a registered Will dated 22.02.1988, in respect of his undivided $\frac{1}{2}$ share. Therefore, the $\frac{1}{2}$ share belongs to Ramalingaier goes to Krishnamurthy, male heir absolutely. After the death of Ramalingaier, Krishnamurthy is entitled to entire suit property. After the death of Krishnamurthy, his legal heirs, the appellants herein are entitled to the suit property. Since the first respondent / plaintiff got married in the year 1955 itself and Mahalakshmi married in the year 1948 and also she died in the year 1973 itself, either the State Act, 1989 or the Central Act, 2005 would not be applicable to the respondents. As per the Will, the appellants are entitled to the entire property. The trial Court failed to appreciate the fact that the Will was proved in the manner known to law and disbelieved the Will and allowed the suit for partition. The reasons stated for disbelieving the Will is not tenable either under law or on facts. Therefore,



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the appeal has to be allowed and the judgment and decree passed by the trial Judge is liable to be set aside and the suit has to be dismissed in toto, since the respondents are not entitled to any share in the suit property.

10. The first respondent in the appeal and the cross objector in the Cross Objection is one and the same. The learned counsel for the first respondent/Cross Objector would submit that Ramalingaier got the ancestral property. He got one son and two daughters. Though the daughter Mahalakshmi married in the year 1948, she died even in the year 1973. Prior to amendment in the State Act, 1987 and the Central Act, 2005, came into force, she married and died. Therefore, she is not the coparcener in the ancestral property, as per the amended Act. Further, since the first respondent / Cross Objector even though married in the year 1948, as per the Central Act, 2005, she is a coparcener and she is entitled to 1/3rd share. As a daughter, right by birth, she is a coparcener and she is entitled to get a share on par with the son Krishnamurthy. Therefore, the suit property has to be divided between Ramalingaier / father, Krishnamurthy / brother and the



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cross-objector, who is also one of the coparcener and they are entitled to 1/3 share each. Since the Ramalingaier died intestate, Ramalingaier's 1/3rd share will go to Krishnamurthy, the first respondent / Cross Objector and the heirs of Mahalakshmi.

11. Though the trial Court held that Krishnamurthy is entitled to ½ share in the suit property and the ½ share of the Ramalingaier would go to the appellants and the respondents, the trial Court had failed to consider the amended Central Act, 2005. He would further submit that as per the decision of the Hon'ble Supreme Court in the case of ***Vineeth Sharma vs. Rakesh Sharma and others*** reported in ***2020 (9) SCC 1***, even though the Ramalingaier died prior to 2005, the Cross - Objector as a female member right by birth, is also entitled to equal share on par with the son Krishnamurthy. Therefore, the quantum has to be re-fixed and the cross objection has to be allowed.



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12. Heard the learned counsel for the appellants and the learned counsel for the Cross Objector and perused the materials available on record.

13. Admittedly, the suit property is the ancestral property of Ramalingaier. The partition took place between the Ramalingaier and his brothers by way of registered partition deed, dated 27.09.1950. The son of Ramalingaier viz., Krishnamurthy was born on 01.11.1932. At that time, he was a minor and the suit property allotted to both the Ramalingaier and his son Krishnamurthy. After the date of partition, the Ramalingaier and his son Krishnamurthy become the absolute owner of the suit property and they were enjoying the property. The relationship of the parties are not in dispute and subsequent to the partition dated 27.09.1950, the suit property comes in the hands of Ramalingaier and Krishnamurthy. According to the appellants, Ramalingaier executed a registered Will dated 22.02.1988, in respect of undivided $\frac{1}{2}$ share in the suit property. Subsequently, the Ramalingaier died



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in the year 1988 itself. Therefore, the appellants are entitled to the entire suit properties.

14. According to the respondents, the Ramalingaier never executed a Will and the alleged Will is created by the appellants. Therefore, it will not bind the respondents. The Ramalingaier died intestate. The first respondent / Cross Objector is also a coparcener, as per the amended Act, 2005. As per the amended Act, 2005, the daughter also coparcener by birth on par with the son. Therefore, the Ramalingaier, Krishnamurthy and the Cross Objector are equally entitled to each 1/3rd share and since the Ramalingaier died intestate, the 1/3rd share of Ramalingaier would go to the appellants, the Cross Objector and the other respondents. As per the amended Act, 2005 as well as the *Vineeth Sharma case*, the cross objector is entitled to equal share on par with the son. Therefore, she is also a coparcener by birth and before the *Vineeth Sharma case* the position was little bit different regarding the date of death of the father. However, after *Vineeth Sharma case*, now the law is settled that even after the death of the



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father, the daughter is entitled to get equal share. Under such circumstances, the appeal filed by the appellants is liable to be dismissed and the Cross Objection has to be allowed and the quantum has to be modified.

15. The character of the properties are not in dispute and the relationship of the parties are also not in dispute. The only question is whether the Cross – Objector is a coparcener and she is entitled to equal share with Krishnamurthy and Ramalingaier. As per the amended Act, 2005 as well as the decision in the case of *Vineeth Sharma* reported in **2020 (9) SCC 1**, the cross objector is also a coparcener and she is entitled to 1/3rd share in the suit property.

16. As far as the execution of the Will is concerned, the appellants have not proved the Will in the manner known to law. Though the appellants claimed that Ramalingaier executed a registered Will in respect of undivided ½ share, the respondents stoutly denied the execution of the Will. Even otherwise, as per law, the propounder has to prove the Will in the manner



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known to law. The trial Court also disbelieved the Will and held that the Will was clouded with suspicious circumstances. Though one of the attestors of the Will was examined as D.W.3, in order to prove the Will, however, the Will has not been proved in the manner known to law. Mere identification of the signature of the testator is not alone sufficient and the testator has to speak about the mental status of the testator and he has to prove the Will in the manner known to law. In this case, the propounder had actively participated in the execution of the Will and the Will was registered in the house of the testator. The D.W.2 is the interested witness and he is none other than the brother of the deceased first appellant. Mere proof of execution is not enough, when the Will surrounding with suspicious circumstances and the suspicious circumstances has to be removed by the propounder.

17. In this case, even though the Mahalakshmi died prior to the death of her mother, the recitals shows that Ramalingaier gave jewels to Mahalakshmi, after the death of his wife. Even though the Mahalakshmi



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predeceased his wife, it is seen in the recital of the Will that testator gave jewels to his daughter Mahalakshmi after death of his wife, it is highly unsustainable and the propounder / beneficiary also actively participated in the execution of the Will. Even that alone may not be a sole ground to disbelieve the Will. However, the same is also one of the suspicious circumstances and there is no reason stated as to why the Will has been registered in the house of the testator and even the registration charge and other expenses only borne by propounder.

18. A careful scrutiny of the Will and the evidence of P.W.1, this Court finds that the propounder has not removed the surrounding suspicious circumstances. Even though there is no bar to register the Will by the testator in the house itself, there must be some acceptable reason and the propounder has to explain the acceptable reason for the deviation from the normal course. Therefore, the trial Court, on considering all the facts, raised surrounding suspicious circumstances. The propounder has not removed the clouds of suspicious circumstances. As the first appellate Court is a fact



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finding Court, this Court has to re-appreciate the entire evidence and has to give an independent finding. In this case, while re-appreciating the evidence, this Court finds that the suit property is the ancestral property and the Ramalingaier and his son Krishnamurthy and the Cross Objector are entitled to 1/3rd share, as the Cross Objector is a coparcener, as per amended Central Act, 2005 and the latest decision of the Hon'ble Supreme Court in the case of *Vineeth Sharma* (cited supra). The Will said to have been executed by Ramalingaier has not been proved in the manner known to law. Once the Will is clouded with suspicious circumstances and not proved and not coming into force, all the coparcener viz., Ramalingaier, Krishnamurthy and the cross objector are equally entitled to 1/3rd share in the suit property. The Will has not been proved in the manner known to law. This Court finds that the said Ramalingaier died intestate. Therefore, the said Ramalingaier's 1/3rd share would go to the appellants, the cross objector and the other respondents. By birth, the cross objector is entitled to 1/3rd share in the suit property and from Ramalingaier's 1/3rd share, she is entitled to 1/3rd share. Therefore, the cross objector is entitled to 4/9th share and the appellants are



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entitled to 4/9th share and the other respondents viz., legal heirs of Mahalakshmi are entitled to 1/9th share.

19. In a recent judgment of the Hon'ble Supreme Court reported in **2022 Live Law (SC) 549, Kattukandi Edathil Krishnan and another vs. Kattukandi Edathil Valsan and others**, it has been held as follows:-

"33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and



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without requiring initiation of any separate proceedings.

34. We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions contained in paragraph '33' of this judgment to the concerned Trial Courts in their respective States."

20. As per the above latest decision of the Hon'ble Supreme Court, a party need not file a final decree application separately. The Court itself can *suo motu* initiate final decree proceedings after passing the preliminary decree. Therefore, the trial Court is directed to initiate *suo motu* final decree proceedings and pass a final decree. Since already the suit is pending from 2002, all the final decree proceedings shall be completed within a period of six months from the date of its initiation. Registry is directed to send the original records to the trial Court concerned along with the judgment and decree made in this appeal within a period of fifteen days from the date of this judgment.



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21. In the result, the Appeal Suit is dismissed and the Cross
Objection is allowed. No costs.

18.08.2022

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To

1. The I Additional District Court,
Madurai
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN,J.

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