



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.12.2023
Pronounced on	21.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Appeal Suit.No.293 of 2013

1.R.Venkittan Alias Venakatachalam (died)

2.V.Karuppuswamy

3.V.Arunachalam

(Appellants 2 & 3 and sole respondent

legal heirs of the deceased viz

R.Venkittan @ Venkatachalam

as per momo dated 07.12.2021

CSR 35941) vide Court order

dated 14.12.2021 made in

A.S.No.293/2013 (AANJ)

.....Appellants/Defendants



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Jayamai

Vs.

...Respondent/Plaintiff

Prayer: First Appeal has been filed under section 96 of CPC read with order 41 Rule 1 Civil Procedure Code, against the Judgement and Decree dated 10.04.2013 made in O.S.No.189 of 2011 on the file of the Principal District and Sessions Judge of Erode.

For Appellants : Mr.P.Valliappan,
Senior Counsel
For Respondent : M/s.Singaravelu

J U D G M E N T

This appeal is directed against a judgment and decree dated 10.04.2013 passed by the learned Principal District and Sessions Judge of Erode. in O.S.No.189 of 2011.

2.The Appellants 2 and 3 are the Defendants 2 and 3 in O.S.No. 189 of 2011 and Plaintiff in the above suit who is the respondent herein.



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For the sake of convenience, the parties herein are referred to as they are ranked before the trial Court as Plaintiff and Defendant.

3.The case of the plaintiff in brief:

The plaintiff is the daughter of the 1 defendant and sister of the defendants 2 and 3. On 07.03.1973, one Ranga vannan, the father of 1st defendant and grand father of plaintiff and defendants 2 and 3 purchased the 1st item of the suit properties out of his earnings and income from ancestral properties in his favour and as well as in favour of his sons namely the first defendant, one Linga vannan and Karuppa vannan. The said Ranga vannan died intestate 18 years ago leaving behind him, his sons, the first defendant the said Lingavannan and Karuppavannan and his two daughters Pappath and Nagammal. The said two daughters got married and they are living separately with their husbands. On 18.6.2004, the 1st defendant and his brothers Linga vannan alias Lingappan and Karuppavannan alias Karupaswamy have partitioned the property left by their father Rangavannan and the first



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defendant, the father of the plaintiff and defendants 2 and 3 were allotted 'A' schedule property described in the said partition deed. The said property was purchased by the said Ranga vannan, the paternal grand father of the plaintiff and the defendants 2 and 3 and the first defendant out of the income from the ancestral properties. Hence, it is ancestral joint family property of the plaintiff. On 14.09.2009 there was a partition among the plaintiff and defendants on one hand and the families of brothers and sisters of 1st defendant, the father of the plaintiff and defendants 2 and 3 on the other hand. They partitioned the properties purchased by one Chinnavannan, the grand father of the 1st defendant on 2.5.1940. In the said partition, the plaintiff and the defendants were allotted the 'A' schedule property. The properties are ancestral properties of the plaintiff and the defendants. The plaintiff is entitled to 1/4th share in common as per Hindu Succession Amendment Act 39 of 2005. The plaintiff and the defendants are enjoying the suit properties in common and they have built a house from the common fund in the 2nd item of the suit properties. The plaintiff and the defendants are entitled to 1/4th share each in common. There is no partition between them.



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The defendants tried to sell the 1st item of the suit properties to some third parties. The plaintiff approached the defendants for amicable partition of the suit properties. But the defendants are not amenable for amicable partition. Hence, she issued a lawyer notice on 16.06.2011 for partition of the 1st item of the suit properties alone, since the plaintiff was not having full particulars regarding the items 2 and 3 of the suit properties. The defendants sent a reply notice dated 27.06.2011 through their advocate denying the claim of the plaintiff. Hence, the suit for partition and permanent injunction.

4. The 1st defendant, the father of the plaintiff filed the written statement, adopted by the defendants 2 and 3 denying the allegations of the plaintiff that the 1st item of the suit property was purchased by Ranga vannan from the income of the ancestral properties. The 1st item of the suit property is the separate property of the 1st defendant herein hence the plaintiff has no legal right or interest what so ever over the same. Even assuming that the property purchased by Ranga vannan was only out of his own earnings and as such it is the separate property. There was a partition on 14.09.2009 between



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the family of 1st defendant and his brothers. In the month of May 2003, the plaintiff's husband drove the plaintiff from the house demanding dowry.

Hence a complaint was lodged before the All Women Police Station at Kangayam. Subsequently, there was a compromise in the presence of then Village Panchayat President Mohanasamy and Sengoda gounder of Vellade Muthampalayam. In the said panchayat, it was agreed to discharge the mortgage amount of Rs.3,00,000/- borrowed by the plaintiff's husband by the defendants and then the plaintiff's husband should return back the amount. Subsequently, a property belonged to the maternal grand father was sold in the year 2011 in which, the plaintiff was given a substantial portion. In return, she had agreed to release all her rights in the family properties in the 2nd and 3rd item of the suit properties. After that, she had orally relinquished her rights in the family properties. The defendants also agreed to forgo the amount given to discharge the mortgage debt incurred by her husband in the year 2003. Hence, the plaintiff did not claim any demand for partition of in item Nos. 2 and 3 of the suit properties in her lawyer's notice dated 16.06.2011. The 2nd defendant has put up a building in the 2nd item of the



suit property about 7 years ago and living there separately. The 3rd defendant is not yet married. Hence, the 3rd defendant along with his aged parents is living in a thatched shed. Of late, the thatched shed and the mud walls were in a dilapidated condition. Hence, the 3rd defendant and his father have put up a new house adjacent to the existing dilapidated house. The building was raised about 3 feet from the ground level and almost at the stage of completion. While so, the plaintiff has filed the above suit with an intention to harass the defendants. The building is now completed. It is denied that the plaintiff and defendants are enjoying the suit properties in common and they have built a house with the common fund in the 2nd item of the suit properties. The plaintiff filed the suit for partition without impleading the other legal heirs of Rangavannan namely his two sons and two daughters and the husband of predeceased daughter Annakodi. They are necessary parties to the suit. Hence, prayed for dismissal of the suit.

5. The trial Court has framed the following issues:



1. Whether the plaintiff is entitled for partition?

2) Whether the plaintiff is entitled to the relief of partition and permanent injunction as prayed for in the suit?

3) Whether the plea of the defendants that the 1st item of the suit property is the separate property of 1st defendant is correct?

3) Whether the compromise alleged by the defendants in their written statements is true?

4) Whether the suit is bad for non-jointer of necessary parties?

5) To what other relief's the plaintiff is entitled to?

6. The trial court after taking into consideration oral and documentary evidences of both sides and the arguments advanced by the respective counsels passed the preliminary decree in respect of the suit properties in favour of the plaintiff.

7. Aggrieved over the judgment and decree of the trial Court, the



plaintiff preferred the present appeal.

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8. Heard Mr.P.Valliappan, learned Senior counsel for the appellant and M/s.Singaravelu, learned counsel appearing for the respondent.

9. The appellant has raised the following points for consideration

1. Whether the suit is bad for non-joinder of necessary parties?

2. Whether this appeal can be allowed or not?

Point No.1

10. On a careful consideration of the materials available on record and the submission made by both the counsel, it could be seen that there is no dispute that the plaintiff is the daughter of the first defendant and sister of the defendants 2 and 3. According to the plaintiff, the suit properties are ancestral in nature and therefore, the plaintiff is entitled to $\frac{1}{4}$ th share in common as per Hindu Succession Amended Act 39 of 2005.

11. The learned counsel appearing for the appellants/defendants would



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contend that in a suit for partition, all the legal heirs ought to have been made as parties. When all the heirs are not made parties to the suit, the suit is bad for non-joinder of necessary parties. Suit for partition is not maintainable in the absence of necessary parties for adjudication. The necessary parties could be added even at appellate stage, who had share in the suit property. The husband of the deceased female who died intestate, is bound to be included in a suit for partition for adjusting her shares. the defendants contended that the first item of the suit property is the separate property of the first defendant and in the second and third item of the suit properties the plaintiff orally agreed to relinquish all her rights in a compromise entered between the parties. The further contention of the defendants is that the sons and daughters of Rangavannan, who is the father of the first defendant and the husband of predeceased daughter Annakodi are necessary parties to the suit. Without impleading the legal heirs of Rangavannan, the suit is bad for non-joinder of necessary parties. To support his contention he has relied upon the following decision cases:



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1.2020(2)MWN (Civil) 82

**"(B) CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 1, Rule 9 -- Non-Joiner of necessary parties—
Dismissal of Suit-- Whether justified –Suit for partition –
Necessary parties, who had share in Suit, not been impleaded
by Plaintiff in spite of objection raised by Defendants—
Necessary parties in Partition Suit to be mandatorily
impleaded –Non-Joiner of necessary parties in Partition Suit,
held, ground for dismissal of Suit –dismissal of Suit by Trial
Court, upheld."**

2.2009 (3) CTC 760

**Code of Civil procedure,1908 (5 of 1908), Order 1, Rule 10
& Section 100 – Hindu law – Partition Suit – Second
appeal – Non – joinder of necessary parties – Held :
Necessary parties could be added at any stage of
proceedings – Necessary parties could be added even at**



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appellate stage before High Court – Partition Suit should not be dismissed by opportunity should be given to parties concerned to implead necessary parties."

3.2015 (2) MWN (Civil)26

Plaintiff tracing title through alleged Will executed in their favour - Widow and daughter of Testator not made parties to Suit - When title to property is traced on basis of Will, non-testamentary Legal Heirs, who would get share in event of failure to prove Will,

Suit remanded and parties directed to implead widow and daughter of Testator as parties in Suit - Appeal allowed.

4.2015 (5) CTC 752

Hindu Succession Act, 1950 (30 of 1956), Section 16-
Partition of property of Female-Necessary parties – Property of a Hindu Female who died intestate, held, would devolve on her sons and daughter and her husband-- Application in suit



for partition for adjusting shares of a Hindu Female who died intestate, held, bound to include husband of deceased female.

5.2021 (2) CTC 639

***Code of Civil Procedure, 1908 (5 of 1908),
Order 1, Rule 9 – Suit for Partition decided without
impleading Legal Heir -Share allotted to Legal Heir though
not party – Suit held bad for non-joinder of necessary party
– Judgement and Decree of Trial Court partitioning Suit
property, set aside – Second Appeal allowed.***

Held: In the above case, this Court held that the appropriate parties were not included in the Suit, the Suit is not bad for non-joinder but, if the parties, who are not on the array of the parties in the Suit, who are necessary parties, in the absence, no final adjudication could be made, then the Suit has to be held bad for non-joinder of necessary parties. Therefore, the Plaintiff has to face the legal consequences on dismissal of the Suit. In the case on hand, admittedly, one Kamalammal was born to Muthaiyan through his First Wife. He is none other than the own sister of the First Defendant. When the First Defendant specifically pleaded in his written statement that his sister has not been added as a party and as such prayed for



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dismissal of the suit for non-joinder of necessary parties. If the trial court failed to frame any issues in this regard and the plaintiff also failed to take any steps to implead the sister of the First Defendant as a party to the suit. Expecially, the suit for partition, all the parties have to be shown as a parties so that the partition can be completely effected. In the absence of necessary party, no effective decree can be passed. Therefore, non-joinder of necessary party is fatal to the case, In view of the above said principles, this court is of the considered opinion that non-joinder of necessary party in this partition suit is fatal and the suit is liable to be dismissed on this ground alone.

6.2014 (2) MWN (Civil) 168

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908),
Order 1, Rule 9-Suit for Partition –Non-joinder of necessary parties – Necessary parties - proper parties - Distinction- All co-sharers are necessary parties in Suit for Partition—Non-joinder of all Legal Heirs in Suit for Partition is fatal - Plaintiff sought for Partition of Suit property without impleading necessary parties having interest and title over Suit property - Suit is bad for non-joinder of necessary parties."



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7.2010 (2) MWN (Civil)440

"(B) CODE OF CIVIL PROCEDURE, 1908, Order I Rule 9-- partition suit – Non-Joinder of parties-Suit for partition not maintainable in absence of necessary parties for adjudication"

8.2011 (1) MWN (Civil)529

"(B) CODE OF CIVIL PROCEDURE, 1908(5 of 1908), Order I Rule 10- Suit for parition –All heirs not made parties to suit-- Suit is bad for non-joinder of necessary parties-- Second Appeal partly allowed."

9.2020 (1) MWN (Civil) 708

***CODE OF CICIL PROCESURE,
1908 (5 OF 1908), Order 1 ,Rule 10 – Suit for Partition
– Non – Joinder of necessary parties – Suit for Partition,
Separate Possession and Permanent Injunction – Suit
property, Joint Family property of Plaintiffs and
Defendants – Suit decreed by Trail Court – Stand of
Defendant in that his Sister, one of Legal Heries of their
father enjoying Suit properties as he stayed in another
city – No Relinquishment Deed or Release Deed
executed by Sister in favour of Defendant – Held, in Suit***



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for Partition, all Legal Heirs to be impleaded – As sister of Defendant, one of Legal Heirs of deceased, not impleaded, Suit is bad for non – joinder of necessary party – Decree passed in Suit set aside – Matter remanded to Trial Court to implead sister as party in Suit – Appeal disposed of.[Para 24 & 25]"

12.The learned counsel appearing for the respondent/plaintiff would contend that the basic aim of Section 52 of the Hindu Succession Act is to ensure that inherited property of an issueless female Hindu dying intestate goes back to the source. It was enacted to prevent inherited property falling into the hands of strangers. Hence, the husband of the predeceased daughter of Rangavannan, namely Annakodi is not a necessary party in the suit. To support his contention he has relied upon the decision case reported in **2010 5 CTC 364** in which it is held that

“A perusal of the aforesaid provisions would show that the basic aim of Section 15(2) is to ensure that inherited property of an issueless female Hindu dying intestate goes back to the source. It was enacted to prevent inherited property falling into the hands of strangers. This is also evident from the recommendations of the Joint Committee



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of the Houses of Parliament, which have been duly noticed by this Court in the case of State of Punjab v. Balwant Singh, 1992 Supp (3) SCC 108. The scheme underlying the introduction of the aforesaid provision had been discussed as follows:

"It came to be incorporated on the recommendations of the joint committee of the two Houses of Parliament. The reason given by the Joint Committee is found in Clause (17) of the Bill which reads as follows:

"While revising the order of succession among the heirs to a hindu female, the Joint Committee have provided that properties inherited by her from her father reverts to the family of the father in the absence of issue and similarly property inherited from her father or father in law reverts to the heirs of the husband in the absence of issue. In the opinion of the joint committee such a provision would prevent properties passing into the hands of persons to whom justice would demand they should not pass."

"15. The report of the Joint Committee which was accepted by Parliament indicates that sub-section (2) of Section 15 was intended to revise the order of succession among the heirs to a Hindu female and to prevent the properties from passing into the hands of persons to whom justice would demand that they should not pass. That means the property



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should go in the first instance to the heirs of the husband or to the source from where it came."

13.It is not in dispute that the father of the 1st defendant namely Rangavannan had two other sons and daughters apart from the first defendant namely Lingavannan and one Karuppa vannan and daughters Pappathy and Nagammal the sons of Rangavannan have entered into partition under Ex.A3 partition deed in which, the first item of the suit property was allotted to the shares of the first defendant and the other two daughters of Rangavannan namely Pappathi and Nagammal relinquished their shares in the first item suit property under Ex.A.4 release deed dated 14.09.2009 releasing all their rights in the properties of their father Rangavannan. In respect of the properties of their grandfather namely Chinnavannan, the said pappathi and Nagammal relinquished all their rights after receipt of cash consideration as mentioned in Ex.A.2 partition deed. Therefore, the sisters of the first defendant namely Pappathi and Nagammal and his brothers Lingavannan and Karuppu vannan have already partitioned their properties and released their rights in the properties. Hence, it is not necessary to implead them in the present for



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partition as necessary parties. Likewise, the properties of Chinnavannan namely the 'C' Scheduled property have been already divided amongst the first defendant and his brothers and sisters. Hence, they are not necessary parties in the suit. Therefore, the contention of the defendants that the suit is bad for non-joinder of necessary parties is unsustainable. As far as, the husband of the predeceased daughter of the first defendant namely Annakodi is concerned, it is not in dispute that she died issueless. Therefore, under Section 15 (2) of Hindu Succession Act, it is very clear that when an issueless female had died intestate, such property will not devolve upon her husband and the property would revert back to the original source. Applying the principles laid down in ***S.R.Srinivasa vs. S.Padmavathi Ammal*** reported in **2010 (5) CTC 364**, the son-in-law of the 1st defendant who had no issues is not a necessary party in the suit as per Section 15 (2) of the Hindu Succession Act. Moreover, the defendants failed to prove that the plaintiff has relinquished her rights in the 2nd and 3rd items of the suit properties. The alleged oral relinquishment is not valid under the eye of law. Any relinquishment in respect of immovable property has to be compulsorily



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registered. Moreover, even in the reply notice given by the defendants the factum of oral relinquishment was not mentioned. Furthermore, the defendants have allotted some properties under Ex.A.2 to the plaintiff in the year 2009 after the alleged release by the plaintiff in the year 2003. If really the alleged oral release is true, the defendants would not have allotted properties to the plaintiff. The defendants also failed to establish the discharge of a mortgage loan by the defendants which is said to have been incurred by the husband of the plaintiff. Therefore, the contention of the defendants that since they have discharged the said mortgage loan, the plaintiff in turn relinquished her rights in the suit item nos.2 & 3 respectively, is unsustainable.

14. With regard to item No.1, the defendants would submit that it is the separate property of the 1st defendant and therefore, the plaintiff is not entitled for partition in the said property. The 1st item of the suit property as per Ex.A.1 sale deed was purchased by one Rangavannan and his sons namely the 1st defendant and one Linga vannan and Karuppa vannan on



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07.03.1973. The contention of the plaintiff is that the said property was purchased in the name of the 1st defendant and his brothers and the father of the 1st defendant with the joint family nucleus existed in the family. The initial burden lies on the plaintiff to establish the existence of joint family property and the joint family property had sufficient nucleus out of which properties were acquired. When such initial burden is discharged it is for the party who claims it to be his separate property has to prove that the same was purchased out of his own income. The categorical admission made by the 1st defendant, examined as D.W.1 would clearly establish that after the death of Chinnavanna, who is the grandfather of the 1st defendant the family were possessing four acres of ancestral property and at that point of time of purchasing the property under Ex.A.1, the family had no other income except the joint family income. It is not established on the side of the defendants that the property under Ex.A.1 was purchased out of separate income to purchase the said property. Therefore, in the absence of evidence of independent income, the property acquired under Ex.A.1 has to be presumed to be a joint family property. Therefore, the trial Court has rightly come to the conclusion



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that the plaintiff is entitled to $\frac{1}{4}$ th share in the suit properties. No infirmity or perversity found in the judgment and decree passed by the trial Court in O.S.No.189 of 2011.

15.For all the reasons stated above, this Court come to the conclusion that there is no reason whatsoever to interfere with the well considered judgment and preliminary decree of the learned Trial Judge. There is no merit in the appeal and it is liable to be dismissed, accordingly dismissed. The preliminary decree passed by the trial Court is confirmed. Considering the facts and circumstances of the case, this Court is of the view that there shall be no order as to cost.

21.12.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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K.GOVINDARAJAN THILAKAVADI, J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

Appeal Suit.No.293 of 2013